

HUMAN RIGHTS COMMITTEE

Zébié v. Côte d'Ivoire

Communication No. 940/2000

9 July 2002

CCPR/C/75/D/940/2000

ADMISSIBILITY

Submitted by: Zébié Aka Bi (represented by counsel, Maître Joel Bataille and Maître Jean-Claude Richard)

State party concerned: Côte d'Ivoire

The Human Rights Committee, established under article 28 of the International Covenant on Civil and political Rights,

Meeting on 9 July 2002,

Adopts the following:

Decision on admissibility

1. The author is Mr. Zébié Aka Bi, born in Côte d'Ivoire and residing in France. He alleges to be a victim of a breach by Côte d'Ivoire of article 25 of the International Covenant on Civil and Political Rights. He is represented by counsel.

The facts as presented by the author

2.1 The author alleges that he is unable to participate in the presidential election in Côte d'Ivoire, in this case the election scheduled for 17 September 2000, either as a voter or as a candidate, as a result of the new provisions of article 35 of the Constitution and of the Electoral Code.

2.2 The author explains that, by Decree No. 200-497 of 17 July 2000 amending the draft Constitution, the head of State, General Robert Guei, revised article 35, paragraph 3, of the Constitution relating to conditions for election to the post of President of the Republic, in the following terms: "He must be of Ivorian origin, born of a father and mother who themselves are of Ivorian origin. He must never have renounced Ivorian nationality." These eligibility criteria were

also included in articles 53 and 54 of the draft Electoral Code. Finally, they were approved by a referendum held on 23 July 2000, which led to the adoption of the draft amendment to the Constitution and draft Electoral Code.

2.3 The author states that the Constitution and the Electoral Code were amended in the context of the political situation in Côte d'Ivoire, namely the deposition of the former President of the Republic by the military junta currently in power and responsible for organizing the next presidential election.

2.4 Owing to the new provisions of the Constitution and the Electoral Code, the author claims to have been deprived, first of all, of his right to vote for the candidate of his choice, who would not be able to stand in the presidential election because he did not meet the criteria relating to national origin and nationality. Moreover, the author draws attention to his dual nationality - Ivorian and French - and alleges that, owing to the eligibility criteria relating to non-renunciation of Ivorian nationality, which in his view imply that no other nationality has been claimed, he is unable, contrary to his wishes, to stand in the presidential election.

The complaint

3.1 The author challenges the criteria for standing in presidential elections insofar as they discriminate against him and are contrary to article 25 of the Covenant.

3.2 Referring to General Comment No. 25 of the Human Rights Committee on article 25 of the Covenant, the author contends that citizenship alone determines the granting of political rights and that no distinctions are permitted between citizens in the enjoyment of those rights on the grounds of race, colour, birth or other status. Moreover, he points out that only restrictions based on objective and reasonable criteria are justifiable. Finally, he quotes paragraph 15 of General Comment No. 25, which reads in part: "Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as [...] descent [...]."

3.3 The author contends that the requirement of exhaustion of domestic remedies should be considered with due regard for efficiency and urgency. He argues that, owing to the political and legal legitimacy of the new Constitution and Electoral Code following their adoption by referendum, no domestic remedy could be effectively sought against the eligibility criteria. He adds that the political situation in Côte d'Ivoire must be taken into account, namely that presidential elections were organized after the military's seizure of power. Finally, since the Electoral Code provides that the list of candidates should be finalized at least a fortnight before the election date of 17 September 2000, the author, who brought the case to the Human Rights Committee on 27 July 2000, stresses the urgency of his communication.

3.4 The author alleges that Côte d'Ivoire has violated article 25 of the Covenant.

3.5 The author states that the case is not being examined under another procedure of international investigation or settlement.

The State party's observations on admissibility

4.1 In its observations of 7 October 2000, the State party disputes the admissibility of the communication.

4.2 In the first place, the State party contends that the author's Ivorian nationality has not been proven. The State party points out that Act No. 61-45 of 14 December 1961 on the Ivorian Nationality Code, amended by Act No. 72-852 of 21 December 1972 provides, in article 1, paragraph 2, that "nationality is acquired or lost after birth by virtue of the law or a decision of the public authorities taken in accordance with the provisions of the law". Moreover, under article 89 of that Act, proof of Ivorian nationality must be adduced by the person who claims to have such nationality.

4.3 The State party alleges that the author never produced any evidence to support his claim that he is Ivorian, especially since birth on Ivorian soil is not a condition for the acquisition of Ivorian nationality.

4.4 The State party adds that article 48 of the aforementioned Nationality Code provides that "Ivorian adults who voluntarily acquire a foreign nationality or who claim another nationality shall lose their Ivorian nationality."

4.5 According to the State party, even if the author produced evidence that he was Ivorian, Mr. Aka Bi Zébié, having acquired French nationality on 24 August 1983 (pursuant to article 135 of the French Nationality Code), lost his Ivorian nationality beginning on that date, that is, 17 years ago.

4.6 The State party concludes that the author is not under the jurisdiction of Côte d'Ivoire and that, in accordance with article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights, the Committee should declare itself incompetent in the case.

4.7 Secondly, the State party alleges that the author has not exhausted domestic remedies.

4.8 The State party indicates that the author has never adduced any evidence that he brought his case before Ivorian courts and has exhausted domestic remedies. In addition, the State party emphasizes that the date of 17 September 2000 set for the presidential election is not correct and, moreover, was used by the author as a pretext for circumventing domestic remedies. The State party indicates that the date of the presidential election has been postponed to 22 October 2000. According to the State party, the author does not adduce any evidence that he has initiated any proceedings in an Ivorian court since the postponement of that date. The State party explains that the author could have brought his case to the Constitutional Council established by the new Constitution and whose functions are temporarily being carried out by the Constitutional Chamber of the Supreme Court¹. Moreover, the State party contends that the author could, through a simple request, apply to the President of the Supreme Court for a summary ruling - a provision applied in urgent cases by virtue of article 79² of Act No. 94-440 of 16 August 1994 establishing the composition, organization, functions and operation of the Supreme Court.

4.9 Finally, the State party stresses that the author did not register as a presidential candidate, which constitutes an abuse of his right to submit a communication to the Committee.

The author's comments on the State party's submissions

5.1 In his letter of 10 January 2002, the author stated that he did "not intend to respond to the State party's submissions".

Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 87 of its rules of procedure, whether the claim is admissible under the Optional Protocol to the Covenant.

6.2 As required under article 5, paragraph 2 (a), of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes that the author has produced no arguments relating to any efforts he has made to claim his rights, either as a voter or as a candidate in the presidential election. Under the circumstances, the Committee considers that the author has not demonstrated that he is a victim of a violation of the Covenant and that the communication is therefore inadmissible under article 1 of the Optional Protocol.

6.4 In the circumstances, it is unnecessary for the Committee to consider the other arguments put forward by the State party concerning admissibility.

7. The Committee therefore decides:

(a) That the communication is inadmissible under article 1 of the Optional Protocol;

(b) That this decision shall be communicated to the State party and to the author.

* The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Louis Henkin, Mr. Ahmed Tawfik Khalil, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Mr. Patrick Vella and Mr. Maxwell Yalden.

Notes

¹ Order No. 2000-428 of 9 June 2000 establishing the Constitutional Chamber. Article 1: "A special chamber, called the 'Constitutional Chamber', responsible for monitoring and verifying the

legality of the referendum and presidential and legislative elections in the year 2000, is hereby established as a body of the Supreme Court"; article 6: "The Constitutional Chamber shall rule, in accordance with the provisions currently in force, on the eligibility of candidates for the presidential and legislative elections ..."

² Article 79: "In all urgent cases, the President of the Administrative Chamber may, on the basis of a simple request: (a) appoint an expert to establish without delay whether or not there are grounds for proceedings to be brought before the Administrative Chamber: counsel for the defence, if any, shall be notified immediately; and (b) order any other useful measures, without prejudice to the substance of the case and without hindering the execution of any administrative decision."