

## Suy Bi and others v Côte d'Ivoire (provisional measures) (2019) 3 AfCLR 732

Application 044/2019, *Suy Bi Gohore Emile and others v Côte d'Ivoire*

Ruling (provisional measures), 28 November 2019. Done in English and French, the French text being authoritative.

Judges: KIOKO, BEN ACHOUR, MATUSSE, MENGUE, MUKAMULISA, CHIZUMILA, BENSAOULA, TCHIKAYA, ANUKAM and ABOUD

Recused under Article 22: ORE

The Applicants argued that the Respondent State had failed to establish an independent National Electoral Commission in line with an earlier judgment of the Court. The Applicants requested the Court to issue an order for provisional measures that representatives of various organs of the Respondent State should not take up their seats on the Commission. The Court dismissed the request for provisional measures as the members of the Electoral Commission had already been appointed and thus deemed the request to have been overtaken by events. Furthermore, that the Applicants had not shown that such an order was needed to prevent irreparable harm.

**Jurisdiction** (prima facie, 18-22)

**Provisional measures** (evidence of risk of irreparable harm, 32-34)

### I. The Parties

1. Suy Bi Gohoré Emile, Kouassi Kouamé Patrice, Kakou Guikahué Maurice, Kouadjo François, Yao N'guessan Justin Innocent, Gnokonte Gnessoa Désiré, Djedje Mady Alphonse, Soro Kigbafori Guillaume, Trazere Olibe Célestine (hereinafter referred to as "the Applicants") are professionals of Ivorian origin.
2. The said Application was filed against the Republic of Côte d'Ivoire (hereinafter referred to as "the Respondent State") which became a party to the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter") on 31 March 1992 and to the Protocol on 25 January 2004. The Respondent State also filed the Declaration prescribed under Article 34(6) of the Protocol by which it accepts the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organizations.

### II. Subject of the Application

3. The present Application filed on 10 September 2019, is in

respect of requests for provisional measures. The substantive matter concerns a new law adopted by the National Assembly of the Respondent State in the context of the reform Law of the Independent Electoral Commission. Furthermore, this Court on 18 November 2016, already delivered on the merits of this matter a judgment on Application 001/2014 – *Action for the Protection of Human Rights (APDH) v Republic of Côte d'Ivoire* concerning the composition of the Respondent State's Independent Electoral Commission. The Court found that the composition of the Ivorian electoral body was imbalanced and that this affected its independence and impartiality. The Court also held that Law 2014-335 of 18 June 2014 violated Articles 10(3) and 17(1) of the Charter and Article 3 of ECOWAS Democracy Protocol. The Court consequently ordered the Respondent State to amend Law 2014-335 of 18 June 2014 on the Independent Electoral Commission to make it compliant with the afore-mentioned instruments.

4. On 4 May 2017, the Respondent State requested an interpretation of the judgment of 18 November 2016. On 28 November 2017, the Court declared the request inadmissible.
5. In 2019, the Respondent State decided to reform the Independent Electoral Commission (IEC). During this process, the opposition parties refused to participate in the reform process due to the absence of clear terms of reference to guide the discussion.
6. Faced with the opposition parties' refusal to participate in the process, the Respondent State pursued the exercise and introduced Bill 2019-708 of 5 August 2019 before the two houses of Parliament – the National Assembly and the Senate, both of which are controlled by the ruling political coalition, according to the Applicants. On Tuesday 30 July 2019, the Bill was adopted by the National Assembly; and on Friday 2 August 2019, by the Senate.
7. On 2 August 2019, sixty-six (66) members of the National Assembly brought the matter before the Constitutional Council requesting the latter to determine, adjudge and declare that Articles 5, 6 and 17 of Law 2014-135 of 18 June 2014 are at variance with Articles 4 and 53 of the Ivorian Constitution.
8. By two decisions (CI-2019-005/DCC/05-08/CC/SG of 5 August 2019 and CI-2019-006/DCC/13-08/CC/SG of 13 August 2019) the Constitutional Council declared inadmissible the Applicants' petition regarding the constitutionality of the new law on the composition of the Independent National Electoral Commission, citing various "shortcomings" of form and on grounds that the impugned law had already been promulgated by the President of

the Republic on the night of 5 August 2019.

### **III. Alleged violations**

**9.** The Applicants allege that the Respondent State violated the following:

- i. its commitment to comply with the Court's decisions to which it was a party and ensure their full implementation within a specified period, pursuant to Article 30 of the Protocol;
- ii. its obligation to create an impartial and independent National Electoral Commission within the meaning of Article 17 of the African Charter on Democracy, Elections and Governance (ACDEG) and Article 3 of ECOWAS Democracy Protocol;
- iii. its obligation to protect the right of citizens to participate freely in the government of their country, as provided under Article 13(1) and (2) of the Charter;
- iv. its obligation to protect the right to equality before the law and equal protection of the law, pursuant to Article 10(3) of ACDEG, Article 3 (2) of the Charter and Article 26 of the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- v. its obligation to comply with Article 17 of ACDEG, Article 3 of Protocol A/SPI/12/01 on Democracy and Good Governance and Articles 4 and 53 of the Respondent State's 8 November 2016 Constitution".

### **IV. Summary of the procedure before the Court**

- 10.** On 17 September 2019, the Registry acknowledged receipt of the Application, registered and served it on the Respondent State on 19 September 2019, and granted the latter sixty (60) days to file a Response. It was also granted seven (7) days to file its Response to the request for provisional measures.
- 11.** On 25 September 2019, the Registry acknowledged receipt of a new version of the Application which the Applicants sent in replacement of the initial version. By notice of the same date, the said Application was forwarded to the Respondent State which was given fifteen (15) days to submit its Response in respect of provisional measures.
- 12.** On 1 October 2019, the Registry received from the Respondent State a Response to the first version of the application for provisional measures and acknowledged receipt thereof. By notice of the same date, the Registry served this Response on the Applicants for a reply thereto within fifteen (15) days.
- 13.** On 3 October 2019, the Registry acknowledged receipt of the list of the Respondent State's representatives. On the same day,

the names of the representatives were duly transmitted to the Applicants.

14. On 15 October 2019, the Registry received a second Response from the Respondent State regarding provisional measures.
15. On 21 October 2019, the Registry received the Applicants' Reply regarding the provisional measures. On 23 October 2019, the Registry acknowledged receipt of the Applicants' Reply to the Respondent State's first Response to the request for provisional measures as well as the Respondent State's second Response. The said submissions were served on both parties for response within fifteen (15) days.
16. On 15 November 2019, the Registry acknowledged receipt of a second Response from the Respondent State in respect of the provisional measures. On the same day, the said Response was forwarded to the Applicants for a Reply within seven (7) days of the notification.

## V. Jurisdiction of the Court

17. In dealing with any Application filed before it, the Court must conduct a preliminary examination of its jurisdiction, pursuant to Articles 3, 5(3) and 34(6) of the Protocol and Rules 39 and 40 of the Rules.
18. 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* jurisdiction.<sup>1</sup>
19. 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."
20. As mentioned in paragraph 2 of this Ruling, the Respondent State is a party to the Charter and the Protocol and has also made 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 in conjunction with Article 5(3) thereof.
21. In the instant case, the rights claimed by the Applicants as having been violated are protected by the Charter, ICESCR, ACDEG and ECOWAS Protocol – instruments that the Court is empowered to

1 *African Commission on Human and Peoples' Rights v Libya* (order) (2013) 1 AfCLR 21 para 10; *Amini Juma v Tanzania* (order) (2016) 1 AfCLR 658 para 8.

interpret and apply under Article 3(1) of the Protocol.

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

## VI. Provisional measures requested

23. The Applicants pray the Court to:

- i. order the Republic of Côte d'Ivoire, before any election whatsoever, to amend Law No. 2019-708 of 5 August 2019 on the Recomposition of the Independent Electoral Commission (IEC) to make it compliant with the instruments to which it is a party;
- ii. order a provisional measure requiring the State of Côte d'Ivoire to temporarily stay the implementation of the decisions of the Independent Electoral Commission stemming from the impugned law, before any election, until the Court renders its decision on the merits of the matter;
- iii. not set up the Independent Electoral Commission on the basis of Law No. 2019-708 of 05 August 2019 on the Recomposition the Independent Electoral Commission (IEC);
- iv. enjoin the various organs of the State of Côte d'Ivoire targeted by Law No. 2019-708 of 05 August 2019, including the Presidency of the Republic and the Ministry of Territorial Administration not to proceed with the appointment of members to the Independent Electoral Commission;
- v. enjoin the various organs of the State of Côte d'Ivoire, including the Presidency of the Republic and the Ministry of Territorial Administration, not to take their seat in the Independent Electoral Commission (IEC);
- vi. (...) and this, until the Court renders its decision on the merits".

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24. 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".
25. 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”.

26. The Court notes that it has the duty to decide in each case whether in light of the particular circumstances of a case, it has to exercise the jurisdiction conferred on it by the above-mentioned provisions.
27. The Court takes into account the applicable law with regard to provisional measures which are specific. The Court cannot issue a Ruling *pendente lite* except when the basic requisite conditions are met, i.e. extreme gravity, urgency and prevention of irreparable harm to persons.
28. In the instant case, the Court notes that the Applicants made several requests in the Application for provisional measures.
29. As the Court has already ruled that it has *prima facie* jurisdiction, it will proceed to examine the provisional measures requested.
30. The Court notes that in the instant case, the Applicants are requesting the Court, pursuant to Article 27 of the Protocol and Rule 51 of the Rules, to order the following provisional measures: to enjoin the various organs of the State of Côte d'Ivoire, including the Presidency of the Republic and the Ministry of Territorial Administration, not to take their seat in the IEC.
31. The Applicants argue that such measures are imperative as long as the Electoral Commission does not meet the requirements of independence and impartiality. Furthermore, in their view, it is necessary to bear in mind that this reform is supposed to respond to the Court's injunction to the Republic of Côte d'Ivoire to reform its law to make it compliant with the international legal instruments to which it is a party. It is noteworthy that, in 2010, the IEC was at the centre of the electoral dispute that triggered a civil war which, according to official figures, claimed the lives of over three thousand, two hundred and forty-eight (3,248) people. Moreover, Côte d'Ivoire will in October 2020 have its first major election since that unfortunate post-electoral crisis of 2010/2011.
32. The Court notes that the Respondent State seeks a ruling that the Application for provisional measures is in respect of a law already enacted, that the members of the Electoral Commission have been sworn in before the Constitutional Council, and that the Bureau of the Electoral Commission was established on Monday, 30 September 2019. The Court also notes that the Respondent State contends that the provisional measures requested do not meet the requirements set out in Article 27 of the Protocol, that the Applicants' pleas and arguments are based solely on fears without any real direct correlation with the impugned situation, and that the Applicants have not been able to sufficiently demonstrate that the conditions set forth by Article 27 of the Protocol have

been met.

33. The Court notes that the Application for provisional measures seeking to prevent the application of the said law has become irrelevant following the establishment of the Independent Electoral Commission as well as the appointment of its members and the personalities proposed by the different organs of the Respondent State.
34. The Court holds that in view of the facts as reported by the Applicants and the Respondent State, the circumstances do not reveal a situation of which the gravity and urgency would pose a risk of irreparable harm or an immediate social disorder. The Court also holds that since the Applicants have not provided evidence as to the extreme gravity of the circumstances of this case, there is no justification for the request for measures to be ordered prior to consideration of the merits. The Application is consequently dismissed.
35. This Ruling of provisional measures remains provisional in nature and in no way prejudices the Court's decisions on the merits of the case.

## **VII. Operative Part**

36. For these reasons,  
The Court,  
*Unanimously,*  
*Dismisses* the request for provisional measures.