



**PRESS RELEASE
JUDGMENT SUMMARY**

SUY BI GOHORE EMILE AND OTHERS V. REPUBLIC OF CÔTE D'IVOIRE

APPLICATION NO. 044/2019

JUDGMENT ON MERITS AND REPARATIONS

15 JULY 2020

A DECISION OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Date of Press Release: 15 July 2020

Arusha, 15 July 2020: The African Court delivered a Judgment in the matter of *Suy Bi Gohoré Emile and others v. Republic of Côte d'Ivoire*.

Messrs SUY Bi Gohoré Emile, KAKOU Guikahué Maurice, KOUASSI Kouamé Patrice, KOUADJO François, YAO N'guessan Justin Innocent, GNONKOTE Gnessoa Désiré, DJEDJE Mady Alphonse, SORO Kigbafori Guillaume and TRAZERE Olibe Célestine (the Applicants) are nationals of the Republic of Côte d'Ivoire (the Respondent State). On 10 September 2020, they filed an Application against the Respondent State challenging the independence and impartiality of their country's electoral commission.

From the record before the Court it emerges that a new law on the recomposition of the Independent Electoral Commission (the IEC) was promulgated by the President of the Respondent State on 5 August 2019 as Law N°2019-708. Furthermore, on 4 March 2020, the Respondent State adopted Order N° 2020/306 which modified Law N° 2019-708 by giving opposition parties or political groupings the possibility of proposing one additional personality to the electoral body, both at the level of the Central and the Local electoral commissions.

The Application relies on the judgment delivered by this Court on 18 November 2016 in the matter of *Action pour la Protection des Droits de l'Homme (APDH) v Côte d'Ivoire* (merits) concerning the composition of the IEC and on this Court's judgment of 28 September 2017 to interpret said judgment.



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The Court found in its judgment in *APDH v. Côte d'Ivoire* (merits) that the Respondent State had violated its obligation to establish an independent and impartial electoral body, and consequently, also violated the right to participate freely in the government of one's country and the right to equal protection of the law. The Court therefore ordered the Respondent State to amend Law no. 2014-335 of 18 June 2014 on the IEC to make it compliant with the relevant human rights instruments to which it is a Party.

In its judgment in *APDH v. Côte d'Ivoire* (interpretation) the Court declared the request for an interpretation of the aforesaid judgment inadmissible as it did not relate to any of the operative provisions of the Judgment.

In their Application, the Applicants allege that the Respondent State has violated its obligations to: (i) create an independent and impartial electoral body; (ii) protect citizens' right to participate freely in the government of their country; (iii) protect the right to equal protection of the law; and (iv) comply with the judgment of the Court within the time stipulated by the Court and to guarantee its execution.

The Applicants prayed the Court to find a violation of the relevant human rights instruments, order the Respondent State to amend, before any election, the impugned law on the recomposition of the IEC, to make it compliant with the respective human rights instruments, and to impose a deadline on the Respondent State to implement the order and submit to the Court a report on its implementation.

The Respondent State raised an objection on the Court's material jurisdiction, because in its view, the Application is based primarily on allegations that it violated Article 30 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Protocol). This means, in the view of the Respondent State, that the Applicants are requesting the Court to monitor the execution of its judgment, despite there being no provision, either in the African Charter on Human and Peoples' Rights (the Charter) or in the Protocol, that confers such competence on the Court.

Responding to this objection, the Court noted that Article 30 of the Protocol explicitly imposes an obligation on States to comply with its judgments. In fact, it considered that this obligation constitutes the *conditio sine qua non* of any international litigation. It is the existence of this duty that separates international judicial mechanisms from quasi-judicial mechanisms that are not authorised to issue binding decisions.

Therefore, considering the obligation to execute the Court's judgments, which generally imposes a duty on States to remedy established human or peoples' rights violations, the Court holds that non-compliance



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with Article 30 of the Protocol is tantamount to a “violation of a human or peoples’ rights”, as referred to in Article 27(1) of the Protocol.

Accordingly and through a combined reading of Articles 3, 27(1) and 30 of the Protocol, the Court found that it has material jurisdiction in a case or dispute submitted to it, to establish whether or not a State has complied with its judgment within the time stipulated, and make appropriate orders to remedy the violation, if necessary.

For these reasons and considering that the instant Application constitutes a new dispute in relation to the case of *APDH v Côte D’Ivoire* (merits), based on new factual and legal circumstances, and considering that all the alleged violations concern human rights instruments to which the Respondent State is a Party, the Court held that it has material jurisdiction to examine the Application.

Although the other aspects of jurisdiction had not been disputed by the Respondent State, the Court also examined them and concluded that its personal, temporal and territorial jurisdiction vis-à-vis the Application, was established.

The Court held in particular, that the personal jurisdiction of the Court in the instant case was not affected by the Respondent State’s withdrawal of the Declaration prescribed under Article 34(6) of the Protocol, which allows individuals and Non-Governmental Organisations (NGOs) to bring cases directly to the Court, given that the withdrawal of the Declaration will only take effect on 30 April 2021.

The Respondent State raised one objection concerning the admissibility of an amended Application submitted by the Applicants to replace the initial Application. The Court noted that the amended Application was duly transmitted to the Respondent State, in accordance with the relevant Rules of Court (the Rules). The Court further noted that it extended the timelines for the Respondent State to file its Response to the amended Application and that the Respondent State also filed its Responses based on the amended Application. Taking into consideration that the Respondent State was not deprived of the time needed to respond to the amended Application, the Court found that no prejudice was caused to the Respondent State by the replacement of the Application. For these reasons, the Court dismissed the Respondent State’s objection to the admissibility of this Application.

None of the admissibility requirements established in Article 56 of the Charter were in contention between the Parties. However, pursuant to the Protocol and the Rules, the Court still ascertained that the



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admissibility requirements had been fulfilled. Based on this examination, the Court found that the Application met all the conditions set out in the said Article and accordingly declared it admissible.

In its examination of the merits, the Court found that the Applicants failed to demonstrate that the Respondent State established an electoral body that is composed of members who are not independent and impartial, manifestly imbalanced in favour of the ruling party, overly institutionally dependent due to inadequate degrees of administrative or financial autonomy, and manifestly lacking confidence from political stakeholders based on its reform process.

However, considering the manifest imbalance of the number of Chairpersons of the Local electoral commissions proposed by the ruling party, following Bureau elections based on the previous law when the electoral body at the Local levels was still imbalanced in favour of the Government, the Court found that the Respondent State has not fully complied with Article 17 of the African Charter on Democracy, Elections and Governance (the ACDEG) and Article 3 of the ECOWAS Democracy Protocol, and has therefore violated these provisions.

Following this finding, the Court ordered the Respondent State to take the necessary measures before any election to ensure that new Bureau elections, based on the new composition of the electoral body, are organised at the Local levels.

In addition, the Court considered the absence of a mechanism to ensure that the process of nomination of members of the electoral body by political parties, especially opposition parties, as well as CSOs, are driven by those entities. Accordingly, the Court found that the Respondent State has not fully complied with its obligations to ensure public trust and transparency in the management of public affairs and effective citizens' participation in democratic processes as prescribed by Article 3(7), Article 3(8) and Article 13 of the ACDEG, nor with its obligation to ensure that the electoral body has the confidence of all the political actors, as prescribed by Article 3 of the ECOWAS Democracy Protocol. The Court therefore found that the Respondent State has violated these provisions.

Based on this finding, the Court ordered the Respondent State to take the necessary measures before any election to ensure that the process of nomination of members of the electoral body by political parties, especially opposition parties, as well as CSOs are driven by those entities, based on pre-determined criteria, with the authority to organise themselves, consult, hold elections as necessary, and submit the required nominees.

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The Court further ordered the Respondent State to report to it on the measures taken with regard to the two above mentioned orders within three (3) months from the date of notification of this Judgment, and thereafter, every six (6) months until the Court considers that there has been full implementation thereof.

With regard to the alleged violation of the right to participate freely in government, the Court found that the Applicants have not demonstrated how the non-inclusion of independent candidates in the list of entities that may propose members to the electoral body as established in the impugned law has affected their right to freely participate in government or have equal access to the public service of the country. The Court further noted the difficulty in identifying and selecting representatives of independent candidates before the final lists of candidates for elections are drawn up. For these reasons, the Court found no violation regarding the right to freely participate in government nor with regard to the question of equal access to the public service of the country, as provided under Article 13(1) and (2) of the Charter.

Regarding the alleged violation of the right to equal protection of the law, the Court considered that the argument of the Applicants on the discrimination towards independent candidates is based on the assumption that there is an imbalance in the composition of the electoral body. The alleged discrimination against the candidates that do not originate from the ruling party is then supposedly the result of the imbalanced composition. However, the Court noted that it already established that the Applicants have failed to demonstrate the imbalanced composition of the electoral body. The Court also noted that the Applicants did not clarify what kind of advantage candidates from the ruling party would benefit from which is allegedly denied to other candidates, particularly independent candidates. Accordingly, the Court did not find that the Applicants have proven any unfair advantage towards some candidates. Therefore, the Court did not find that the right to equal protection of the law has been violated in relation to independent candidates or any other candidates, as envisaged in Article 10(3) of the ACDEG, Article 3(2) of the Charter and Article 26 of the International Covenant on Civil and Political Rights.

With regard to the alleged violation of the Respondent State's obligation to execute judgments, the Court recalled that in its judgment in *APDH v Côte d'Ivoire* (merits), it ordered the Respondent State to: "to amend Law No 2014-335 of 18 June 2014 on the Independent Electoral Commission to make it compliant with the aforementioned instruments to which it is a Party;" and "to submit to it a report on the implementation of this decision within a reasonable time which, in any case, should not exceed one year from the date of publication of this Judgment."

The Court noted the various efforts undertaken by the Respondent State to comply with its judgement of 18 November 2016 and guarantee its execution, including through its request on 4 March 2017 for an



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interpretation of the Court's judgement and its search for a consensus-based solution to reform the electoral body through the adoption of Law N° 2019-708 of 5 August 2019 on the recomposition of the IEC.

The Court also observed that it already found that the Applicants have not demonstrated that the impugned law establishes an electoral body that is composed of members who are not independent and impartial. The Court also did not find that the impugned law provides for a composition of the electoral body at the Central level or at the Local levels that is manifestly imbalanced in favour of the ruling party. Neither did it find the electoral body overly institutionally dependent due to inadequate degrees of administrative or financial autonomy, or manifestly lacking confidence from political stakeholders in respect of its reform process.

However, the Court noted the manifest imbalance of the number of Chairpersons of the Local electoral commissions proposed by the ruling party. In addition, the Court noted the absence of a mechanism to ensure that the process of nomination of members of the electoral body by political parties, especially opposition parties, as well as CSOs, are driven by those entities.

Nonetheless, the Court observed that the remaining manifest imbalance of the Chairpersons of the Local electoral commissions relates to the implementation of the law and not to the content of the law.

The Court further noted that the absence of an appropriate mechanism to appoint members of the electoral body from civil society and political parties, particularly opposition parties, does not necessarily require an amendment of the impugned law. Such a mechanism could also be established through other measures.

The Court therefore found that the Applicants have not sufficiently demonstrated that the impugned law on the electoral body fails to meet the standards provided by the relevant human rights instruments to which the Respondent State is a Party.

Regarding the obligation to execute the judgment within the time stipulated, the Court took notice of the fact that the Respondent's State's request for interpretation of the *APDH v Côte d'Ivoire* (merits), may explain the initial delay in executing the said judgment. And while the Respondent State could have launched the consensus-based legislative process to reform the law governing the electoral body earlier, the Court finds the Respondent State's justification of the delay acceptable, considering that the organisation of such an inclusive political dialogue with different political parties and CSOs to establish an electoral body that meets relevant international standards inevitably took time.



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Accordingly, the Court held that the Respondent State has not violated its obligation to execute the judgment of the Court provided under Article 30 of the Protocol.

The Court decided that each Party shall bear its own costs.

Further information

Further information on the case, including the full text of the judgment of the African Court, is available at: <https://en.african-court.org/index.php/56-pending-cases-details/1264-app-no-044-2019-suy-bi-gohore-emile-8-others-v-cote-d-ivoire-details>

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