

(TRANSLATION)

THE FACTS

The facts of the case as submitted by the applicant may be summarised as follows.

1. The applicant, a French citizen born in 1922, is a retired lawyer resident in La Turbie (Alpes-Maritimes).

The application concerns Law No. 77-729 of 7 July 1977 on the election of French representatives to the Assembly of the European Communities (European Parliament) and refers to Sections 3, 11, 18 and 19 thereof.

2. *Law of 7 July 1977*

Article 3 (Method of voting)

“The election shall be made by proportional representation applying the rule of the highest average without vote-splitting or preferential voting.

Seats shall be allotted to candidates in the order of their nomination on each list.

Lists which do not secure at least 5% of the votes cast shall be disregarded in the apportionment of seats.”

Article 11 (Presentation of candidatures)

"An agent for each list shall lodge with the Caisse des Dépôts et Consignations a deposit of 100,000 francs. The deposit shall be refunded to lists which secure at least 5% of the votes cast.

Deposits not claimed within one year of the date of their being lodged shall lapse and shall accrue to the Treasury."

Article 18 (Propaganda)

"The State shall meet the expenses incurred in connection with the work of the committees established pursuant to the previous Article and the expenses resulting from their operation.

In addition, the cost of paper, of printing ballot papers, posters and circulars and of bill posting shall be refunded to lists of candidates which secure at least 5 % of the votes cast.

For the purposes of the previous paragraph a decree of the Conseil d'Etat shall determine, in the light of the number of registered electors, the nature and number of ballot papers, posters and circulars for which the cost will be refunded. It will also fix a flat-rate sum in respect of bill posting costs.

Methods of bill posting and disseminating election propaganda other than those laid down in this Law and the subsequent decree shall be prohibited."

Article 19

"Lists of candidates may make use of the national radio and television broadcasting companies' facilities during the election campaign.

Two hours' broadcasting time shall be made available to lists presented by parties and groupings represented by parliamentary groups in the National Assembly or the Senate. This broadcasting time shall be apportioned equally among the lists.

Thirty minutes' broadcasting time shall be made available to the other lists and shall be apportioned equally among them, provided always that no list shall be allowed more than five minutes.

In conditions of fairness and efficiency to be determined by decree, the broadcasts will have to be transmitted in the same text on the national television channels and national radio channels alike.

The duration of the broadcasts as determined above shall be two hours and thirty minutes on television and an equivalent time on national radio.

The costs of transmitting the broadcasts shall be met by the State.

The timing of the broadcasts and the rules governing their preparation shall be decided by the committee provided for in Article 22 after consultation with the Chairman of the national radio and television broadcasting companies."

3. The elections to determine France's representatives to the European Parliament were held on 17 June 1984. The applicant, who voted in the elections, petitioned the Conseil d'Etat for the annulment of the election of the French members of parliament, invoking *inter alia* the provisions of Article 10 of the Convention.

On 23 November 1984 the Conseil d'Etat dismissed the petition.

4. The applicant contends that the aforementioned provisions of the Law of 7 July 1977 infringe Article 10 of the Convention taken alone and in conjunction with Article 14. He further alleges a violation of Article 13 of the Convention.

In particular, the applicant submits the following.

5. *First*, the Convention is violated by the provision in the third paragraph of Article 3 of the disputed Law, which sets at 5% the limit to be attained by a list of candidates in order to be included in the allocation of seats. The applicant holds that this provision draws a distinction in law between the major political parties and national minorities, and thus violates the principle of equality and the right to freedom of expression.

6. *Second*, the Convention is infringed by Article 11 and by the second paragraph of Article 18, which require the lists of candidates put up for election to lodge a deposit of 100,000 francs which, as with election publicity expenses, is refundable only to lists having obtained at least 5% of the votes cast.

Consequently, the French system establishes a selection according to financial resources which prevents the free expression of political opinions.

7. *Third*, the Convention is violated by the inequality inherent in the allowance of speaking time on the air for candidates on the lists presented by the parties and groupings represented by parliamentary groups in the National Assembly and the Senate, in comparison with the allowance for other candidates.

According to the applicant, if free elections are to ensure the free expression of the people's opinion without any distinction, particularly on the ground of political opinions, it should be imperative at election time to secure the equality of all candidates and, by the same token, equal speaking time on the television channels during that period.

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THE LAW (Extract)

1. The applicant contests the compatibility of the Law of 7 July 1977 with the Convention, invoking Articles 10 and 14 of the Convention.

The Commission considers, however, that as the applicant's complaints relate to the provisions of the Law concerning the election of French representatives to the European Parliament, the complaints should first be examined in the light of Article 3 of Protocol No. 1, which provides :

"The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

This provision "implies essentially — apart from freedom of expression (already protected under Article 10 of the Convention) — the principle of equality of treatment of all citizens in the exercise of the right to vote and their right to stand for election." (Eur. Court H. R., Mathieu-Mohin and Clerfayt judgment of 2 March 1987, Series A no. 113, p. 24, para. 54.)

The Commission considers that the first question which arises is to establish whether the legislative provisions of the 1977 Law, relating as they do to the election of French representatives to the European Parliament, concern the election of a "legislature" within the meaning of Article 3 of Protocol No. 1.

While it is true that the word "legislature" does not necessarily mean only the national parliament, and has to be interpreted in the light of the constitutional structure of the State in question (*ibid.*, p. 23, para. 53), it is no less true that regard should also be had to the international undertakings given by States which may affect the legislative powers of the national parliaments. The Commission would recall at this juncture that "if a State contracts treaty obligations and subsequently concludes another international agreement which disables it from performing its obligations under the first treaty, it will be answerable for any resulting breach of its obligations under the earlier treaty" (No. 235/56, Dec. 10.6.58, Yearbook 2 pp. 257, 300). This particularly applies to the present case as it concerns obligations contracted under a treaty, the Convention, whose guarantees concern "public order in Europe" (No. 788/60, Austria/Italy, Dec. 11.1.61, Yearbook 4 p. 117).

Thus it is inadmissible that transfers of power should at the same time enable the High Contracting Parties to exclude areas normally covered by the Convention from the guarantees set forth therein. This has a crucial bearing on the observance of essential rights such as those provided for in Article 3 of Protocol No. 1, which is of vital importance in the Convention system.

Accordingly, the Commission has previously held that developments in the structure of the European Communities may make it necessary for the High Contracting Parties to guarantee the rights protected by Article 3 of Protocol No. 1 in

respect of new representative bodies assuming, at least in part, the powers and functions of national legislative bodies (Application No. 8612/79, Dec. 10.5.79, D.R. 15 pp. 259, 263). It nevertheless considered that at the time its decision was given, i.e. in 1979, "the European Parliament [had] no legislative powers in the strict sense, apart from Article 95, paragraph 3 of the ECSC Treaty" and where legislation was concerned it was an advisory body which also had "certain supervisory and budgetary powers (cf. Articles 137, 199 *et seq.* of the EEC Treaty)" (*ibid.*).

Although the Parliament's role has grown since then, particularly following the entry into force of the Single European Act of 17 and 28 February 1986 (cf. in particular the new text of Article 149 of the EEC Treaty), the European Parliament does not yet constitute a legislative body in the sense in which this expression is ordinarily understood.

As the transformation is not yet complete, the Commission considers that it need not answer the question raised earlier since in any case the applicant's complaints are inadmissible on other grounds.

As pointed out above, the applicant's complaints relate to certain provisions which govern the conduct of the elections of French representatives to the European Parliament in accordance with the Law of 7 July 1977. It has not contested that the elections which took place in 1979 and 1984 were "free" or held "by secret ballot". The applicant claims, however, that as a result of the provisions to which he objects, the elections were not held "under conditions which ensure the free expression of the opinion of the people in the choice of the legislature".

The Commission recalls that Article 3 of Protocol No. 1 does not create any obligation to introduce a specific electoral system such as proportional representation or majority voting. Given that the legislation of the Contracting Parties on the matter varies from place to place and from time to time, they are allowed a wide margin of appreciation (Mathieu-Mohin judgment, *loc. cit.*, p. 24, para. 54). In the Court's view, electoral systems seek to fulfil objectives which are sometimes scarcely compatible with each other: to reflect fairly faithfully the opinions of the people and to channel currents of thought so as to promote the emergence of a sufficiently clear and coherent political will. What must be secured is the principle of equality of treatment of all citizens. It does not follow, however, that all votes must necessarily have equal weight as regards the outcome of the election or that all candidates must have equal chances of victory (*ibid.*).

As to the present case, the Commission takes the view that the rule whereby lists not having obtained at least 5% of the votes cast are not included in the allocation of seats (Article 3, final paragraph, of the Law of 7 July 1977), the rule that the deposit of 100,000 francs to be paid in respect of each list is refunded only to those having obtained at least 5% of the votes cast (Article 11, second paragraph,

of the Law of 7 July 1977) and, lastly, the rule providing that only the aforementioned lists are to receive reimbursement of their election publicity expenses, are all intended to promote the emergence of sufficiently representative currents of thought. This is an altogether justifiable aim under the terms of Article 3 of Protocol No. 1. Furthermore, similar provisions as regards the minimum threshold for the allocation of seats exist in other European legal systems.

Some doubts may arise over the regulations on radio and television broadcasting time allowed for electoral propaganda, and over to the distinction drawn between lists of groupings represented in the National Assembly or the Senate and other lists (Article 19, second and third paragraphs, of the Law of 7 July 1977).

However, having regard to the margin of appreciation allowed to the Government concerned, the Commission does not consider these arrangements, taken as a whole, to be unjustified or disproportionate.

Such arrangements, even in combination, most certainly did not interfere with the free expression of the opinion of the people in the choice of the legislature.

It follows that, as the present case discloses no violation of Article 3 of Protocol No. 1, whether taken alone or in conjunction with Article 14 of the Convention, the application must to be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

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