

Gillot et al v. France (Communication No 932/2000 France. 26/07/2002. CCPR/C/75/D/932/2000)

From DADEL

1) Reference Details

Jurisdiction: United Nations Human Rights Committee

Date of decision: 26 July 2002

Link to full case:

[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/12769c97c02eee6ac1256c38002e171f?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/12769c97c02eee6ac1256c38002e171f?Opendocument)

2) Facts

The authors claim violations by France of articles 2, 25 and 26 of the International Covenant on Civil and Political Rights ("Covenant").

The 21 authors of this communication are all French citizens residing in New Caledonia, a French overseas community. On 5 May 1998, two political organizations in New Caledonia, the Front de Liberation Nationale Kanak Socialiste (FLNKS) and the Rassemblement pour la Caledonie dans la Republique (RPCR), together with the Government of France, signed the so-called Noumea Accord. The Accord, which forms part of a process of self-determination, established the framework for the institutional development of New Caledonia.

An initial referendum on the provisions of the Accord was held on 8 November 1998. The Noumea Accord was approved by 72 percent of those voting, and it was established that one or more referendums would be held thereafter. The authors, who did not meet the length-of-residence requirement, were not eligible to participate in the referendum and they dispute the manner in which the electorates for these various referendums were determined. On 7 October 1998, the authors filed a joint petition before the Council of State for rescission of the referendum of 8 November 1998. Their petition was rejected by the Council of State. Each author applied to the Noumea administrative commission to be included in the electoral rolls. Their applications were rejected and the commission's decision was upheld by the Noumea court of first instance. Their appeals to the Court of Cassation were also dismissed.

The authors complain that they have been discriminated against in the manner in which persons eligible to vote in the 1998 referendum and future referendums were determined. In particular, they claim discrimination on the basis of the ethnic origin or national extraction of French citizens resident in New Caledonia. They maintain that the French authorities have established an ad hoc electorate for local ballots, so as to favor Kanaks (Melanesian community present in New Caledonia for approximately 4,000 years) and Caldoches, (persons of European descent present in New Caledonia since colonization in 1853), whose political representatives signed the Noumea Accord. According to the authors, the Accord was concluded to the detriment of other French citizens resident in New Caledonia who originate from metropolitan France (including the authors), as well as other ethnic groups.

3) Admissibility

The Committee found part of the communication relating to violation of articles 25 and 26 of the Covenant to be admissible.

4) Merits

The Committee referred to its jurisprudence in relation to article 25 of the Covenant, that the right to vote is not an absolute right and that restrictions may be imposed on it provided they are not discriminatory or unreasonable. The restrictions have to be evaluated on a case-by-case basis, having regard to the purpose of the restriction and the principle of proportionality.

In the present case, the Committee observed that the referendum was conducted in the context of a process of self-determination in New Caledonia. Therefore, Article 25 has to be read in conjunction with Article 1 of the Covenant. It would not be unreasonable to limit participation in referendums to those persons concerned with the future of New Caledonia.

The Committee observed that the criteria used are: (a) for the 1998 referendum relating to the continuation or non-continuation of the process of self-determination, the condition of length of residence in New Caledonia; and (b) for the purpose of future referendums directly relating to the option of independence, additional conditions relating to possession of customary civil status, a presence in the territory of moral and material interests, combined with birth of the person concerned or his parents in the territory. The Committee noted that as the date for a decision on self-determination approaches, the criteria for determination of the electorate are more numerous and take into account the factors that demonstrate the strength of the links to the territory.

With regard to the authors' complaint of discrimination in the 1998 referendum on the basis of their ethnic origin or national extraction, the Committee considered that the criterion used for the 1998 referendum established a differentiation between residents as regards their relationship to the territory, on the basis of the length of residence requirement whatever their ethnic origin or national extraction. The Committee therefore considered that the criterion used for the 1998 referendum did not have the purpose or effect of establishing different rights for different ethnic groups or groups distinguished by their national extraction.

It did not accept the author's contention of discrimination on the basis of descent and family ties in determining the electorate for future referendums from 2014 onwards. The Committee noted that residents who fulfill descent (including birth and family ties) based criteria are in circumstances that are objectively different from the authors whose link to the territory is based on length of residence. The Committee also noted that length of residence is one of the criteria and that different criteria may be used alternatively for future referendums. Furthermore, in the Committee's view, the restrictions on the electorate resulting from the criteria used for the referendum of 1998 and referendums from 2014 onwards respect the criterion of proportionality to the extent that they are strictly limited *ratione loci* to local ballots on self-determination and therefore have no consequences for participation in general elections, whether legislative, presidential, European or municipal, or other referendums.

5) Decision

The Committee held that the criteria for the determination of the electorates for the referendums of 1998 and 2014 or thereafter are not discriminatory, but are based on objective grounds for differentiation that are reasonable and compatible with the provisions of the Covenant.