



PRESS RELEASE
JUDGMENT SUMMARY

XYZ V. RÉPUBLIQUE DU BENIN

APPLICATION No. 059/2019

JUDGMENT ON THE MERITS AND REPARATIONS

27 NOVEMBER 2020

DECISION OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Press Release: 27 November 2020

Arusha, 27 November 2020: The African Court delivered judgment in the case of *XYZ v. Republic of Benin*. XYZ is a national of Benin (the Applicant). For security reasons, he requested anonymity, which was granted to him by the Court pursuant to Article 56(1) of the Charter and Rules 41(8) and 50(2)(a) of the Rules of Court (the Rules).

In his Application filed with the Registry on 2 September 2019, the Applicant questions the independence and partiality of the electoral bodies as well as the composition of the National Assembly.

The Applicant contended that the Respondent State amended Electoral Law No. 2019-43 of 15 November 2019 (the 2019 Electoral Code) less than six months before the 17 May 2020 local and municipal elections, which, in his view, is contrary to the Economic Community of West Africa (ECOWAS) Protocol on Democracy and Good Governance additional to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (the ECOWAS Protocol on Democracy).

The Applicant submitted that the National Assembly that amended the electoral law was itself illegitimate because it was composed solely of members of the presidential camp. The Applicant further alleges that, pursuant to the revised electoral laws, the Respondent State established the Council for the Guidance and Supervision of the Permanent



PRESS RELEASE
JUDGMENT SUMMARY

Computerised Electoral List (COS-LEPI) and the National Autonomous Electoral Commission (CENA) - bodies that are, respectively, responsible for organising the intensive national electoral census and establishing the COS-LEPI as well as organizing the elections. The Applicant questioned the independence and partiality of these two bodies given that their members represented the political parties of the presidential camp only. He concluded that the local and municipal elections of 17 May 2020 could not be considered free, fair and transparent, and must therefore be annulled by the Court.

The Applicant alleged that the National Assembly was illegal and that it illegitimately amended the electoral laws. He also submitted that his right to equal protection of the law as guaranteed by Article 3(2) of the Charter was violated.

The Applicant contended that the Respondent State violated its obligation: to establish independent and impartial electoral bodies, pursuant to Articles 13(1) of the Charter, 17 of the African Charter on Democracy, Elections and Good Governance (ACDEG) and Article 3 of the ECOWAS Protocol on Democracy; not to unilaterally and substantially amend the electoral laws less than six months before elections pursuant to Article 2(1) of the ECOWAS Protocol on Democracy; to guarantee national and international peace and security in accordance with Article 23 of the Charter.

For all these violations, he requested the Court to grant him fair compensation and reparations under Article 27(1) of the Protocol Establishing the African Court on Human and Peoples' Rights (the Protocol).

For its part, the Respondent State requested the Court to order the Applicant to pay the State two billion (2,000,000,000) CFA Francs, by way of counterclaim for all damages suffered and incurred.

The Respondent State raised two objections relating to the Court's lack of jurisdiction: (i) lack jurisdiction to annul an election and (ii) failure by the Applicant to cite any case of human rights violation. The Respondent State also raised preliminary objections as to the admissibility of the Application, including, *inter alia*, abuse of *actio popularis*, the fact that there was no connection between the main and additional Applications, the fact that



PRESS RELEASE
JUDGMENT SUMMARY

the Applicant did not have an interest in bringing proceedings and that he did not provide proof his victim status.

Pursuant to Rule 49(1) of its Rules, the Court ascertained its jurisdiction and the admissibility of the Application. It concluded that it had jurisdiction and that the Application was admissible because it met all the conditions set out in Article 56 of the Charter, and echoed in essence by Rule 50 of the Rules of Court.

The Court found in particular that it had personal jurisdiction, since the Respondent State was a party to the Protocol and had made the Declaration under Article 36(4) of the Protocol, thus allowing the Applicant to bring his case directly before the Court. The Court also held that the withdrawal had no effect on either the pending cases or the new cases filed before the withdrawal took effect on 26 March 2021, i.e. one year after it was notified to the Court. In this case, the Application was already pending on the date of the withdrawal of the Declaration by the Respondent State, i.e. 25 March 2020.

After considering the merits of the case, the Court held that the allegations of illegitimacy and illegality of the National Assembly in amending the electoral laws and the allegation of lack of independence and impartiality of CENA had not been established, and that nor had the Respondent State violated the Applicant's right to equal protection of the law, as prescribed in Article 3(2) of the Charter.

The Court further found that the Respondent State did not violate the right of citizens to participate freely in the conduct of the public affairs of their country pursuant to Article 13(1) of the Charter following the unilateral and substantial amendment of the Electoral Code six months and two days before 17 May 2020, the date when the local and municipal elections were held.

The Court however found that the Respondent State violated the right of citizens to participate freely in the conduct of public affairs of their country pursuant to Article 13(1) of the Charter, insofar as the composition of COS-LEPI did not provide the guarantees of independence and impartiality prescribed in Article 17(2) of the ACDEG and Article 3 of the ECOWAS Protocol on Democracy.



PRESS RELEASE
JUDGMENT SUMMARY

The Court further ordered the Respondent State to take measures before any elections to ensure that the composition of the COS-LEPI is consistent with the provisions of Article 17(2) of the ACDEG and Article 3 of the ECOWAS Protocol on Democracy.

The Court ruled that the counterclaim in the sum of FCFA two billion (2,000,000,000) was baseless and ordered each Party to bear its own costs of the proceedings.

The Court further ordered the Respondent State to submit to it, within three months from the date of notification of the present judgment, a report on the implementation of points xiii of the present operative part.

Further information about this case, including the full text of the decision of the African Court can be found on the website at: <https://www.african-court.org/cpmt/details-case/0592019>

For any other queries, please contact the Registry by email registrar@african-court.org

The African Court on Human and Peoples' Rights is a continental court established by African Union Member States to ensure the protection of human and peoples' rights in Africa. The Court has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the African Charter on Human and Peoples' Rights and any other relevant human rights instrument ratified by the States concerned. For further information, please consult our website at www.african-court.org



African Court
on Human and Peoples' Rights

Arusha, Tanzania
Website: www.african-court.org
Telephone: +255-27-970-430

PRESS RELEASE
JUDGMENT SUMMARY