

Communication 253/2002 - Antoine Bissangou/Republic of Congo

Summary of the facts:

1. On March 14, 1995 the Complainant brought a case against the Republic of Congo and the Municipal Office of Brazzaville before the Court of First Instance of Brazzaville, sitting on civil matters, with a view to obtaining the recognition of the responsibility of the Congolese Republic, as well as reparation for the damage caused to his personal property and real estate following barbaric acts carried out by soldiers, armed bands and uncontrolled elements of the Congolese National Police Force, during the socio-political upheavals that took place in the country in 1993.

2. On February 18, 1997 the civil division of the Court of First Instance passed a ruling ordering the Congolese Republic and the Municipal Office of Brazzaville to pay the following amounts:

<i>Principal amount for all the damage caused:</i>	<i>180,000,000 FCFA</i>
Damages:	15,000,000 FCFA
Amount representing legal costs:	7,000 FCFA
Total amount:	195,037,000 FCFA

That is the equivalent of 297,333.98 Euros, the whole being immediately enforceable.

3. On March 19, 1997, the ruling became legally binding and a certificate of no-appeal was issued to the Complainant (see file).

4. In a letter dated May 20, 1999, the Minister of Justice asked the Minister of Economy, Finance and Budget of Congo to enforce the ruling. However, in a letter dated December 30, 1999, the Minister of Economy, Finance and Budget refused to execute the ruling, for no apparent reason.

Complaint:

5. The Complainant alleges the violation of Articles 2, 3 and 21(2) of the African Charter. The Complainant is asking the African Commission to recommend to the Republic of Congo Brazzaville to comply with the ruling which has been passed on behalf of the Congolese people, and to comply at the same time with the provisions of the Charter to which it is signatory.

Procedure

6. The Complaint was received by the Secretariat of the African Commission on 27th June 2002.
7. On 1st August 2002, the Secretariat wrote to the Complainant informing him that the Complaint was registered and that it would be considered at the Commission's 32nd Ordinary Session, which was scheduled to take place from 17th to 31st October 2002 in Banjul, The Gambia.
8. At its 32nd Ordinary Session held from 17th – 23rd October 2002 in Banjul, The Gambia, the African Commission considered the Complaint and decided to be seized thereof.
9. On October 30, 2002 the Secretariat communicated the above decision to the Parties and requested them to submit in writing, their observations on the matter of exhaustion of local remedies. The Secretariat also sent a copy of the Communication to the Respondent State.
10. The Complainant sent his comments on admissibility to the Secretariat in a letter dated 17th December 2002.
11. On 24th March 2003, a reminder was sent by Note Verbale to the Respondent State, requesting its comments on admissibility to be sent to the Secretariat of the Commission.
12. On 25th March 2003, the Secretariat sent the Complainant's observations to the Respondent State and reminded the latter to send its observations concerning the exhaustion of local remedies before the 15th April 2003.
13. During the 33rd Ordinary Session held from 15th to 29th May 2003 in Niamey, Niger, the African Commission considered the Communication and deferred its decision on admissibility to the 34th Ordinary Session. The Parties were requested to send further information on the procedure to be followed for the recovery of the debt.
14. On 23rd June 2003, the Secretariat informed the Parties of this decision and requested the Respondent State to submit its observations on the admissibility of the Communication within three (3) months from the date of the receipt of this Note, and to include the details of Congo's legislation on the matter of debt recovery.
15. On 22nd September 2003, the Secretariat again contacted the Parties involved in the Communication and requested them to submit their written observations on admissibility.
16. On 6th October 2003, the Secretariat received written submissions from the Complainant.

17. The Secretariat acknowledged receipt of the Complainant's submissions on 15th October 2003 and on the same date forwarded the said submissions to the Respondent State reminding it to forward its written submission with regard to admissibility and to provide more information on all the local remedies available in the context of debt recovery in Congolese legislation.

18. On the 4th November 2003, the Secretariat of the African Commission received written observations from the Respondent State.

19. During the 34th Ordinary Session of the African Commission held from 6th to 20th November 2003 in Banjul, The Gambia, the Respondent State made an oral presentation of its grounds of defence on the admissibility of the Communication.

20. After consideration of the Communication during its 34th Ordinary Session, the African Commission decided to defer its decision to the 35th Ordinary Session in order to allow the plaintiff time to submit his written observations on the admissibility of the Communication, taking into account the observations of the Respondent State.

21. On 7th December 2003, the Secretariat notified the Parties of the decision of the African Commission and sent to the Complainant a copy of the observations submitted by the Respondent State.

22. On 9th March 2004, the Secretariat of the African Commission informed the Parties that consideration of the admissibility of the Communication was scheduled for the 35th Ordinary Session. The Complainant was requested to send his reaction to the written observations submitted by the Respondent State.

23. On 30th March and 5th April 2004, the Secretariat of the African Commission received the observations from the Complainant on the matter of admissibility. These observations were forwarded by DHL to the Respondent State on the 30th April 2004.

24. During the 35th Ordinary Session held in Banjul from 21st May to 4th June 2004, the African Commission heard oral submissions from the Respondent State. After having considered the Communication, the African Commission declared it admissible.

25. On 18th June 2004, the Secretariat of the African Commission informed the Parties of the Commission's decision and requested them to submit more information on the merits of the Communication.

26. A reminder was sent to both Parties on 6th September 2004.

27. On the 28th October 2004, the Secretariat of the Commission received the written observations from the Complainant on the merits of the Communication and acknowledged receipt thereof.

28. During the 36th Ordinary Session held from 23rd November to 7th December 2004 in Dakar, Senegal, the African Commission considered the Communication and deferred its consideration on the merits to the 37th Ordinary Session.

29. By correspondence of 20th December 2004, the Secretariat of the Commission informed Parties to the Communication of the above decision.

30. On 10th March 2005, the Secretariat of the Commission conveyed the comments of the Complainant to the Respondent State reminding it to send its written arguments as early as possible.

31. During the 37th Ordinary session held from 27 April to 11 May 2005 in Banjul, the Gambia, the African Commission considered the communication and decided to defer its consideration on the merits to the 38th ordinary session.

32. By correspondence dated 28 June 2005, the Secretariat of the African Commission informed the parties of the decision of the African Commission and requested the Respondent State to submit its arguments on the merits of the case within two months.

33. The Secretariat of the Commission sent a reminder to the Respondent State on 10 October 2005.

34. At its 38th Ordinary Session held from 21st November to 5th December 2005, the African Commission decided to defer its decision on the merits to the 39th Ordinary Session.

35. On 15th December 2005, the Secretariat of the Commission conveyed this decision on deferment to the Parties.

36. At its 39th ordinary session held in Banjul, The Gambia from 11 – 25 May 2006, the African Commission considered the communication and decided to defer its decision on the merits to its 40th ordinary session.

37. By Note Verbale of 14 July 2006 and by letter of the same date, both parties were notified of the Commission's decision.

38. At its 40th Ordinary Session held from 15 – 29 November 2006 in Banjul, The Gambia, the African Commission considered the communication and took a decision on the merits.

LAW

Admissibility

39. The admissibility of Communications submitted in conformity with Article 55 of the Charter is governed by the conditions spelt out by Article 56 of the same Charter. According to paragraph 56(5), communications can only be considered if they are submitted “after the exhaustion of local remedies, if any, unless it is obvious that this procedure is unduly prolonged”.

40. According to Article 56(2), communications brought before the African Commission shall be “compatible with the Charter of the Organisation of African Unity of with the present Charter”, and in terms of Article 56(5), communication will not be examined unless they “are sent after exhausting local remedies, if any unless it is obvious that this procedure is unduly prolonged”.

41. The Complainant has submitted evidence that he brought an action before the Court of First Instance which delivered a ruling on the 18th February 1997, condemning the Respondent State to pay to him the amount of 195,037,000 FCFA, namely the equivalent of 297,333.98 Euros. This judgment was not contested by the Respondent State. A certificate of no appeal had been delivered to the Complainant by the Registrar of the Court.

42. The Complainant added the certificate of no appeal to the case file, which means that the judgment is final and should be executed. He produced supporting documents certifying that the file had been forwarded by the Ministry of Justice to the Ministry of the Economy, Finances and Budget for execution. The Complainant alleges that despite several notices sent requesting it to honour its debt, the Respondent State has refused to comply.

43. The Complainant alleges that the ruling, in relation to which execution is being called for is final and binding. He contends that the certificate of no appeal added to the case file legally establishes that there are no other remedies to be brought against the said ruling.

44. The Complainant alleges that in a country where the rule of law exists, the fact that an Administrative Officer refuses to execute a decision of the Court against which there are no more legal remedies, is a constitutive case of criminal offence.

45. The Respondent State, in making an oral presentation of its grounds of defence before the African Commission during its 34th Ordinary Session, did not contest the facts of the Complaint. It however raised a plea of inadmissibility regarding the Complainant’s request on the grounds that the rule of exhaustion of local remedies had not been observed.

46. Regarding the incompatibility with the Charter, the Congolese State alleges that the object of the communication does not fall under the jurisdiction devolving on the Commission in terms of Article 45 of the Charter that is to promote and protect human and peoples' rights in Africa. According to the State, *"...The African Charter on Human and Peoples' Rights has established a non-jurisdictional mechanism to guarantee rights and freedoms, the decisions of the latter having just a moral significance and are not binding. Therefore, the Commission could not turn into a jurisdiction to consider requests for the payment of money against states."*

47. The Commission observes that the communication is based on allegations of violation of provisions of the Charter which it has the mandate to promote and protect. As the State itself acknowledged it in its submission, the African Commission *"controls the conformity of State Parties actions to African Charter on Human and Peoples' Rights"*. The Commission finds that in the case under consideration, in seizing the Commission, the complainant does not have any other intention than to request the latter to play its role by controlling the conformity to Articles 2, 3 and 21(2) of the Charter of a action (the refusal to enforce a court decision in favour of the complainant) of a State party (the Republic of Congo). The Commission concludes that the object of the communication falls under its mandate and, as a result, finds that the communication is compatible with the Charter.

48. Regarding the exhaustion of local remedies, the Respondent State contends that the Complainant had a remedy against the refusal of the Minister of the Economy, Finances and Budget to execute this ruling in accordance with the provisions of Articles 405 to 409 of the Code of Civil, Commercial, Administrative and Financial Procedure. These Articles stipulate that: *"any citizen who is qualified and so wishes has the right to bring an appeal for annulment against any regulatory or individual decision by an administrative Authority. Such an appeal must be brought within two (2) months from the date of the publication or notification of the grievance on the one hand, and exceptionally within four (4) months in case of silence from the administration which is interpreted as an implicit dismissal, on the other..."*.

49. Article 410 of the same Code adds: *« Nonetheless, before applying for the annulment of an administrative decision, the interested Party may present, within 2 months, an appeal to a higher or the same administrative Authority to cancel the said decision. In such a case, the application for annulment will only be effective either from the date of the notification of the dismissal of the administrative appeal, or on the expiry of the 4 months stipulated in the Article 408 mentioned above"*.

50. The Respondent State alleges that in the case under consideration, starting from the date of the notification of the unjustified dismissal of his case by the Minister for Economy, Finance and Budget, the Complainant should have,

within 2 months, brought an appeal either to the same administrative authority, or to the Head of Government as a higher administrative authority.

51. The Respondent State contends that such an early administrative appeal would have allowed the Complainant to have the negative decision annulled. Otherwise, the Complainant should have secured the real grounds for the dismissal of his claims to allow him make a submission for an annulment at the expiry of the above mentioned deadlines.

52. The Respondent State alleges that since the refusal of the Minister was an administrative decision, the Administrative Chamber of the Supreme Court was competent to deal with its annulment, in accordance with the provisions of Article 3 of law No. 17-99 of 15th April 1999 modifying and supplementing certain provisions of law No. 025-92 of 20th August 1992 and law No. 30-94 of 18th October 1994 governing the organisation and functioning of the Supreme Court. This Article stipulates that: "*the Supreme Court shall rule on appeals relating to abuses of power lodged against decisions from various Authorities*".

53. Finally the Respondent State stresses that the Complainant, an attorney by profession, is hardly ignorant of the procedural subtleties of Congolese law and that under the circumstances, he should have submitted his grievances beforehand to the Congolese Courts which have primacy over subsidiary international appeals.

54. The Respondent State concluded that the Complainant did not resort to any internal remedy after the administrative decision rejecting his case and, in consequence, did not comply with one of the essential rules governing the admissibility of Communications before the African Commission, namely that of exhaustion of local remedies.

55. All the conditions laid down by Article 56 have been fulfilled by this Communication. However, the rule stipulating the exhaustion of local remedies as a requirement for the submission of a Communication before the African Commission assumes that the Respondent State should first of all have the opportunity to compensate, by its own means and within the context of its system of domestic law, for any prejudice that may have been caused to an individual.

56. The African Commission, in *Communications 48/90, 50/91 and 89/93 Amnesty International & al./Sudan*, ruled that all local remedies, if they exist, if they are of a legal nature, are effective and are not subordinate to the discretionary power of the public Authorities, should be exhausted.

57. The Commission is of the view that the Complainant has exhausted all local remedies in endeavouring to assert his right to compensation for the prejudice suffered and rejects the Respondent State's claims that he should have appealed against the decision of the Minister before seizing the Commission.

58. The Commission notes that no strict legal provision grants the Minister responsible for the budget any authority to refuse to pay damages which are legally granted. The execution of the judgments made against the Respondent State therefore appears to be subject to the regular procedure provided for in the Administrative Procedure Code (Article 293 and the following ones).

59. Under these circumstances, the question which arises is whether the Complainant should have initiated the procedures of forced execution against the Respondent State as provided for by the Administrative Procedure Code. The Commission considers that it is unreasonable to require from a citizen who has won the case of a payable debt against the State at the end of a legal proceedings to institute procedures of seizure against it (assuming that it is possible to resort to this means of imposition against the public Authorities). As it happened, the Complainant, having duly notified his judgment to the competent Authorities in accordance with the relevant Articles of the Administrative Procedure Code, he had a right to expect the immediate execution of his judgment.¹

60. The Commission is of the view that the Minister had not right to hinder or delay the execution of a final judgment without legitimate reason. The Commission observes that the decision of the Minister was unjustified and that the Respondent State did not, at any time try to clarify to the Commission the reasons for the refusal by its Officer. In this context, the Commission supports the position of the European Court according to which even the inability of the Respondent State to pay could not justify the refusal by the Minister to execute a final judgment.²

61. Furthermore, the Commission considers that the appeal provided for in Article 402 of the Administrative Procedure Code does not constitute a legal remedy which can be used by the Complainant. The Commission reiterates that local remedies, if any, should be legal, effective and not subject to the discretionary powers of the public Authorities. Concerning the appeal for annulment provided for in Article 410 of the Administrative Procedure Code, the Commission is not convinced that it would have allowed the Complainant to gain satisfaction. Even a ruling by the Supreme Court setting aside the unjustified decision of the Minister would have given the Complainant the power to demand the execution of his judgment without however providing him with any means to enforce this ruling. Under these circumstances, the Commission considers this remedy as ineffective.

¹ See the decision of the European Court of Human Rights in the case *Metaxas vs. Greece*, no. 8415/02, § 19, 27 May 2004.

² *Burdov vs. Russia*, no. 59498/03, § 34, 7 May 2002, and *Ruianu vs. Rumania*, no. 34647/97, 17 June 2003.

62. In conclusion, even assuming that the above-mentioned appeals had enabled the Complainant to recover his debt, the Commission observes that the Complainant had not been informed of the reasons underlying the decision of the Minister, a decision about which, moreover, he does not appear to have been notified.

63. For these reasons and considering the fact that the Complainant had duly exhausted all local remedies, the African Commission declares the Communication admissible.

THE MERITS

64. The Complainant alleges the violation of Article 2 of the African Charter which stipulates that “Every individual has the right to enjoy the rights and freedoms recognised and guaranteed in the present Charter...” and the violation of Article 3 of the African Charter which stipulates that “Every individual shall be equal before the law, every individual shall be entitled to equal protection of the law”.

65. The Complainant contends that the Respondent State does not treat its citizens in the same manner and does not guarantee the total equality of its citizens before the law by leaving it to the discretion of the Minister of the Economy, Finances and the Budget to choose which judgments to honour. In support of his allegations, he alludes to the letter of the Permanent Secretary of the Minister dated 30th December 1999 which rejects, without justification, the request for execution of his judgment and those of two other people.

66. It is important to point out here that a judgment rendered in the presence of both Parties had jointly and severally condemned the Republic of Congo and the Mayor’s Office of Brazzaville to pay the Complainant the amounts of 180,000,000 FCFA representing principal and 15,000,000 FCFA representing damages and interest, in compensation for the prejudice caused to his personal assets and property by the soldiers and officers of the national Police Force during the socio-political upheavals of 1993. Neither the Republic of Congo, nor the Brazzaville Mayor’s Office lodged an appeal against the judgment, so that the latter became final on the 19th March 1997. On the 30th December 1999, with no apparent reason, the Permanent Secretary of the Minister of the Economy, Finances and Budget informed the Minister of Justice about his refusal to execute the judgment of the Complainant.

67. The Respondent State does not oppose the facts alleged in this Communication but refutes the allegations of discrimination. It retorts that the three individuals affected by the Minister’s refusal do not come from the same ethnic group or region nor do they share the same religion or political opinion. One of the individuals concerned is even said to be a former Minister of the Government who was actually holding office at the time of the rejection. Under

the circumstances, the Congolese State contends that the Communication constitutes an abuse of rights in terms of Article 144, paragraph (c) of the African Commission's Rules of Procedure.

68. The two provisions cited by the Complainant repose, on the one hand, on the principle of non-discrimination and on the other, on that of equality. These principles mean that citizens should be treated in a fair and equitable manner before the law and have the right to enjoy, with no distinction whatsoever, the rights guaranteed by the Charter. The right to equality is all the more important since it determines the possibility for the individual to enjoy many other rights.

69. Like Article 14 of the European Convention, Article 2 does not stipulate a general banning of discrimination; it only prohibits discrimination where it affects the enjoyment of a right or freedom guaranteed by the Charter. The Commission considers that the Complainant has not adequately supported his claims of discrimination to show that this Article has been violated; besides, his not having proven how the enjoyment of one of the rights guaranteed by the Charter had been hindered in a discriminatory manner, his Complaint is not based on any of the grounds of discrimination listed out in Article 2 or on grounds similar to the latter.

70. Nonetheless, the Commission notes that Article 3 of the African Charter contains a general guarantee of equality which supplements the ban on discrimination provided for in Article 2. In this regard, the African Charter differs from the European Convention and draws inspiration from the Agreement on Civil and Political Rights. Equality before the law, protected by paragraph 1 of Article 3, relates to the status of individuals before the law. Equal protection by the law, guaranteed in paragraph 2 relates to the implementation of the law and is applicable where the rights of the Complainant are implemented unequally.

71. The Commission further notes that for Article 3 to be applicable, the inequality alleged by the Complainant should follow from the "law". In this context, the legislative or regulatory Act constitutes the most unambiguous form of law. It is obvious however that Member States could easily circumvent the Charter if the term "law" were to be restricted to these formal methods of legislating. The Commission is of the opinion that the Member States would violate Article 3 if they were to exercise a power or judgment conferred by a law in a discriminatory manner. As it happens, the refusal by the Minister of the Economy, Finances and the Budget is not based on any specific legislative authority. Nevertheless, the Commission feels that it was incumbent on the Minister to honour the judgment by virtue of the rule of law and of the principle of the *res judicata*.

72. In this context the Commission observes that the Complainant was unjustifiably refused the implementation of a legal ruling which had the character of *res judicata*. The Minister of the Economy, Finances and the Budget rejected

his request for execution as well as that of two other individuals for no apparent reason. In his claims before the African Commission, the Respondent State did not put forward any argument to explain the decision of the Minister in rejecting the Complainant's claim. Moreover, in its submissions dated 30 March 2004 in reaction to the complainant's arguments, the State has quoted victims of the same violent events who have been compensated. The Minister thereby transformed the right of the Complainant to an effective remedy before the Courts into an illusion and denied him the right to fair legal compensation. Under these circumstances, the Commission is of the view that the decision of the Minister arbitrarily deprived the Complainant of the protection of the law accorded to other citizens in accordance with the provisions of Article 3 of the Charter.

73. Furthermore, although the Complainant does not specifically mention this Article of the Charter, the examination of the facts shows a violation of Article 7 of the Charter concerning the right to fair trial. The effective exercise of this right by individuals requires that:

“All State Institutions against which an appeal has been lodged or a legal ruling has been pronounced conform fully with this ruling or this appeal.”³

74. The Commission notes that in similar instances, the European Court of Human Rights declared that the right to access to a Court guaranteed by Article 6 (1) of the European Human Rights Convention would be illusory if the domestic laws of a State allowed a final and binding legal ruling to remain ineffective to the detriment of one Party. The Court therefore ruled that the execution of a judgment, no matter from what jurisdiction, should be considered as being an integral part of the “proceedings” in accordance with Article 6. The Court further recognised that the effective protection of the person to be tried and the re-establishment of legality constituted an obligation for the State to comply with a judgment or ruling pronounced by the highest Court in the land. In consequence, by virtue of this Article, the execution of a legal ruling can neither be unduly prevented, nullified nor delayed.⁴

75. The Commission is also of the view that the right to be heard guaranteed by Article 7 of the African Charter includes the right to the execution of a judgment. It would therefore be inconceivable for this Article to grant the right for an individual to bring an appeal before all the national Courts in relation to any act violating the fundamental rights without guaranteeing the execution of judicial rulings. To interpret Article 14 any other way would lead to situations which are incompatible with the rule of law. As a result, the execution of a final judgment

³ See the Guidelines and Principles on the right to a fair trial and legal assistance in Africa.

⁴ See, among others, the rulings on *Hornsby vs. Greece* of 19th March 1997, Collection 1997-II, pp.510-511, § 40, *Burdov vs. Russia*, cited above, *supra* note 2.

passed by a Tribunal or legal Court should be considered as an integral part of “the right to be heard” which is protected by Article 7.

76. Furthermore, the Commission considers that the refusal by the Minister to honour the judgment passed in favour of the Complainant also constitutes a violation of Article 14 of the Charter. Although the Complainant only alluded to this Article at the moment of his argument, the Commission considers that his initial claims sufficiently supported a claim of violation of the right to property. Drawing inspiration from the jurisprudence of the European Court under Article 1 of Protocol No. 1 of the European Convention,⁵ the Commission considers that a monetary compensation granted by judgment having acquired the authority of res judicata should be considered as an asset. Therefore, the unjustified refusal of the Respondent State to honour the final judgment passed in favour of the Complainant hindered the enjoyment of his assets.

77. The African Commission appreciates the fact that in spite of the situation which was then prevailing in the Republic of Congo during the period under review, the Court had been able to act rapidly and firmly in pronouncing the judgements in a bid to restore the rule of law.

78. The African Commission nonetheless remains conscious of the fact that without a system of effective execution, other forms of private justice can spring up and have negative consequences on the confidence and credibility of the public in the justice system.

79. Finally, the Commission wishes to make some comments with regard to the claims of the Complainant based on Article 21 (2) of the Charter. This Article stipulates that “in case of spoliation the dispossessed people shall have the right to the lawful recovery of their property as well as to an adequate compensation”. The Complainant contends that the Respondent State violated this Article in refusing to honour a judgment of the Brazzaville High Court upholding the total responsibility of the Respondent State and that of the Brazzaville Mayor’s Office in relation to the looting of his assets by the soldiers and the unruly elements of the national Police Force.

80. The African Charter does not provide a definition of the concept of “people” that is found in Articles 19 to 24. This concept nonetheless defines third generation rights whose recognition constitutes the main distinctive feature of the African Charter. Article 21 of the Charter is one of these rights; it guarantees to all peoples the right to freely dispose of their wealth and natural resources. Under the terms of this Article, a people stripped of their wealth and natural resources has the right to the recovery of its property and to an adequate compensation.

⁵ See *Burdov*, cited above; supra note 1, and *Stran Greek Refineries and Stratis Andreadis vs. Greece*, judgment of the 9th December 1994, Series A no. 301-B, p.84.

81. In *Social and Economic Rights Action Center, Centre for Economic and Social Rights vs. Nigeria, Communication 159/96 (2001)*, the African Commission recalled in the following terms, the origin of Article 21: “[This] provision dates back to the colonial period during which the material and human resources of Africa had been greatly exploited by foreign powers, thus creating a tragedy for the Africans themselves, depriving them of their inalienable rights and land”. Considering its nature and its objective, this Article can only be referred to in the *exclusive* interest of a people that has the legitimate right to an adequate compensation as well as to the recovery of its assets in case of spoliation.

82. In this case, the movable and immovable property of the Complainant that had been destroyed during the socio-political events which shook the country in 1993 does not constitute the wealth and natural resources of a people but rather individual assets. It is important to point out that in the present Communication the Complainant is acting on his own behalf and on behalf of a group of individuals or of a population living in a given territory. Under these circumstances, the African Commission does not find any violation of Article 21 (2) of the African Charter.

83. The complainant also requests the Commission to prescribe the respondent State to pay him damages and a daily penalty for delay in payment of the sum granted to him by a court ruling, which he estimates at 200.000.000 FCFA et 50.000.000 FCFA respectively.

84. The Commission, although admitting that the complainant suffered some loss due to the delay in the payment of the sum granted by Congolese courts, does not consider itself in a position to put a figure to the loss. This is the reason why, relying on its jurisprudence, especially its decision on communication 59/91,⁶ the Commission recommends that the amount of the compensation be determined according to Congolese legislation.

For these reasons, the African Commission

1. **Observes** that the Republic of Congo is in violation of Article 3, 7 and 14 of the African Charter;
2. **Says** that there was no violation of Articles 2 and 21(2) of the African Charter;
3. **Urges** the Republic of Congo to harmonize its legislation with that of the African Charter;
4. **Requests** the Republic of Congo to compensate the Complainant as required by paying him the amount fixed by the High Court of

⁶ Communication 59/91 *Embga MekongoLouis v Cameroon*, paragraph 2.

Brazzaville, namely the global amount of 195,037,000 FCFA equivalent to 297,333.00 Euros;

5. Further requests the Republic of Congo to pay compensation for the loss suffered by the complainant, the amount of which shall be determined in accordance with Congolese legislation.

Done at the 40th Ordinary Session of the African Commission held in Banjul, The Gambia, from 15 - 29 November, 2006

