



International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning Communication No. 2401/2014*, **

<i>Communication submitted by:</i>	V.D. (represented by counsel, Alexia Gertrude Amesbury)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Seychelles
<i>Date of communication:</i>	7 March 2014 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 28 May 2014 (not issued in document form)
<i>Date of adoption of decision:</i>	26 July 2019
<i>Subject matter:</i>	Participation in presidential elections
<i>Procedural issues:</i>	Victim status; exhaustion of domestic remedies; level of substantiation of claims
<i>Substantive issues:</i>	Taking part in the conduct of public affairs; right to be elected to public office
<i>Articles of the Covenant:</i>	25
<i>Articles of the Optional Protocol:</i>	1, 2 and 5 (2) (b)

1. The author of the communication is V.D., a national of Seychelles born in 1955. He claims a violation of his rights under article 25 of the Covenant. The Optional Protocol entered into force for the State party on 5 August 1992. The author is represented by counsel.

The facts as submitted by the author

2.1 The author stood as a candidate in the 2011 presidential elections in Seychelles. During the election period, the Electoral Commission designated 27 April 2011 as the day for all candidates to submit their election nomination documents, in conformity with the 1995 Elections Act. Each potential candidate was assigned a specific time slot between 9

* Adopted by the Committee at its 126th session (1–26 July 2019).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.



a.m. and 2 p.m. to submit the documents in question. The author was assigned the time slot of 1 p.m. He claims that the time slot allocation is important, since it allows a candidate with potential errors or irregularities in the nomination documents to rectify said errors before the end of the submission period on the nomination day.

2.2 The author presented all the documents required for nomination under the Elections Act at his assigned time slot on 27 April 2011 and the Chief Electoral Officer acknowledged receipt of the documents. The author notes that he therefore believed that the documents were in order and that his candidature had been validly accepted. However, on the same day, at 5.15 p.m., after the closing time for submissions, he was notified in writing by the Chief Electoral Officer that he had been disqualified as a candidate in the elections as he had failed to comply with the requirements under the Elections Act. No information on which specific requirement he had failed to comply with was provided in that letter.

2.3 On 3 May 2011, the author petitioned the Constitutional Court alleging that his constitutional right to be elected to office had been violated. He argued that under the Elections Act, the Chief Electoral Officer did not have the power to disqualify candidates in the election – only other candidates could object to nominations. He further argued that he should have been given until midnight on the nomination day to rectify any errors found in the nomination documents. The author requested the Constitutional Court to declare that his disqualification from the election was illegal and that the failure to give him until midnight on the nomination day to remedy any irregularity in the nomination documents contravened his constitutional rights. He further requested the Court to order that he be “returned the list of endorsements”; that the presidential elections be postponed until the Court had taken a final decision on the matter; and that the Court grant such other orders or writs as might be appropriate to enforce the protection of his constitutional rights.

2.4 On 6 May 2011, a hearing was held before the Constitutional Court. The respondents, namely the Chief Electoral Officer, the Electoral Commissioner and the Attorney General, noted that the author’s nomination had been rejected as his nomination documents did not fulfil the requirements under the Elections Act. Specifically, the author’s list of endorsements by the electorate had been found not to comply with the minimum requirement of 500 valid signatures. Due to discrepancies, duplications and signatures of individuals not registered as voters, the validated signatures amounted only to 454. The respondents argued that the Chief Electoral Officer had acted in accordance with the Elections Act in determining whether to accept or reject the author’s candidature.

2.5 On 11 May 2011, the Constitutional Court ruled that the author’s disqualification from the election had been unlawful. The Court noted that there was a two-stage process in the nomination procedure of candidates for election. On presentation of nomination documents by a candidate, the Chief Electoral Officer was to satisfy himself that the documents were in compliance with the requirements under the Elections Act. If he was not satisfied that the documents were in order, he was under an obligation to hand them back to the candidate, who could then choose to rectify any irregularity and resubmit the documents, if time allowed. The Court noted that the second stage of the nomination procedure allowed for candidates to object to the nomination of other candidates, after which it was for the Chief Electoral Officer to make a determination as to the validity of the challenged nomination. The Court found that in the author’s case, the Chief Electoral Officer had failed to conduct the verification process upon receipt of the author’s nomination documents and had erred in law by disqualifying the author as a candidate in the elections in the absence of any objection filed by any of the other candidates. The Court concluded that the author’s disqualification from the election amounted to a violation of his constitutional rights. However, it found that the author had not sought a specific remedy to redress the violation. It noted that: “In this particular case the petitioner has not, on the petition, sought any relief that would have the effect of erasing the transgression of his constitutional rights and freedoms. He basically sought only declaratory orders. He did not seek the quashing of the decisions made.” The author argues that the Court failed to consider that in his request for relief he had asked the Court to “grant such other orders or writs as may be appropriate to enforce the protection of his constitutional rights”.

2.6 On 13 May 2011, the author appealed the judgment of the Constitutional Court to the Court of Appeal, requesting the latter to reinstate him as a validly nominated candidate

in the presidential elections. The author also submitted an interlocutory injunction on 16 May 2011, requesting the Court of Appeal to prevent the authorities from proceeding with the elections before the final determination of his appeal, as polling was due to begin on 18 May 2011.

2.7 The author's request for an injunction was heard by the President of the Court of Appeal on 19 May 2011 and a preliminary ruling was rendered on 20 May 2011, dismissing the author's application on the grounds that the author's right to be elected did not supersede the right of the electorate to have elections held as scheduled. That decision was later confirmed by the Court of Appeal on 27 May 2011.

2.8 On 2 September 2011, the Court of Appeal rendered two judgments on the author's appeal and the respondents' cross-appeal. It found that the Chief Electoral Officer was entitled to verify, accept or reject nominations after the closing period for submission of nominations, and concurred with the Chief Electoral Officer's finding that the list of endorsements submitted by the author did not fulfil the requirements of the Election Act. The Court found that the author's constitutional rights had not been violated. However, it found that the author had not been under an obligation to specify the exact remedy sought in his complaint before the Constitutional Court, as it was within the power of the Constitutional Court to provide applicants with appropriate remedies. It noted, however, that the matter was "purely academic", considering its findings that the author's constitutional rights had not been violated by his disqualification as a candidate in the presidential elections. Nevertheless, the author notes that the Court called the attention of the legislative branches to the fact that the Elections Act was flawed because it did not provide a procedure and time limit for amendments when irregularities or mistakes were detected in nomination papers.¹

The complaint

3.1 The author submits that Seychelles have violated his rights under article 25 of the Covenant by disqualifying him from running in the 2011 presidential elections. He claims that he should have been promptly informed of the acceptance or rejection of his nomination as a candidate in the election. He further claims that the 1995 Elections Act is fundamentally flawed as it makes no provisions granting candidates the opportunity to rectify errors in nomination documents that have been submitted.

3.2 The author also claims that his rights under article 25 of the Covenant were violated, as the Constitutional Court, while recognizing a violation of his constitutional rights, refused to provide him with an effective remedy by reinstating him as a validly nominated candidate in the 2011 presidential elections. Moreover, the Court of Appeal confirmed that the Constitutional Court should have provided him with such a remedy, but this decision was rendered without effect because the Court of Appeal also found that his constitutional rights had not been violated. The author argues that the judgments of the Constitutional Court and the Court of Appeal had no effect in practice, which resulted in him being prevented from participating in elections to public office.

State party's observations on admissibility and the merits

4.1 On 24 July and 27 November 2014, the State party submitted its observations on the admissibility and merits of the communication. The State party submits that the communication is inadmissible on grounds of lack of victim status and failure to substantiate the claims for the purposes of admissibility. In its observations on the merits of the communication, the State party also noted that the author had not raised his claims of alleged discrimination and the inadequacies of the Elections Act before the domestic authorities.

¹ In its judgments, the Court of Appeal noted that the provisions of the Elections Act made "no allowance for defective nomination papers to be amended or rectified". The Court found it "certainly unsatisfactory that the Act does not provide a procedure and time limit for amendments when defects are detected in nomination papers but it is not for this Court to remedy the shortcomings of the provisions of the Election Act, bearing in mind the adage that one cannot legislate from the bench". The Court noted that it directed the attention of the legislature to this fact.

4.2 The State party notes that in its judgment of 2 September 2011, the Court of Appeal held that the author's right to participate in public office under article 24 (1) (c) of the Constitution had not been violated. It notes that the Court found that his candidature was validly rejected as it did not meet the requirements of the Elections Act, specifically the requisite number of endorsements by the electorate. It argues that the author cannot be considered to have victim status under the Covenant, as his disqualification from running in the presidential elections of 2011 stemmed from his own oversight.

4.3 The State party further submits that the communication should be found inadmissible for failure to substantiate the claims for the purposes of admissibility. It argues that the claims raised by the author under article 25 of the Covenant are vague and lacking in detail, and should therefore be found inadmissible. It further argues that, as the Court of Appeal found that the author had not fulfilled the legal requirements for being nominated as a candidate in the presidential elections, he is prevented from raising a complaint before the Committee. It submits that this amounts to an abuse of the right of submission of communications before the Committee.

4.4 As concerns the merits of the complaint, the State party submits that the author has failed to explain and substantiate how his rights under article 25 of the Covenant have been violated. It further notes that the author's complaint before the domestic authorities concerned the interpretation of the scope of powers of electoral authorities under the Elections Act and argues that the author did not raise the alleged inadequacies or the constitutionality of the Electoral Act before the domestic authorities. It notes that the Court of Appeal held that the author's rights under the Constitution had not been violated, as he had been disqualified from running as a candidate in the 2011 presidential elections owing to errors attributable to him, namely the failure to submit a list of endorsements corresponding to the requirements stipulated by law. It argues that the author's claims have been thoroughly considered by the Court of Appeal which found no violations of his rights under applicable law.

Author's comments on the State party's observations on admissibility and the merits

5. On 12 October 2014 and 4 February 2015, the author submitted his comments on the State party's observations on the admissibility and merits of the communication. He maintains that the communication is admissible. He notes that the subject matter of the complaint is his claim that the Court of Appeal failed to apply domestic laws, including the Constitution, in a manner that was fair and impartial. He further claims that the allocation of time slots for candidates to submit their nomination documents to the Chief Electoral Officer was discriminatory, as the ruling party's candidate, the incumbent President, was allocated the time slot of 9 a.m. whereas he was given the time slot of 1 p.m., thereby providing him with less time to rectify any error in the nomination documents.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether or not it is admissible under the Optional Protocol to the Covenant.

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

6.3 The Committee notes the State party's submission that the author cannot be considered to have victim status under the Covenant, as his disqualification from running in the presidential elections of 2011 stemmed from his own oversight. The Committee recalls its jurisprudence that any person claiming to be a victim of a violation of a right protected under the Covenant must demonstrate either that a State party has, by act or omission, already impaired the exercise of his right or that such impairment is imminent, basing his arguments, for example, on legislation in force or on a judicial or administrative decision or

practice.² In the present case, the Committee notes that the author, who was a candidate in the 2011 presidential elections, was directly and personally affected by the decision of the Chief Electoral Officer to disqualify him from running in the elections, as well as by the decisions of the Constitutional Court and the Court of Appeal. The Committee therefore finds that it is not precluded under article 1 of the Optional Protocol, from examining the present communication.

6.4 The Committee notes the author's claim that he has exhausted all effective domestic remedies available to him. It notes the State party's submission that the author's complaint before the domestic authorities concerned the interpretation of the scope of powers of the electoral authorities under the Elections Act and its argument that the author did not raise the alleged inadequacies or the constitutionality of the Electoral Act before the domestic authorities. The Committee observes that in order to exhaust domestic remedies, the author must have raised, through all effective and available domestic mechanisms for redress, the substance of the claims that are the subject of the communication before the Committee.³ The Committee notes that the author has not provided any information on whether he raised his claims before domestic authorities that the Elections Act was flawed or that the allocation of time slots for submission of nomination documents was discriminatory. The Committee further notes, based on the information on file, that his claim before the domestic authorities appears to have centred on the claim that the Chief Electoral Officer did not have the power to disqualify candidates from the election and his claim that he should have been given until midnight on nomination day to rectify any irregularity in his nomination papers. The Committee therefore finds this part of the communication inadmissible pursuant to article 5 (2) (b) of the Optional Protocol.

6.5 The Committee further notes the State party's submission that the communication should be found inadmissible for failure to substantiate the claims for the purposes of admissibility. It notes the State party's argument that the Court of Appeal held that the author's rights under the Constitution had not been violated, as he had been disqualified from running as a candidate in the 2011 presidential elections owing to errors attributable to him. The Committee further notes the author's claims that the State party authorities violated his rights under article 25 of the Covenant by failing to promptly inform him of the acceptance or rejection of his nomination as a candidate in the election; provide him with sufficient time to rectify the errors in his nomination papers or with an effective remedy for the violation suffered; and that the Court of Appeal failed to apply domestic laws in a manner that was fair and impartial. The Committee notes, however, that the author has not explained in what manner he considers that the Court of Appeal failed to meet the standards of fairness and impartiality. The Committee additionally notes that the author has not disputed the State party's argument that he was disqualified from running as a candidate in the presidential elections because of his failure to submit nomination documents meeting the requirements stipulated by law. The Committee notes that the author disagrees with the assessment of the Court of Appeal that his right to run as a candidate in the 2011 presidential elections had not been violated and with its interpretation of domestic legislation. The Committee recalls its jurisprudence, according to which it is for the organs of States parties to evaluate the facts and the evidence or the application of domestic legislation in a particular case, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice, or that the Court otherwise violated its obligations of independence and impartiality.⁴ In the present case, the Committee notes that the provisions of the Elections Act applied equally to all candidates in the election and it considers that the author has failed to substantiate, for purposes of admissibility, his claim that the conduct of the domestic courts amounted to arbitrariness or

² See *Rabbae v. Netherlands* (CCPR/C/117/D/2124/2011), para. 9.5, citing *Andersen v. Denmark* (CCPR/C/99/D/1868/2009), para. 6.4, and *A.W.P. v. Denmark* (CCPR/C/109/D/1879/2009), para. 6.4.

³ See *Corral v. Spain* (CCPR/C/83/D/1356/2005), para. 4.2, in which the Committee stated that authors must "raise the substance of the issues submitted to the Committee before domestic courts".

⁴ See, inter alia, *Riedl-Riedenstein and others v. Germany* (CCPR/C/82/D/1188/2003), para. 7.3, *Arenz and others v. Germany* (CCPR/C/80/D/1138/2002), para. 8.6; *Tyan v. Kazakhstan* (CCPR/C/119/D/2125/2011), para. 8.10. See also the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 26.

a denial of justice. The Committee therefore declares the author's claims under article 25 of the Covenant insufficiently substantiated and thus inadmissible under article 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 5 (2) (b) of the Optional Protocol;

(b) That this decision shall be transmitted to the State party and to the author of the communication.
