

**APPLICATION/REQUÊTE N° 11123/84**

Etienne TETE v/FRANCE

Etienne TETE c/FRANCE

**DECISION** of 9 December 1987 on the admissibility of the application

**DÉCISION** du 9 decembre 1987 sur la recevabilité de la requête

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**Article 1 of the Convention** *If a High Contracting Party concludes an international treaty which does not permit it to fulfil its obligations under the Convention, it is responsible for any infringement of these obligations*

**Article 13 of the Convention** *This provision does not relate to legislation and does not guarantee a remedy by which legislation could be controlled as to its conformity with the Convention*

**Article 26 of the Convention** *When a complaint relates to a continuing situation against which no remedy is available, the six month period runs from the end of the situation. As long as this lasts, the six month rule does not apply*

**Article 3 of the First Protocol**

- a) *The term "legislature" must be interpreted in the light of both the institutions established by the constitutions of the Contracting Parties and the international undertakings affecting the legislative powers of the Parliament*
- b) *In view of the nature of its powers and in spite of its increasing role, the European Parliament cannot yet be considered as a "legislature" within the meaning of this provision*
- c) *This provision does not require States, which enjoy a wide margin of appreciation in the matter, to introduce a particular kind of electoral system, provided they ensure the equality of treatment of all citizens*

*d) Electoral rules which are designed to foster the emergence of sufficiently representative currents of thought are legitimate. This applies to various provisions in the law of 7 July 1977 on the election of French representatives to the European Parliament criticised in this application*

**Article 1 de la Convention** *Si une Haute Partie Contractante conclut un accord international qui ne lui permet pas de s'acquitter de ses obligations aux termes de la Convention, elle encourt une responsabilité pour toute atteinte à ces obligations*

**Article 13 de la Convention** *Cette disposition ne concerne pas la législation et ne garantit pas un recours en vertu duquel s'opérerait un contrôle de la conformité de la législation avec la Convention*

**Article 26 de la Convention** *Lorsque le grief porte sur une situation continue contre laquelle il n'existe aucun recours, le délai de six mois court à partir de la fin de cette situation. Tant que celle-ci perdure, la règle des six mois ne trouve pas à s'appliquer*

**Article 3 du Protocole additionnel**

*a) Les termes « corps législatif » doivent être interprétés en tenant compte tant des structures établies par les constitutions des Parties contractantes que des engagements internationaux affectant les compétences législatives du Parlement*

*b) En raison de la nature de ses pouvoirs et malgré l'accroissement de son rôle, le Parlement européen ne peut pas encore être considéré comme un « corps législatif » au sens de cette disposition*

*c) Cette disposition n'impose pas aux Parties contractantes disposant en la matière d'une large marge d'appréciation un système électoral déterminé pourvu qu'elles assurent l'égalité de traitement des citoyens*

*d) Les normes électorales qui visent à favoriser des courants de pensées suffisamment représentatifs sont légitimes. Tel est le cas de diverses dispositions de la loi du 7 juillet 1977 relative à l'élection des représentants français au Parlement Européen, critiquées dans la présente requête*

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(TRANSLATION)

## THE FACTS

The facts as submitted by the parties are apparently not in dispute and may be summarised as follows

1 The applicant, a French national born in 1956, is the Legal Affairs Officer and a member of the National Council of the "Greens" (Ecologist Party) and a member of the Municipal Council of Caluire (Department of Rhône), where he is resident

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 is directed at Articles 3, 11, 18 and 19 thereof

### 2 *Law of 7 July 1977*

#### *Article 3 (Method of voting)*

"The election shall be 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 five per cent 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 Depots et Consignations a deposit of 100,000 francs

The deposit shall be refunded to lists which secure at least five per cent 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 candidatures which secure at least five per cent 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 Chairmen of the national radio and television broadcasting companies.”

3 On 10 June 1979 the election to determine the French representatives to the European Parliament took place. Two members of the Ecologist Movement “Les Verts” requested that the elections be annulled on the ground that the Law of 7 July 1977 was not in conformity with the Constitution.

In a decision of 22 October 1979, the Conseil d’Etat rejected these requests.

On 17 June 1984 elections to determine the French representatives were again held. The applicant was a candidate on the list “Les Verts, Europe Ecologique”.

4 The applicant, who states that the purpose of his application is to challenge the 1977 Law and not the 1979 elections, considers that he has satisfied the conditions laid down in Article 26 of the Convention, in particular the requirement that domestic remedies must have been exhausted.

This is so because, since he is not one of the persons listed in Article 61 of the French Constitution (1), he cannot refer the matter to the Constitutional Council.

Furthermore, an appeal to the Conseil d'Etat would be ineffective in view of its established case-law with regard to international treaties.

5. The applicant maintains that the above-mentioned provisions of the Law of 7 July 1977 violate Article 3 of Protocol No. 1 and Article 14 of the Convention. He further maintains that there has also been a violation of Article 13 of the Convention.

6. Referring to the Commission's decisions on the admissibility of the *Lindsay and others v. the United Kingdom and Alliance des Belges de la Communauté Européenne v. Belgium* applications (No. 8364/78 and No. 8612/79 respectively, D.R. 15 pp 247, 259), the applicant maintains that the developing powers of the European Parliament and the text of the French Constitution should result in the election of members of the European Parliament being considered election of a legislature.

Article 34 of the French Constitution (2) provides that the French State budget comes within the competence of the Legislature. Under the EEC Treaty France transferred part of its powers to the Community, in particular in budgetary matters (1% of its VAT revenues as a contribution to the EEC budget; a large part of its powers in agricultural matters).

Furthermore, the European Parliament itself acknowledges that it has budgetary powers (see Article 203 of the EEC Treaty). Moreover, it made 43 million ECU's available to European parliamentarians elected in 1979 to finance their election campaigns in 1984.

7. *Firstly*, Article 3 paragraph 3 of the Law at issue allegedly violates the Convention.

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(1) *Article 61 of the Constitution*

"Organic laws, before their promulgation, and regulations of the Parliamentary Assemblies, before they are applied, must be submitted to the Constitutional Council, which shall rule on their constitutionality

To the same end, laws may be submitted to the Constitutional Council, before their promulgation, by the President of the Republic, the Prime Minister, the President of the National Assembly, the President of the Senate or by 60 Deputies or 60 Senators

In the cases provided for in the two preceding paragraphs, the Constitutional Council must give its ruling within one month. However, at the request of the Government, in an emergency this period may be reduced to eight days. In these same cases, referral to the Constitutional Council shall suspend the time limit for promulgation."

(2) *Article 34 of the Constitution*

"All laws shall be passed by Parliament

( )

The Finance Acts shall determine the financial resources and obligations of the State under the conditions and with the reservations to be provided for in an organic law."

Under the rule embodied in this provision, the ecologists, who represent a branch of public opinion different from others and in consequence belong to a national minority, could have won three seats in 1979 as their list secured 4.40% of the votes (1). In so drawing a legal distinction between the major political parties and national minorities, the disputed provision allegedly violates the principle of equality (Article 14 of the Convention) and the principle of the free expression of the opinion of the people (Article 3 of Protocol No. 1).

8. *Secondly*, Article 11 and Article 18 paragraph 2 of the Law at issue allegedly violate the Convention.

As a result, the French system introduced selection by wealth and prevented the free expression of political opinions. It further resulted in the campaigns of the big lists being financed by the small lists through the taxes paid by electors who voted for the small lists. This too is alleged to be in violation of Article 3 of Protocol No. 1 and of Article 14 of the Convention.

9. *Thirdly*, the above-mentioned provisions of the Convention are alleged to have been violated by the inequality between the broadcasting time allocated to candidates on lists presented by parties and groupings represented by parliamentary groups in the National Assembly and the Senate and that allocated to the other candidates.

Thus, the big lists had 30 minutes of air time and the small lists five minutes. The inequality was particularly striking because each list had to lodge the same deposit of 100,000 francs.

In the applicant's view, free elections guaranteeing the free expression of the opinion of the people without any distinction based *inter alia* on political opinions and membership of a national minority ought at election time to compel respect for the equality of all candidates and hence, at such times, the allocation to them of equal television time

10. *Fourthly*, there was in the present case no effective remedy whereby violations of the Convention might be asserted before the Conseil d'Etat. This was because, despite Article 55 of the French Constitution (2) and notwithstanding the case-law of the Constitutional Council and Court of Cassation, the Conseil d'Etat would, in the event of conflict between two laws, apply the rule that the more recent law takes precedence, irrespective of whether the earlier law is or is not a treaty.

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(1) The applicant asserts that, taking into account the other "small lists", 12% of the electorate was unrepresented

(2) *Article 55 of the Constitution*

"Treaties or agreements duly ratified or approved shall, upon their publication, have an authority superior to that of laws, subject, for each agreement or treaty, to its application by the other party "

For this reason, the Conseil d'Etat, which allegedly ignored the Convention in its decisions in the event of conflict with a law, not only violated Article 13 of the Convention and, in consequence, the whole Convention, but also denied the existence of Article 55 of the French Constitution.

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## THE LAW

1. The applicant complains about Articles 3, 11, 18 and 19 of Law No. 77-729 of 7 July 1977 on the election of French representatives to the Assembly of the European Communities. He alleges that the provisions concerning the method of voting (Article 3), the deposit which lists have to lodge (Article 11), the propaganda costs met by the State (Article 18) and the regulations governing radio and television broadcasts (Article 19) violate Article 3 of Protocol No.1 and Article 14 of the Convention.

He further alleges a violation of Article 13 of the Convention arising out of the case-law of the Conseil d'Etat.

The Government raise first of all an objection to admissibility on the ground of non-compliance with the six month time-limit (Article 26 of the Convention) They further maintain that the application is manifestly ill-founded. Lastly, in the light of the Commission's case-law, the Government consider the complaint based on Article 13 of the Convention to be likewise manifestly ill-founded.

2. As regards the applicant's compliance with the six month rule contained in Article 26 of the Convention, which provides that "the Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken", the Commission recalls that there is a close correlation between the two rules set forth in the above-mentioned provision, viz. the exhaustion of domestic remedies and the six month time-limit (No. 214/56 De Becker, Dec. 9.6.58, Yearbook 2 p. 214). In this connection the Government have themselves recognised that in French law there is no remedy whereby an individual may challenge the validity of a legislative provision such as the one at issue in this case.

The Commission notes that the applicant does not complain of a specific act but is challenging statutory provisions which give rise to continuing situations and against which he has, as has been found, no domestic remedy

The Commission has held in its case-law that when the alleged violation consists, as in the present case, in a continuing situation against which no domestic remedy is available the six period begins to run only when the continuing situation

has ended (cf. No. 214/56; *loc cit* ; cf. also No. 6852/74, Dec. 5.12.78, D.R. 15 p 5). This is not so in the present case, as the impugned provisions are still in force, and hence the six month time-limit does not apply here.

It follows that the Government's objection to admissibility under Article 26 of the Convention cannot be accepted.

3. As to the merits of the applicant's complaints in regard to Article 3 of Protocol No. 1 and Article 14 of the Convention, the Government maintain that no violation can be found firstly because the European Parliament does not constitute a "legislature" within the meaning of Article 3 of Protocol No. 1 and, secondly, but very much as a subsidiary argument, because no provision in the impugned Law introduces a form of discrimination prohibited by Article 14 of the Convention.

The Commission takes the view that the first question which arises is whether the provisions of the 1977 Law relating to the designation of French representatives to the European Parliament concern the appointment of a "legislature" within the meaning of Article 3 of Protocol No. 1.

Although it is true that the word "legislature" does not necessarily mean only the national parliament and although it must be interpreted in the light of the constitutional structure of the State concerned (Eur. Court H.R., Mathieu-Mohin and Clerfayt judgment of 2 March 1987, Series A no. 113, p. 23, para. 53), it is equally true that regard must also be had to international undertakings given by States which affect the legislative powers of the national parliaments. The Commission recalls here 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. 256 and 300). This is particularly so when, as in the present case, the obligations in question have been assumed in a treaty, the Convention, whose guarantees affect "the public order of Europe" (No. 788/60, Austria v. Italy, Dec. 11.1.61, Yearbook 4 pp. 116 and 140).

It cannot therefore be accepted that by means of transfers of competence the High Contracting Parties may at the same time exclude matters normally covered by the Convention from the guarantees enshrined therein. What is at stake is respect for fundamental rights, such as those set forth in Article 3 of Protocol No. 1 which, in the Convention system, is of vital importance.

Thus the Commission has 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, Alliance des Belges de la Communauté Européenne, Dec. 10.5.79, D.R. 15 p. 259). However, it considered that at the time it delivered the aforementioned decision No. 8612/79, that is in 1979, "the European

Parliament [had] no legislative powers in the strict sense, apart from Article 95 paragraph 3 of the ECSC Treaty” and that “where legislation [was] concerned, it [was] an advisory body” with “certain supervisory and budgetary powers (cf Article 137, 199 *et seq* of the EEC Treaty)” (*ibid* )

Although the Parliament’s role has increased since then, particularly as a result of 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 legislature within the ordinary meaning of the term

Since these developments are as yet incomplete, the Commission considers it unnecessary to answer the question asked earlier, and in any case, the applicant’s complaints are inadmissible on other grounds

As was stated earlier, the applicant’s complaints concern certain regulations governing the holding of the elections to determine French representatives to the European Parliament pursuant to the Law of 7 July 1977. It has not been alleged that the elections held in 1979 and 1984 were not “free” or that they were not held “by secret ballot”. The applicant does, however, maintain that the regulations he is challenging were such that 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 particular electoral system such as proportional representation or majority voting. Given that their legislation on the matter varies from place to place and from time to time, the Contracting States have a wide margin of appreciation (Eur Court H R , Mathieu-Mohin and Clerfayt judgment, *loc cit* , p 24, para 54). The Court observes that 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 guaranteed 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* )

In regard to the present case, the Commission takes the view that the rule whereby lists which do not secure at least five per cent of the votes cast are disregarded in the apportionment of seats (Article 3, last paragraph, of the Law of 7 July 1977), the rule whereby the deposit of 100,000 francs which lists are required to lodge is refunded only to those which secure at least five per cent of the votes cast (Article 11 para 2 of the Law of 7 July 1977) and the rule providing for the refund of the propaganda expenses only of those same lists are all designed to foster the emergence of sufficiently representative currents of thought. This is a quite legitimate aim from the standpoint of Article 3 of Protocol No 1. Moreover, comparable

provisions concerning a minimum threshold for the apportionment of seats are found in other European legal systems.

The regulations governing radio and television time for electoral propaganda and the distinction drawn between lists of groupings represented in the National Assembly or in the Senate and the other lists (Article 19 paras. 2 and 3 of the Law of 7 July 1977) may be open to question.

However, in view of the margin of appreciation allowed to the State concerned, the Commission does not consider this body of regulations to be unjustified or disproportionate.

The regulations in question, even taken together, most certainly did not interfere with the free expression of the opinion of the people in the choice of the legislature.

It follows that no violation of Article 3 of Protocol No. 1 taken alone or in conjunction with Article 14 of the Convention can be found in this case, with the result that the application must be rejected in this respect as being manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

4. The applicant, who states that the purpose of his application is to challenge the 1977 Law and not the 1979 elections, complains lastly of a violation of Article 13 of the Convention, which provides "everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity". He maintains in substance that under French law he does not have an effective remedy before the body, namely the Conseil d'Etat, competent to hear and determine allegations that the Convention has been breached by the impugned provisions of the Law of 7 July 1977.

The Commission recalls that it has consistently held that "Article 13 does not relate to legislation and does not guarantee a remedy by which legislation could be controlled as to its conformity with the Convention" (Young, James and Webster v. United Kingdom, Comm. Report 14.12.79, para. 177, Eur. Court H.R., Series B no. 39, p.49).

Since the applicant's complaints in this case concern a law, it follows that Article 13 of the Convention does not guarantee a remedy.

It follows that the complaint is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission

**DECLARES THE APPLICATION INADMISSIBLE.**