

Yumak and Sadak v. Turkey [GC] - 10226/03

Judgment 8.7.2008 [GC]

Article 3 of Protocol No. 1

Choice of the legislature

Free expression of opinion of people

Requirement for political parties to obtain at least 10% of the vote in national elections in order to be represented in Parliament: *no violation*

Facts: The applicants stood in the parliamentary elections of November 2002 as candidates for the DEHAP (Democratic People's Party) in a constituency covering a province. As a result of the ballot, DEHAP obtained approximately 45.95% of the vote (47,449 votes) in that province, but secured only 6.22 % of the vote nationally. In accordance with Law no. 2839 of 1983 on the election of members of the National Assembly, which states that "parties may not win seats unless they obtain, nationally, more than 10% of the votes validly cast", the applicants were not elected. Of the three parliamentary seats allotted to the province, two were filled by a party which obtained 14.05% of the vote (14,460 votes), and the third by an independent candidate who obtained 9.69% of the vote (9,914 votes). Of the 18 parties which took part in the elections, only two succeeded in passing the 10% threshold and thus obtaining seats in Parliament. One of them, which polled 34.26% of the votes cast, won 66% of the seats, while the other obtained 33% of the seats, having polled 19.4% of the votes. Nine independent candidates were also elected. The National Assembly which emerged from the elections was the least representative since the multi-party system was first introduced. The proportion of voters not represented reached approximately 45% and the abstention rate exceeded 20%.

Law: The electoral threshold of 10% imposed nationally for the representation of political parties in Parliament constituted interference with the applicants' electoral rights. The threshold pursued the legitimate aim of avoiding excessive and debilitating parliamentary fragmentation and thus of strengthening governmental stability. The choice made by the legislature was not as such incompatible with Article 3 of Protocol No. 1, which did not in principle impose on Contracting States the obligation to adopt an electoral system guaranteeing parliamentary representation to parties with an essentially regional base irrespective of the votes cast in other parts of the country. On the other hand, a problem might arise if the relevant legislation tended to deprive such parties of parliamentary representation. The electoral threshold used in Turkey was the highest among the member States of the Council of Europe. Only three other member States had opted for high thresholds (7 or 8 %). A third of the States imposed a 5% threshold and 13 of them had chosen a lower figure. The Court noted, however, that the effects of an electoral threshold could differ from one country to another and the various systems could pursue different, sometimes even antagonistic, political aims. None of these aims could be considered unreasonable in itself. The role played by thresholds varied in accordance with the level at which they were set and the party system in each country. A low threshold excluded only very small groupings, which made it more difficult to

form stable majorities, whereas in cases where the party system was highly fragmented a high threshold deprived many voters of representation. While the Court could agree that an electoral threshold of about 5% corresponded more closely to the member States' common practice, it could not assess the threshold concerned without taking into account the electoral system and the political evolution of the country concerned. The Court had accordingly to assess the effects of the correctives and other safeguards with which the impugned system was attended. As regards the possibility of standing as an independent candidate, the Court noted that in Turkey independent candidates were subject to a number of unfavourable restrictions and conditions not applicable to political parties. However, this method could not be considered to be ineffective in practice, as shown by the elections of 2007 in particular, where the fact that no threshold applied to independent candidates had enabled small parties to win seats in the legislature. The same applied to the possibility of forming an electoral coalition with other political groups. Admittedly, since about 14.5 million of the votes in the November 2002 elections had been cast for unsuccessful candidates, these electoral strategies could have only a limited effect. However, the 2002 elections had taken place in a crisis climate for a number of reasons (economic and political crises, earthquakes), and the representation deficit observed after the elections could have been partly contextual in origin and not solely due to the high national threshold. These were the only elections since 1983 where such a high percentage of votes had given rise to no representation in parliament. This meant that the political parties affected by the threshold had managed in practice to develop strategies whereby they could attenuate some of its effects, even though such strategies also ran counter to one of the threshold's declared aims, which was to avoid parliamentary fragmentation. The Court also attached importance to the role of the Constitutional Court. In exercising vigilance to prevent any excessive effects of the impugned electoral threshold by seeking the point of equilibrium between the principles of fair representation and governmental stability, the Constitutional Court, provided a guarantee calculated to stop the threshold concerned impairing the essence of the right enshrined in Article 3 of Protocol No. 1. In conclusion, the Court considered that in general a 10% electoral threshold appeared excessive, and concurred with the organs of the Council of Europe, which had recommended that it be lowered. The high threshold compelled political parties to make use of stratagems which did not contribute to the transparency of the electoral process. In the present case, however, the Court was not persuaded that, when assessed in the light of the specific political context of the elections in question, and attended as it was by correctives and other guarantees which had limited its effects in practice, the threshold had had the effect of impairing in their essence the rights secured to the applicants by Article 3 of Protocol No. 1.

Conclusion: no violation (thirteen votes to four).

See the Chamber judgment in Information Note no. 93.

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