

## **FACTS**

The complaint alleges that voter registration in the constituencies of Serrekunda West, Serrekunda East and Bakau was defective because those registering were not required by the law to give an address or identification. It argues that there was no control over voter registration since no documents have to be shown to the registration officer. The voter may be asked his name and citizenship, but there is no requirement to produce an address or compound number. Furthermore, the witness is not required to identify himself. The complainant argued that the absence of a requirement to produce an address or compound number makes it possible for the voter to forge his right to vote in the constituency, or to vote several times.

In the rural areas the registration of the voters and the voting procedure itself are controlled by the headman, the registration officer, representatives of different political parties, and village elders. In the urban areas the control is only done by the registration officer, who does not know the people. Without the street address or compound number it is impossible for the registration officer to control the identity of the voter, even though they must sign a form of registration and enclose a photograph, because the signature could be forged and the lack of communication between different constituencies could make it possible for the voter to register in several stations.

The complainant argues that the registration by street address/ compound number is possible, since most urban areas in the Gambia have street address or compound number.

The complainant argues that, based on its observations of voter registration, there is widespread fraud.

According to the Government

The government argued firstly that the case was inadmissible because it could be taken through the courts to the level of the (British) Privy Council.

The complainant pointed out that the (Gambian) Elections Act, Section 22(5), states that the judgment of the Gambian Supreme Court shall be final and conclusive; thus, appeal to the Privy Council is impossible.

As to the merits, the state originally claimed that the Gambia does hold free and fair elections. In the urban areas a form was signed and address / compound number, occupation, constituency and photo, were included wherever possible. These were checked by the registration officer both at registration and at the elections, providing adequate protection against fraud. Likewise, in the rural areas, the personal identification by the village headman took place both at registration and at the elections.

The state claimed that it is almost impossible in a developing country like the Gambia to ensure control by street addresses / compound number. Many dwellings in the Gambia, including in the urban areas, do not have street addresses / compound numbers, but are registered in the names of the owners. It is therefore impossible to make this requirement absolute.

The state further argued that it is impossible to require showing of identity papers at the time of registration and election as a high percentage of the population does not have identification papers. It was not before 1985 that a National Identity Card was introduced and now not more than 50% of the population has been registered.

In July 1994 there was a change of government in The Gambia. The present government strongly condemns the claims of the previous government that the streets of Serrekunda were not named with sufficient specificity to permit making a street address a mandatory requirement for voter registration. The present government calls this claim "inexcusable and indefensible."

The present government, by its "Admission of Communication No. 44/90 from the Peoples Democratic Organisation for Independence and Socialism-PDOIS Against the State of the Gambia" concedes that the grievances expressed by the complainants are valid and logical. It expressed its intent to change the current system to correct the present "anomalies."

## **PROCEDURE**

The communication is dated 19 June 1990. The Commission was seized of the communication at the 8th Session and the government of The Gambia was notified on 6 November 1990.

From 1990 to 1995, the Commission proceeded to verify the exhaustion of local remedies.

At the 17th session the communication was declared admissible on the basis that exhaustion of local remedies had been unduly prolonged.

On 20 April 1995 a letter was sent to the complainants and the Gambian Government, stating that the communication was admissible.

The Commission received a letter from the Attorney General's Chambers and Ministry of Justice of The Gambia, conceding that the grievances expressed by the complainants are valid and logical, and that the present electoral law is being reviewed with the objective of curing the present anomalies.

On 20 December 1995, the complainant was informed of this response with the specification that if the Secretariat does not receive arguments to the contrary before the 1 February 1996, the Commission would consider the communication to have been resolved amicably.

## **THE Admissibility**

## **LAW**

The PDOIS argued that it was beyond the jurisdiction of the judiciary to order Parliament to change defective procedures and laws; thus, recourse to the courts was not an option. The complainant alleged that, while the Elections Act provides for objections to voter lists to be made before a revising officer appointed by the Supervisor of Elections, the fact that the voter lists posted did not include a list of addresses made effective scrutiny impossible. The complaint noted that numerous letters had been addressed to the Supervisor of Elections and the President of the Republic as early as 1987 with no response.

The Government noted that in July 1990, the complainant did file a Notice of Objection and sent it to the Commissioner of Western Division. The document was forwarded to the Revising Court. No action appeared to have been taken by the court.

On the basis of these facts the communication was declared admissible.

## LAW

Article 13 of The African Charter reads:

"Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provision of the law".

In 1994 there was a change of government in The Gambia. The present government recognizes that it has inherited the previous government's rights and obligations under international treaties.

The present government has a different view of voter registration. It concedes that the grievances expressed by the complainants are valid and logical. It describes that it is in the process of establishing an independent electoral commission and has commissioned a team of experts to review the present electoral law.

The African Commission welcomes the acceptance of the complainant's contentions and the government's stated determination to review the current electoral law, in order to ensure that elections are regular, free and fair.

### **FOR THESE REASONS THE COMMISSION**

holds that the above communication has reached an amicable resolution.

*Taken at the 20th Ordinary Session, Grand Bay, Mauritius, October 1996.*