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

APPLICATION FOR PROVISIONAL MEASURES NO. 002/2019

IN THE MATTER OF

XYZ

V.

REPUBLIC OF BENIN

APPLICATION 057 /2019

RULING ON PROVISIONAL MEASURES

2 DECEMBER 2019

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

In the matter of:

XYZ

Self-represented

versus

REPUBLIC OF BENIN

represented by:

Mr. Iréné ACLOMBESSI, Legal Representative of the Treasury

after deliberation,

makes the following Ruling:

I. THE PARTIES

1. On 03 August 2019, a national of Benin (hereinafter referred to as "Applicant XYZ") who requested anonymity, filed before this Court an Application for provisional measures against the State of Benin. In the same Application, he also requested the Court to decide on the merits.

2. During its 53th Ordinary session, the Court granted the Applicant request for anonymity.

3. The Republic of Benin (hereinafter referred to as "the Respondent State") became 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 prescribed under Article 34(6) of the Protocol whereby it accepts the jurisdiction of the Court to receive applications from individuals and Non-Governmental organizations.

II. SUBJECT OF THE APPLICATION

4. The Applicant indicates that the former Prime Minister of the Respondent State[1] Mr. Lionel Zinsou was prosecuted for making an inaccurate statement before the Accounts Chamber of the Supreme Court to seek validation of his campaign expenses in respect of the 2016 presidential election.

5. The Applicant submits that on 02 August 2019, the 3rd Direct Appeals Chamber of the Cotonou Court of First Instance found Mr. Zinsou guilty of "forgery" and of exceeding the “limits of campaign expenses", and sentenced him to five years of ineligibility to contest election and six months of suspended prison sentence. He was also fined 50 million CFA Francs.

6. The Counsel for Mr. Lionel Zinsou claimed to have seized the Constitutional Court of the matter, raising a constitutionality objection pursuant to Article 577 of the Code of Criminal Procedure and Article 122 of the Constitution, on the grounds that his appeal asking for documents to be put at his disposal had been turned down, in violation of his right to defence; and that the Judge also violated the principle of presumption of innocence. The Constitutional Court dismissed the appeal, declaring it inadmissible.

[1] Under the Government led by the former President of the Respondent State, Thomas Boni Yayi.

7. On the merits, the Applicant is challenging the afore-said decision of the Constitutional Court.

8. The Applicant contends that the objective of the procedure before Benin Courts is to prevent Mr. Lionel Zinsou from running as candidate in the next presidential election. The Applicant states that, if this prohibition were to become effective, it would limit his right to elect the representative of his choice in the next presidential election in 2021, hence his interest to act. The Applicant draws the attention of the Court to the urgency of the matter, as the candidatures for the next presidential elections are to be submitted not later than the next eighteen (18) months. He therefore prays the Court for provisional measures.

9. The Respondent State is of the view that the request for interim measures to stay execution of the judgment of the Court of the First Instance is irrelevant because, in accordance with the Criminal Procedure Code, the execution of that decision is stayed. Mr. Zinsou filed his appeal on 06 August 2019 and thus, the judgment of the Court of First Instance is *ipso facto* suspended.

10. The Respondent State further argues that the conditions set out in Article 27 of the Protocol for the issuance of provisional measures, in particular, extreme gravity or urgency and the risk of irreparable harm, have not been met.

11. In view of the aforesaid, the Respondent State prays the Court to declare the request for provisional measures inadmissible.

III. ALLEGED VIOLATIONS

12. The Applicant alleges the violation of:

    i. the right to a fair trial as protected by Article 7(1)(d) of the Charter;

    ii. the right to participate freely in the government of his country, to vote and be voted for, as protected by Article 13(1) of the Charter.

IV. SUMMARY OF THE PROCEDURE BEFORE THE COURT

13. On 03 August 2019, Applicant filed the Application requesting the Court to issue an order of provisional measures and to decide on the merit.

14. The Application was served on the Respondent State on 15 August 2019 and the Respondent State filed its response on 30 September 2019 within time, this having been extended by the Court.

V. JURISDICTION OF THE COURT

15. In considering an application, the Court must ensure that it has jurisdiction to hear the case, pursuant to Articles 3, 5(3) and 34(6) of the Protocol.

16. However, with regard to provisional measures, the Court need not satisfy itself that it has jurisdiction on the merits of the case, but simply that it has *prima facie*[2] jurisdiction.

17. In terms of Article 5(3) of the Protocol, "The Court may entitle relevant Non-Governmental organizations (NGOs) with observer status before the Commission and individuals to institute cases directly before it, in accordance with article 34(6) of this Protocol."

18. As mentioned in paragraph 2 of this Ruling, the Respondent State is a Party to the Charter and the Protocol and has also made and deposited the Declaration accepting the jurisdiction of the Court to receive applications from individuals and non-governmental organizations in accordance with Article 34(6) of the Protocol read together with Article 5(3) thereof.

19. In the instant case, the rights claimed by the Applicant to have been violated are protected by the Charter, the Additional Protocol of the Economic Community of West Africa (ECOWAS) on Democracy and Good Governance to the Protocol on

[2] Application No. 002/2013. Order of provisional measures, 15/3/13, African Commission on Human and Peoples' Rights v. Libya §. 10; Application No. 024/2016. Order of provisional measures, 03/6/2016, Amini Juma v. United Republic of Tanzania § 8.

the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security and the African Charter on Democracy, Elections and Governance (ACDEG), instruments that the Court is empowered to interpret and apply pursuant to Article 3(1) of the Protocol.

20. In light of the foregoing, the Court notes that it has *prima facie* jurisdiction to hear the Application.

VI. PROVISIONAL MEASURES REQUESTED

21. The Applicant prays the Court to order:

i. the Respondent State to take all the necessary measures to stay execution of the correctional judgment dated 02 August 2019 of the 3rd Direct Procedures Chamber of the First Instance Court of Cotonou in the procedure referenced COTO/2018/RP/05806 between the Public Prosecutor's Office and Mr. Lionel Zinsou until the Court pronounces on the subject of the main Application;

ii. the Respondent State to report to the Court within such timeframe as the Court may deem fit to determine.

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

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

23. Furthermore, Rule 51(1) of the Rules provides that: "Pursuant to Article 27(2) of the Protocol, the Court may, at the request of a party, the Commission, or on its own accord, prescribe to the parties any interim measure which it deems necessary to adopt in the interest of the parties or of justice".

24. Based on the foregoing provisions, the Court will take into consideration the applicable law in regard to provisional measures which are of a preventive character and do not prejudge the merits of the Application. The Court may order them only if the conditions have been met, that is, extreme gravity, urgency and prevention of irreparable harm to persons.

25. The Court is of the view that the Applicant has not provided enough information to demonstrate the extreme gravity or urgency and the risk of irreparable harm to him.

26. The Court notes and also considers the Respondent State's argument that, according to the law, the Judgment of the first instance is stayed following the appeal filed by Mr. Lionel Zinsou.

27. The Court therefore, dismisses the request for provisional measures.

IV. **OPERATIVE PART**

28. For these reasons,

THE COURT,

Unanimously,

Dismisses the application for provisional measures.

Signed:

Sylvain ORE, President;

Robert ENO, Registrar.

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