

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

LANDRY ANGELO ADELAKOUN AND OTHERS

V.

REPUBLIC OF BENIN

APPLICATION NO. 012/2021

JUDGMENT

4 DECEMBER 2023



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

In the matter of:

Landry Angelo ADELAKOUN AND OTHERS,
Self-represented

Versus

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

After deliberation,
Renders this Judgment:

I. THE PARTIES

1. Messrs Landry Angelo Adalakoun, Romaric Jesukpego Zinsou and Fifamin Miguele Houeto (hereinafter referred to as “the Applicants”) are nationals of Benin. They allege a violation of the right to freedom of opinion and expression owing to the Government shutting down the internet on the day of legislative elections which took place on 28 April 2019.
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 also deposited, on 8 February 2016, the Declaration provided for in Article 34(6) of the Protocol (hereinafter referred to as "the Declaration") by virtue of which it accepted the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organizations. On 25 March 2020, the Respondent State deposited with the African Union Commission (AUC) the Instrument of withdrawal of its Declaration. The Court has ruled that the withdrawal of the Declaration has no effect either on pending cases or on new cases filed before it, before the withdrawal took effect one year after the deposit of the said instrument, in this case, on 26 March 2021.¹

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the Application that on 28 April 2019, the Respondent State held legislative elections in which only two pro-government political parties participated, owing to disagreements between the various political actors.
4. The Applicants aver that it was in the said circumstances that the citizens of Benin on that same day woke up to a nation-wide internet shutdown, without having been given prior notice to enable them to take the necessary measures. They aver that this constitutes a violation of their fundamental rights.

¹ *Houngue Éric Noudehouenou v. Republic of Benin*, AfCHPR, Application No. 003/2020, Order of 5 May 2020 (provisional measures) §§ 4 - 5 and Corrigendum of 29 July 2020.

B. Alleged violations

5. The Applicants allege violation of the right to freedom of opinion and expression, which includes the right to hold opinions without interference and the right to seek, receive and disseminate information and ideas, regardless of borders, through any media protected by Article 19 of the Universal Declaration of Human Rights (UDHR).

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

6. The Application was filed on 22 March 2021, together with a request for provisional measures.
7. On 28 September 2021, the Application was served on the Respondent State for its observations on the request for provisional measures to be filed within fifteen (15) days of receipt. The Respondent State was also requested to submit the list of its representatives within thirty (30) days and its Response to the merits within ninety (90) days.
8. On 20 October 2021, the Respondent State filed its Response to the request for provisional measures. On 24 March 2022, the Court issued an Order dismissing the request for provisional measures and this was notified to the parties on 4 April 2022.
9. The Respondent State did not file a Response on the merits of the Application despite reminders sent to it on 11 February and on 16 November 2022.
10. Pleadings were closed on 30 June 2023 and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

11. The Applicants pray the Court to declare that the Internet shutdown during the April 2019 legislative elections in the Respondent State constitutes a human rights violation.
12. The Respondent State did not file any submissions on the merits.

V. ON DEFAULT BY THE RESPONDENT STATE

13. Rule 63(1) of the Rules provides:

Whenever a party does not appear before the Court, or fails to defend its case within the period prescribed by the Court, the Court may, on the Application of the other party, or on its own motion, enter judgment in default after it has satisfied itself that the defaulting party has been duly served with the Application and all other documents pertinent to the proceedings.

14. The Court notes that the above-mentioned Rule 63(1) sets out three conditions for a judgment by default, namely: (i) notification of the Application and the pleadings to the defaulting Party ; (ii) default by one of the parties; and (iii) a request made by the other party or the Court acting on its own motion.
15. With regard to the notification of the Application and the pleadings to the defaulting Party, the Court recalls that the Application herein was served on the Respondent State on 28 September 2021, with a request to file its observations within ninety (90) days. The Court, therefore, finds that the Application was duly served on the Respondent State.

16. The Court further notes that the Respondent State did not file its written observations on the said Application despite reminders sent to it on 11 February and 16 November 2022. The Court, therefore, concludes that the Respondent State failed in its obligation to present its case.
17. Lastly, the Court notes that the Rules empowers it to rule by default either on its own motion or at the request of the other Party. As the Applicant has not requested a judgment by default, the Court will render judgment on its own motion in the interest of the proper administration of justice.²
18. Accordingly, the Court decides to render its judgment in this Application by default in respect of the Respondent State.

VI. JURISDICTION

19. 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.
20. Furthermore, Rule 49(1) of the Rules provides, “[t]he Court shall conduct preliminary examination of its jurisdiction [...] in accordance with the Charter,

² African Commission on Human and Peoples' Rights v. Libya (merits) (2016), 1 AfCLR 145, §§ 38 to 42; Fidèle Mulindahabi v. Rwanda, ACtHPR, Application no. 010/2017, Judgment of June 26, 2020 (jurisdiction and admissibility), § 30. Yusuph Said v. United Republic of Tanzania, ACtHPR, Application no. 011/2019, Judgment of September 21, 2021 (jurisdiction and admissibility), § 17; Robert Richard v. United Republic of Tanzania, ACtHPR, Application no. 035/2016, Judgment of December 2, 2021 (merits and reparations), §§ 17 to 18.

the Protocol and these Rules.”

21. Based on the above provisions, the Court must, in each Application, conduct a preliminary examination of its jurisdiction and rule on objections thereto, if any.
22. The Court recalls that the Respondent State did not file any submissions. Nonetheless, in accordance with Rule 49(1) of the Rules, it must satisfy itself that all aspects of its jurisdiction are met. To this end, the Court notes that it has:
 - i. Material jurisdiction, as the Applicants allege violation of freedoms of opinion and expression protected under Article 19 of the UDHR³ read jointly with Article 9 of the Charter.
 - ii. Personal jurisdiction, as the Respondent State is a party to the Charter and Protocol and deposited the Declaration. On 25 March 2020, the Respondent State deposited an instrument of withdrawal of its Declaration. In this regard, as per the Court’s jurisprudence the Respondent State’s withdrawal of its Declaration has no retroactive effect and has no effect either on cases pending before the Court at the time of the said withdrawal, or on new applications filed before the withdrawal took effect one (1) year after it was deposited, in this case, on 26 March 2021. This Application having been filed on 22 March 2021, that is, before the withdrawal of the Declaration took effect, is not affected by the said withdrawal.

³ The Respondent State stated its commitment to the UDHR in the preamble to its Constitution. See, Law No. 90-32 of 11 December 1990 establishing the Constitution of the Republic of Benin. On the general legal status of the UDHR, See, *Anudo Ochieng Anudo v. United Republic of Tanzania* (merits) (22 March 2018) 2 AfCLR 248, § 76; *Robert John Penessis v. United Republic of Tanzania* (merits and reparations) (28 November 2019) 3 AfCLR 593, § 85.

- iii. Temporal jurisdiction as the alleged violations occurred after the Respondent State became a party to the Charter and to the Protocol, as indicated in paragraph 2 of this Judgment.
 - iv. Territorial jurisdiction, insofar as the violations alleged by the Applicants occurred on the territory of the Respondent State.
23. Consequently, the Court finds that it has jurisdiction to examine the Application.

VII. ADMISSIBILITY

24. Under Article 6(2) of the Protocol “[t]he Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter”.
25. Pursuant to Rule 50(1) of the Rules, “[t]he Court shall ascertain the admissibility of an Application filed before it in accordance with Article 56 of the Charter, Article 6(2) of the Protocol and these Rules”.
26. Rule 50(2) of the Rules, which in substance restates Article 56 of the Charter, provides that:

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;
- 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.
-
- 27. As earlier pointed out, the Respondent State did not file any submissions. However, the Court must satisfy itself that all admissibility requirements under the aforementioned provisions are met.
 - 28. The Court notes that the Applicants clearly indicate their identity such that the requirement under Rule 50(2)(a) is met.
 - 29. The Court also notes that the Applicants' prayers seek to protect their rights guaranteed by the Charter. Besides, one of the objectives of the Constitutive Act of the African Union, as stated in Article 3(h) thereof, is the promotion and protection of human and peoples' rights. Moreover, the Application is not incompatible with the Constitutive Act. The Court, therefore, holds that the Application is compatible with the Constitutive Act and the Charter and that it meets the requirements of Rule 50(2)(b) of the Rules.
 - 30. The Court further notes that the Application does not contain any disparaging or insulting language directed against the Respondent State or its institutions or the African Union, thus making it compliant with the requirements of Rule 50(2)(c) of the Rules.
 - 31. The Court also notes that the Application is not based exclusively on news disseminated by the mass media but concerns an internet shutdown which is not disputed by the Respondent State. The condition set out in Rule 50(2)(d) of the Rules is, therefore, met.

32. As regards the requirement of exhaustion of local remedies, the Applicants concede that they did not file any appeal before the Constitutional Court. However, they submit that they seek to be exempted on account of the habitual delays in proceedings before the said Court, as well as the lack of impartiality and independence on the part of its judges.
33. The Respondent State made no submission on this issue.

34. The Court recalls that in accordance with Article 56(5) of the Charter and Rule 50(2)(e) of the Rules, Applications must be filed after exhaustion of local remedies, if any, unless it is obvious that the procedure relating to this remedy is unduly prolonged.
35. The Court notes that the local remedies to be exhausted are of a judicial nature. They must be available, should be capable of being exercised by the Applicant without hindrance, and must be effective, in the sense that they are “able to give satisfaction to the Applicant or are of such a nature as to remedy the disputed situation”.⁴ The Court will examine whether these requirements are met in the present case, bearing in mind these principles.
36. The Court observes, in the instant Application, that in accordance with the provisions of the Respondent State’s Constitution and the Organic Law on the Constitutional Court, the Constitutional Court has jurisdiction to hear allegations of human rights violation.⁵ The Court recalls, in line with its

⁴ *Beneficiaries of the late Norbert Zongo, Aboulaye Nikiema alias Ablassé, Ernest Zongo and Blaise Ilboudo and Burkinabè Movement for Human and Peoples' Rights v. Burkina Faso* (merits) (5 December 2014), 1 AfCLR 219, § 68; *Konaté v. Burkina Faso* (merits), *supra*, §108.

⁵ Article 117 of the Benin Constitution states: “*The Constitutional Court is the highest court of the State in constitutional matters. It rules on the constitutionality of the law and guarantees fundamental human rights and public freedoms (...)*”; Article 122 of the Constitution provides that: “*Any citizen may complain to the Constitutional Court about the constitutionality of laws either directly or through the unconstitutionality objection procedure invoked in a matter which concerns him before a court of law*”.

jurisprudence, that the remedy before the Respondent State's Constitutional Court is an available, effective and satisfactory remedy.⁶

37. The Court notes that under the aforementioned provisions, any act likely to violate fundamental rights may be brought before the Constitutional Court by way of a simple complaint. Therefore, the Applicants, who allege violations of fundamental rights arising from an internet shutdown on 28 April 2019, the day of the legislative elections, could have seized the Constitutional Court with the violations they allege in the present Application.
38. The Court recalls that determination of circumstances warranting exemption from exhaustion of local remedies is made on a case-by-case basis taking into account, *inter alia*, the likelihood that an Applicant is able to exercise the local remedies without impediments.⁷ It is, therefore, for the Applicant to demonstrate the existence of impediments that render local remedies unavailable or ineffective. The Court will consequently examine each of the Applicants' arguments separately in light of this requirement.
39. The Court observes, with regard to the first argument, namely, the habitual lengthy judicial proceedings before the Respondent State's Constitutional Court, that the said court renders its decision on alleged violation of human rights within eight (8) days of referral.⁸ The Court considers that this time-limit attests to the fact that the court conducts proceedings expeditiously. The Court further notes that the Applicants not only failed to exercise the said remedy but

Article 22 of Law No. 91-009 of 4 March 1991 on the Constitutional Court as amended by the Law of 31 May 2001 states that: "Laws and regulatory acts deemed to infringe fundamental human rights and public freedoms, and in general, violate human rights shall similarly be transmitted to the Constitutional Court either by the President of the Republic, or by any citizen, any human rights advocacy association or non-governmental organization."

⁶ *Laurent Metegnon and Others v. Republic of Benin*, AfCHPR, Application No. 031/2018, Judgment of 24 March 2022, § 63; *Conaïde Togla Latondji Akouedenoudje v Republic of Benin*, AfCHPR, Application No. 024/2020, Judgment of 13 June 2023 (merits and reparations), § 39

⁷ *Bernard Anbataayela Mornah v. Republic of Benin and Others*, AfCHPR, Application No. 028/2018, Judgment of 22 September 2022 (merits and reparations), § 204.

⁸ Article 33(1) of Law No. 91-009 of 4 March 1991 establishing the Organic Law on the Constitutional Court as amended by Law of 31 May 2001.

they also did not attempt to exhaust it. They have also provided no evidence in support of their arguments.

40. With regard the Applicants' second argument, namely, the lack of independence and impartiality on the part of judges, the Court recalls, in line with its established jurisprudence, that that the impartiality of a judge is presumed and undisputable evidence is required to refute this presumption.⁹ Thus, mere allegation of lack of independence and impartiality of a judicial authority is not sufficient. In the present Application, the Applicants have not proved lack of independence and impartiality on the part of the judges of the Respondent State's Constitutional Court.
41. The Court infers therefrom that the Applicants are making statements of a general nature, and accordingly reiterates that "general statements are not enough. More substantiation is required."¹⁰
42. The Court, therefore, finds that the Applicants' have failed to justify that the exceptions to rule on exhaustion of local remedies applies to them. They should, therefore, have exhausted the said remedies before seizing this Court. The Court thus finds that the Application does not meet the requirement of exhaustion of local remedies under Rule 50(2)(e) of the Rules.
43. Having found that the Application does not meet the requirement of Rule 50(2)(e) of the Rules, and given the cumulative nature of the admissibility requirements,¹¹ the Court need not pronounce itself on the other requirements

⁹ *Alfred Agbesi Woyome v. Republic of Ghana* (merits and reparations) (28 June 2019) 3 AfCLR 235, § 128; *XYZ v. Republic of Benin*, Judgment (merits and reparations) (27 November 2020) 4 AfCLR 83, § 82

¹⁰ *Fidèle Mulindahabi v. Republic of Rwanda* (jurisdiction and admissibility) (4 July 2019) 3 AfCLR 389, §15; *Kennedy Gihana & Others v. Republic of Rwanda*, (merits and reparations) (28 November 2019) 3 AfCLR 655, §120. *Alex Thomas v. Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 140.

¹¹ *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; *Collective of former ALS workers v. Republic of Mali*, (jurisdiction and admissibility) (Judgment of 28 March 2019) 3 AfCLR 73, § 39.

set out in paragraphs 6 and 7 of Article 56 of the Charter as restated in Rule 50(2)(f) and 50(2)(g) of the Rules.

44. In view of the foregoing, the Court declares the Application inadmissible.

VIII. COSTS

45. None of the Parties made submissions on this point.

46. Rule 32(2) of the Rules provides that “[u]nless otherwise decided by the Court, each party shall bear its own costs, if any.”

47. The Court considers that there is no reason to depart from this principle. Consequently, the Court decides that each party should bear its own costs.

IX. OPERATIVE PART

48. For these reasons

THE COURT

Unanimously,

On default

- i. Delivers Judgment by default of the Respondent State.

On jurisdiction

- ii. *Declares* that it has jurisdiction.


On admissibility

- iii. *Holds* that the Application does not meet the requirement of exhaustion of local remedies under Rule 50(2)(e) of the Rules, as restated in Article 56(5) of the Charter;
- iv. *Declares* the Application inadmissible.

Costs:


- v. *Orders* that each Party should bear its own costs.

Signed:


Imani D. ABOUD, President; 


Modibo SACKO, Vice-President; 


Ben KIOKO, Judge; 


Rafaâ BEN ACHOUR, Judge; 


Suzanne MENGUE, Judge; 

Tujilane R. CHIZUMILA, Judge; 

Chafika BENSAOULA, Judge; 

Blaise TCHIKAYA, Judge; 

Stella I. ANUKAM, Judge; 

Dumisa B. NTSEBEZA, Judge; 

Dennis D. ADJEI, Judge;



and Robert ENO, Registrar.



Done in Algiers, this Fourth Day of December in the Year Two Thousand and Twenty-Three, in French and English, the French text being authoritative.

