



COMMUNITY COURT OF JUSTICE, ECOWAS
COUR DE JUSTICE DE LA COMMUNAUTE, CEDEAO
TRIBUNAL DE JUSTICA DA COMUNIDADE, CEDEAO

IN THE COURT OF JUSTICE OF THE ECONOMIC COMMUNITY OF WEST
AFRICAN STATES (ECOWAS)
(HOLDEN AT ABUJA – NIGERIA)

JUDGMENT

In the case of

1-ASSOCIATION DES VICTIMES DE LA TORTURE DU TOGO (ASVITTO)

2-Mr. ATCHOLI KAO Monzolouwè B. E.

Against

STATE OF TOGO.

Application N°: ECW/CCJ/APP/49/22 Judgment N°. ECW/CCJ/JUD/42/24

JUDGMENT

Delivered in

ABUJA

On 22nd November 2024

CASE N°: ECW/CCJ/APP/49/22

JUDGMENT N° ECW/CCJ/JUD/42/ 24

**ASSOCIATION DES VICTIMES DE LA TORTURE AU TOGO (ASVTTO)
AND ANOR** **APPLICANTS**

V.

STATE TOGOLAIS

DEFENDANT

BEFORE THEIR LORDSHIPS

Hon. Justice Sengu Mohamed KOROMA	Presiding
Hon. Justice Dupe ATOKI	Member
Hon. Justice Gberi-Bè OUATTARA	Judge Rapporteur/Member

ASSISTED BY: Me. Aboubakar Djibo Diakité

I. REPRESENTATION OF THE PARTIES

Me Elom Koffi KPADE, Lawyer registered with the Bar in Lomé

Me Raphaël N. KPANDE-ADZARE, Lawyer registered with the Bar in Lomé

Counsel for the Applicants

The Defendant was not represented by any Counsel

II. JUDGMENT OF THE COURT

This is the judgment delivered by the Court in a virtual public hearing in accordance with Article 8(1) of the Practice Directions on Electronic Case Management and Virtual Hearings, 2020.

III. DESIGNATION OF THE PARTIES

1. The applicants are: the Association of Victims of Torture in Togo (ASVITTO), an association under Togolese law with its registered office in Lomé in the Tokoin Hôpital district and ATCHOLI KAO Monzolouwè B. E, acting in his capacity as statutory representative of the Association des Victimes de la Torture au Togo (ASVITTO) of Togolese nationality, residing at Tokoin Hôpital, Lomé (hereinafter referred to as ‘the applicants’);
2. The Respondent is the State of Togo, a Member State of the Community, signatory to the African Charter on Human and Peoples' Rights and other international instruments relating to the protection of human rights (hereinafter referred to as “the Respondent”);

IV. INTRODUCTION

3. The purpose of these proceedings is to examine the application by which the applicants request that the Court find that the defendant has infringed their right to freedom of association, their right to non-discrimination, their right to equality before the law, their right to an effective remedy and their right to be tried within a reasonable time ;



V. PROCEDURE BEFORE THE COURT

4. On 07 October 2022, the applicants, assisted by Maîtres Elom Koffi KPADE and Raphaël N. KPANDE-ADZARE, their counsel, lodged an application with the Court Registry against the defendant for violation of their human rights.

This application was served on the defendant on 07 October 2022;

5. On expiry of the period of one month allowed for the defendant to lodge its statement of defence, and in the absence of a request from the defendant for an extension of the time-limit, the applicants lodged at the Court Registry an application for judgment by default on 21 March 2024.

That application was served on the defendant on 21 March 2024;

6. At the hearing on 07 July 2024, the defendant was absent. The applicants, through their counsel, pleaded the merits of the case and the Court reserved judgment to be delivered on a date to be communicated to the parties;

VI. ARGUMENTS OF THE APPLICANTS

a) Summary of facts

7. By application received at the Court Registry on 07 October 2022, the Association des Victimes de la Torture au Togo (ASVITTO) and ATCHOLI KAO Monzolouwè acting in his capacity as statutory representative of ASVITTO brought an action against the defendant before the ECOWAS Court of Justice for breach of human rights ;

8. In support of their application, they explain that following its Constitutive General Assembly, the first leaders of the Association of Victims of Torture in Togo (ASVITTO) filed a declaration of the said Association with the Ministry of Territorial Administration on Decentralisation and Local Authorities, and as required, the Association provided its basic data in the initial notification, namely the name of the Association, the names of the founding members, the physical address, contact details, the Articles of Association containing the Association's Aims and Programme of Activities;

9. They maintain that, in accordance with Law no. 40-484 of 1 July 1901 on the Contract of Association, the purpose of this declaration is to obtain a certificate which must be published in the Official Gazette of the Togolese Republic;

10. The applicants state that, however, after this declaration, the relevant Ministry did not issue the certificate of registration of the association, which confers legal personality on associations, and that the lack of legal personality is not without prejudicial consequences for the life and activities of the association';

11. Indeed, the applicants state that the United Nations system agreed to support ASVITTO through the support fund for victims of torture, and that this support, which was to cover a period of up to twenty (20) years, amounted to approximately ten (10) million CFA francs per year. However, as the association did not have a Certificate of Incorporation, the United Nations allocated the said funds to another association, the Collectif des associations contre l'impunité au Togo (CACIT), which does have a certificate, so that it could provide support to the victims of torture.;

12. The applicants state that in the first year, this association received 9,900,000 CFA francs and in the second year 11,000,000 CFA francs on behalf of victims of torture, without providing the support requested. ASVITTO therefore requested that the subsidy be suspended because it did not benefit the victims of torture;

13. The applicants add that the European Union, through its delegation in Lomé, decided to support a project entitled 'Psychological and Medical Care for Forty (40) Victims of Torture and Institutional Support for ASVITTO' in 2014. This project was to have been funded with around fifty (50) million francs. However, as ASVITTO did not have a certificate of registration, the Delegation opted to entrust the management of the funds to another association to support ASVITTO. Unfortunately, the funds were not managed in accordance with the European Union Delegation's instructions, and torture victims were unable to receive the psychological and medical support they were entitled to ;

14. The applicants point out that, just as it was unable to receive funding from these two international institutions, ASVITTO was unable to receive funding from several other partners due to the lack of a registration certificate, even though this has not prevented it from working and carrying out its activities with the means at its disposal;

15. The applicants state that, throughout this time, ASVITTO has provided support and assistance to victims of torture, monitored places of detention and trials, and monitored certain demonstrations. The association has taken care to share reports on its activities with the Government Authorities, as well as sending them

correspondence to question or denounce cases of human rights violations of which it is aware;

16. They report that despite this presence and the monitoring of several activities, the Ministry of Territorial Administration has still not issued it with a receipt for the declaration of association in accordance with the law. As a result, on 20 April 2021, it lodged an appeal with the Minister to request the issue of a Certificate for the declaration of association. As the competent authority remained silent, ASVITTO appealed to the Administrative Chamber of the Supreme Court of Togo, which, to date has not felt it necessary to give a ruling, whereas on 18 February 2022, the applicant filed its reply to the reply of 19 January 2022 from the Minister of Territorial Administration, Decentralisation and Development of Local Authorities. They pointed out that the Respondent had not yet replied to the reply;

17. The applicants consider that this failure or refusal by the competent authorities to issue ASVITTO with a certificate is discriminatory insofar as associations that have filed their prior declaration with the same Ministry have been issued with a certificate, as is the case with the *Ligue de Consommateurs du Togo* [Ligue of Togolese Consumers] (LCT);

18. They point out that this refusal is blocking the funding of the association's activities with technical and financial partners, and that the lack of a receipt is being used by the same administrative authorities to refuse ASVITTO permission to carry out its programmes of activities, in particular monitoring prisons and human rights situations within detention facilities;

VI. b) Pleas – in – law invoked



19. The applicants rely on the following pleas in law

- Violation of the right to freedom of association provided for in articles: 10 of the African Charter on Human and Peoples' Rights (ACHPR) of June 1981, 20 of the Universal Declaration of Human Rights (UDHR) of 10 December 1948; 22 (1) & (2) of the International Covenant on Civil and Political Rights (ICCPR);

- Violation of their rights to non-discrimination and equality before the law, rights provided for in articles: 2 and 3 (1) of the ACHPR, 2 and 7 of the UDHR, 3 of the ICCPR;

- Violation of their rights to an effective remedy and to be tried within a reasonable time, rights enshrined in articles: 7 of the ACHPR, 8 and 10 of the UDHR, 14-1 of the ICCPR;

c) *Conclusions*

20. The applicants solicit that may it please the Court to declare that the defendant has violated:

The applicants' right to freedom of association;

Their rights to equality before the law and to non-discrimination;

Their right to an effective remedy and to be tried within a reasonable time;

Consequently, to order the defendant to issue them with the Certificate of incorporation;



The Applicants also sought:

An order on the State of Togo to pay the applicants the sum of two hundred million (200,000,000) CFA francs for the harm suffered as a result of the violation of their right to freedom of association;

An order on the State of Togo to pay the applicants the sum of one hundred and fifty million (150,000,000) CFA francs for the prejudice suffered as a result of the violation of their rights to equality of all before the law and to non-discrimination.

An order on the State of Togo to pay the applicants the sum of one hundred and fifty million (150,000,000) CFA francs for the prejudices suffered as a result of the violation of their rights to an effective remedy and to be tried within a reasonable time;

An order on the State of Togo to bear all costs; s

VII. ARGUMENT OF THE DEFENDANT

a) Summary of facts

21. The defendant who, under Article 35 of the Rules of Court, had thirty (30) days from the notification of the application made to it on 07 October 2022 to submit a statement of defence, has neither requested an extension of time nor filed a statement of defence with the Registry ;

VIII. AS TO JURISDICTION



22. The applicants maintain that, according to the Court's settled case-law, it is sufficient for the application simply to refer to international human rights instruments, which constitute the core of the Community legal order in the field of human rights, in order to infer the Court's formal jurisdiction, as determined by the provisions of Articles 9.4 and 10 of Supplementary Protocol AP1/01/05 on the ECOWAS Court of Justice;

23. They cite Judgment No. ECW/CCJ/JUD/09/11 of 07 October 2014 delivered by the ECOWAS Court of Justice (CCJ) in the case of Ms AMEGANVI Manavi Isabelle and Others v. the State of Togo to corroborate their allegations and solicit that may it please the Court declare itself competent to hear the case ;

ANALYSIS BY THE COURT

24. The Court wishes to point out that its jurisdiction in human rights matters is governed by the provisions of Article 9(4) of Supplementary Protocol A/SP.1/01/05 of 19 January 2005 amending Protocol A/P.1/7/91 on the Court, which provides that: "*The Court has jurisdiction over cases of violation of human rights that occur in any Member State ...*". » ;

25. In application of these provisions, the ECOWAS Court of Justice has stated on several occasions that the allegations of a violation of human rights in an application are sufficient to justify its jurisdiction without prejudice to the veracity of the facts alleged. It is necessary, but not sufficient, for the applicant to allege a breach of his rights and for the facts to relate effectively to acts which the applicant considers to



be an infringement of his rights in order to justify the jurisdiction of the Community Court of Justice (ECOWAS);

26. By way of example to support this assertion, the Court so decided in particular, in the cases of Les Etablissements VAMO and KUEKIA Pascal against the State of Benin, ECW/CCJ/JUD/12/15 of 20 April 2015, El Hadj Mame Abdou Gaye against the State of Senegal ECW/CCJ/JUD/01/12 of 26 January 2012 and Jamal Olivier Kane against the State of Mali ECW/CCJ/JUD/10/17;

27. The Court notes that the subjective rights enumerated by the applicants, namely the right to freedom of association, the right to non-discrimination, the right to equality before the law, the right to an effective remedy and the right to be tried within a reasonable time, are among the human rights whose protection it is required to protect;

28. As the defendant is an ECOWAS Member State, all the conditions are met for the Court, in accordance with its own settled case-law, to declare that it has jurisdiction to hear this case;

IX. AS TO ADMISSIBILITY

29. The applicants argue that, under Article 10 of the Supplementary Protocol (A/SP.1/01/05) : *<<Access to the Court is open to: "... (d) Any person who is a victim of violations of his human rights...>>*;

30. Having alleged that they are victims of a violation of their rights by the State of Togo, the applicants solicit that may it please the Court of Justice of the ECOWAS Community to declare their application as admissible ;

ANALYSIS BY THE COURT

31. The Court notes that any application lodged with it concerning a violation of human rights must satisfy the conditions laid down in article 10-d of Supplementary Protocol A/SP.1/01/05 of 19 January 2005 amending Protocol A/P.1/7/91 on the Court, which are as follows: '*Access to the Court is open to: "... (d) Any person who is a victim of violations of his human rights...*;

The Application submitted to this effect:

- i) *Shall not be anonymous;*
- ii) *Shall not be pending before another international court of competent jurisdiction, while it is brought before the ECOWAS Court » ;*

32. The Court observes that it follows from the provisions of Article 10 (d) of the above-mentioned Additional Protocol that when an application is lodged it must first examine the applicant's status as a victim ;

33. Indeed, the status of victim of a human rights violation is an important legal concept that makes it possible to determine whether a natural or legal person who claims to be a victim can bring an action for reparation for the alleged violation of his or her human rights. In this respect, it is important to specify that according to the principles of international human rights law, any person who has suffered a violation of his or her fundamental rights is considered a victim, whether the violation is direct or indirect;



34. Therefore, to be considered a victim, the person must have suffered actual or potential harm as a result of the human rights violation. Harm may include loss of property or possessions, pain, suffering, humiliation, unlawful detention or other forms of physical and psychological harm;

35. Victim status may be invoked by any person who claims to be directly affected by a human rights violation, including survivors of deceased persons who have suffered a violation of their human rights. Victim status is legally the main criterion for guaranteeing access to justice for people who have suffered violations of their human rights and for determining the responsibility of the perpetrator of these violations;

36. The Court notes that, in the present case, it is apparent from the facts of the case that the applicants brought their application against the Respondent for infringement of their fundamental rights on account of the fact that the Respondent has, for ten years, failed to issue ASVITTO with a certificate of registration, whereas during that period it has issued certificates to other Associations which filed their applications after ASVITTO. They also claimed that the Respondent was refusing to rule on their appeal against the decision of refusal to issue the certificate to ASSVITTO and that their right to non-discrimination, their right to equality before the law, their right to be tried within a reasonable time and their right to an effective remedy had been infringed ;

37. Consequently, the Court holds that the applicants can legitimately rely on their status as victims;



38. The Court also notes that the applicants are clearly identified. They are ASVITTO and ATCHOLI KAO Monzolouwè B. E. The application is therefore not anonymous;

39. Furthermore, there was no evidence that the applicants had referred their case to another international court with jurisdiction in human rights matters;

40. The Court notes, however, that the application emanates both from a legal entity, ASVITTO, and from a natural person, ATCHOLI KAO Monzolouwè B. E, who states that he is acting in his capacity as statutory representative of the legal entity, which does not have a certificate of existence

41. Before ruling on the admissibility of the application, the Court must therefore determine whether the applicants have the capacity to bring an action before the ECOWAS Court of Justice inasmuch as, in order for an action to be validly brought before the Court of Justice of the Community, the applicant must have the capacity to bring that action;

42. The Court points out that, in order for legal persons to have the capacity to sue and be sued, they must show that they have legal personality, which means that, in accordance with the well-established principle in this regard, they have been constituted in compliance with national laws ;

43. The Court so ruled in its judgment ECW/CCJ/JUD/05/09 in the case of *Coordination Nationale des Délégués Départementaux (CNDD) de la filière café cacao v. State of Côte d'Ivoire* ;

44. The Court notes that, in the present case, Article 5 of the Togolese Law of 1 July 1901 on the Contract of Association provides that: *'Any association wishing to obtain the legal capacity provided for in Article 6 must be made public by its founders. Prior declaration must be made to the prefecture of the département or the sub-prefecture of the arrondissement where the Association has its Registered Office. It will state the title and purpose of the association, the location of its establishments and the names, professions, residences and nationalities of those who, in any capacity whatsoever, are responsible for its administration or management. Two copies of the Articles of Association must be attached to the declaration. A certificate of receipt will be issued within five days. The Association is only made public by an insertion in the Journal Officiel on production of this certificate » ;*

45. The Court concludes that in order for ASVITTO to have legal personality and consequently the capacity to sue and be sued, it must produce a certificate of existence;

46. The Court points out that, in the present case, the applicants are unanimous in acknowledging that no certificate of existence was issued to ASVITTO by the Ministry of Territorial Administration, Decentralisation and Local Authorities, which confers on it legal personality ;

47. The Court notes that it is clear from the documents in the proceedings, and in particular from the applicants' statements, that because ASVITTO's lack of legal personality, its activities could not be funded by the United Nations system and the European Union, as well as by many other partners, in accordance with a note from

the Ministry of Foreign Affairs, ASVITTO's activities could not be funded by the United Nations system and the European Union, as well as by many other partners, in accordance with the contents of a Note from the Ministry of Territorial Administration, Decentralisation and Territorial Development indicating to all Prefects that '*only Non-Governmental Organisations (NGOs) and associations with valid certificates are authorised to carry out activities throughout the national territory*'.» ;

48. The Court holds that ASVITTO did not have legal personality because it did not have a certificate of existence and was therefore not constituted in accordance with Togolese law relating to the constitution of Associations, and that it therefore does not have the capacity to bring legal proceedings and, in particular, the present action before the Court;

49. With regard to the natural person, in order to have the capacity to act, the natural person claimant must be of full age and enjoy all his rights;

50. The Court notes that in the present case, ATCHOLI KAO Monzolouwè B. E merely stated that he was acting in his capacity as statutory representative of ASVITTO, and therefore in the name and on behalf of that association, without indicating his date and place of birth, such that the Court does not have indisputable evidence that he has reached the age of majority. However, given that he is the statutory representative of ASVITTO, and that the application for a certificate has been pending for at least ten years, the Court presumes, subject to proof to the contrary, that he is of legal age;

51. However, the Court notes that the applicant stated that he was acting in his capacity as the statutory representative of ASVITTO, i.e. that he was acting in the name and on behalf of that association. However, it has just been shown that ASVITTO does not have legal personality because it does not have a certificate of legal existence. As a result, the Court ruled that ASVITTO had no legal personality and could not act through an alleged legal representative;

52. In these circumstances, in accordance with its settled case-law, the Court has no option other than to declare the application as inadmissible for lack of legal personality of ASVITTO and therefore of the applicants' capacity to bring legal proceedings. This is what the Court ruled in its judgment No. ECW/CCJ/JUD/07/19 delivered on 26 February 2019 in the case of LE BLOC POUR L'ALTERNANCE EN GUINEE against the REPUBLIC OF GUINEA;

X. ON THE NATURE OF THE DECISION

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53. On 21 March 2024, the Applicants requested the Court to render a default judgment against the Respondent. In support of their application, they explained that they had lodged an application with the ECOWAS Court of Justice against the Respondent on 07 October 2022 and that on the same day, 07 October 2022, the Chief Registrar of the Court had notified the Respondent of their application, specifying that it had one month (30) days in which to lodge a statement of defence;

54. The applicants argued that the period of one month (30 days) allowed to the defendant to file a statement of defence had expired without it doing so, whereas

under Article 90 of the Rules of Court, 'if the defendant, having been duly summoned, does not reply to the application in the prescribed form and within the prescribed period, the applicant may request the Court to award him his claims' as contained in his pleadings.

They therefore requested that the Court issue a default judgment against the defendant in accordance with the provisions of Rule 90;

ANALYSIS BY THE COURT

AS TO THE ADMISSIBILITY OF THE APPLICATION FOR A JUDGMENT BY DEFAULT

55. The Court notes that, under Rule 90 of the Rules of Court, '*If the respondent, who has been duly summoned, does not reply to the application in the prescribed form and within the prescribed time-limit, the applicant may request the Court to adjourn the application*';

56. The Court points out that on 21 March 2024 the applicants applied to the Court to have their claims awarded to them in accordance with Rule 90 of the Rules of Court;

57. The Court notes that, in the present case, the defendant received notification of the application for a default judgment on 21 March 2024;

58. The Court points out that, in accordance with Article 35 of the Rules of Court, the defendant had a period of one (01) month in which to file its statement of defence.



It therefore had until 21 April 2024 to file its statement of defence. As of that date, no statement of defence had been filed by the defendant;

59. The Court emphasises that, in accordance with Article 90(4), before giving judgment by default, it examines the admissibility of the application, whether the formalities have been duly completed and whether the applicant's submissions appear to be well-founded. This is what the Court stated in the case of Mohammed El Tayyib v. The Republic of Sierra Leone, judgment no. ECW/CCJ/JUD/11/15 in the following terms: « *Granting the motion for default judgment against the defendant does not automatically mean that judgment on the merits has been given in favour of the applicant. The Court must examine the issues of jurisdiction, admissibility and evidence before deciding the case on the merits* »;

60. In the present case, the Court has already accepted that it has jurisdiction and that the application is inadmissible.

The Court concludes that, in the light of the foregoing, it is appropriate to declare the application for judgment by default admissible and to examine whether it is well founded;

ON THE MERITS OF THE APPLICATION FOR A DECISION BY DEFAULT

61. The Court points out that a judgment is deemed to have been rendered 'by default' when the defendant remains absent from the proceedings. A judgment given without the defendant being present is called a 'default judgment'. »;

62. The Court notes that, in the present case, the application was lodged at the Registry on 07 October 2022. It notes that on 07 October 2022, the Chief Registrar



served the application on the defendant, stating that it had one month (30) days in which to file a statement of defence;

63. The Court observes that the period of one month (30 days) allowed to the defendant to file a statement of defence expired on 07 November 2022 and that on 21 March 2024, the applicants filed at the registry a request for judgment by default;

64. The Court notes that the application was notified to the defendant on 21 March 2024 and that the defendant did not react;

65. The Court points out that under Rule 90 of the Rules of Court: « *if the defendant, who has been duly summoned, does not respond to the application in the prescribed form and time, the applicant may ask the Court to award him his claims* ».

The Court therefore concludes that in the present case, pursuant to Article 90 of the Rules, it is necessary to give judgment by default.

XIV. ON COSTS

66. Under Article 66(2) of the Rules of Procedure, the unsuccessful party is ordered to pay the costs if the other party so requests. The Court notes that in the present case the applicants have made such a submission. Consequently, the Court rules that the unsuccessful applicants shall bear the costs;

FOR THESE REASONS



The Court

Sitting in a public hearing, on default judgment in regard to the Respondent, and having heard the Applicants:

On jurisdiction

Declares its jurisdiction to hear the present litigation;

On admissibility

Declares the initiating Application as inadmissible for lack of legal standing and capacity to bring proceedings;

AS TO COSTS

Orders the Applicants to bear all costs.

Thus done, and adjudicated on the day, month and year aforesaid.

AND THE FOLLOWING HAVE APPENDED THEIR SIGNATURES

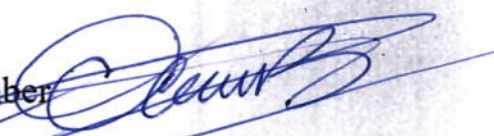
Hon. Justice Sengu Mohamed KOROMA


Presiding

Hon. Justice Dupe ATOKI

Member 

Hon. Justice Gberi-Bè OUATTARA Judge rapporteur/ Member



ASSISTED BY: Me. Aboubakar Djibo Diakité

