

**APPLICATION N° 23151/94**

**Josep ASENSIO SERQUEDA v/SPAIN**

**DECISION of 9 May 1994 on the admissibility of the application**

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**Article 6, paragraph 1 of the Convention :** *Proceedings to have the legality of an election reviewed relate to the exercise of a political right and do not determine civil rights and obligations*

**Article 13 of the Convention :** *The right recognised in this provision may only be exercised in respect of an arguable claim within the meaning of the case-law of the Convention organs*

**Article 14 of the Convention, in conjunction with Article 3 of the First Protocol**  
*It is not discriminatory to require the same percentage of signatures in each constituency for the right to stand for election to the Senate, which means that the number of signatures required varies according to each constituency's population*

**Article 3 of the First Protocol**

- a) *In principle, this provision guarantees the right to vote and the right to stand for election to the legislature. States may however impose certain restrictions on these rights*
  - b) *Number of signatures required to stand for election to the Senate, absence of a hindrance to the free expression of the people's opinion in the choice of the legislature.*
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## THE FACTS

The applicant is a Spanish national born in 1964 and resident in Barcelona

### a) *The specific circumstances of the case*

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

On 28 April 1993, the applicant announced his intention of standing in the elections to the Senate, scheduled for 6 June 1993. The provincial electoral commission (Junta Electoral Provincial) informed him that, under Section 169.3 of the General Electoral Provisions Implementing Act, in order to be able to stand he required the support of 1% of those registered to vote in the Province of Barcelona

On 30 April 1993, the applicant presented 412 supporting signatures and, in a letter, challenged the constitutionality of Section 169.3 of the Electoral Act. He argued that this provision was contrary to the principles of the direct participation of citizens in political life and the equality of individuals and, more generally, was contrary to democracy. He observed in particular that if he had stood for election in the Melilla constituency (the smallest in Spain) his 412 signatures would have been sufficient, whereas in Barcelona he required 37,000. His appeal was rejected by the Barcelona provincial electoral commission on 5 May 1993

The applicant then instituted legal proceedings in the Catalonia High Court. The action was dismissed on 13 May 1993. The applicant lodged an appeal asserting fundamental rights (*recurso de amparo*) and applied for legal aid, which was granted. In a decision (*providencia*) of 19 May 1993, the Constitutional Court rejected the appeal as manifestly ill-founded. After noting that the requirement for the signatures of 1% of those registered to vote only applied to groups of electors, not political parties, who were subject to other special requirements, the court stated that such a condition was designed to give effect to the right to stand for election (*derecho electoral pasivo*) in a reasonable and non-arbitrary fashion and that it could not be deemed unconstitutional.

### b) *Applicable domestic legislation*

According to Article 6 of the Spanish Constitution:

"The political parties are the expression of political pluralism, they contribute to the formation and expression of the will of the people and are a fundamental instrument for political participation. Their creation and the exercise of their activity are free in so far as they respect the Constitution and the law. Their internal structure and working must be democratic

Moreover, Article 23 states that:

"1. Citizens have the right to participate in public affairs, directly or through their representatives freely elected in periodic elections by universal suffrage.

2 They likewise have the right to access on equal terms to public office, in accordance with the requirements to be provided by law "

Section 44 of the Electoral Provisions Implementing Act of 1985 states that the following may present candidates at the various elections:

- 1) parties or federations of parties entered on the corresponding registers,
- 2) coalitions of parties and
- 3) groups of electors meeting the conditions laid down in the Act

Section 169 of the Implementing Act provides that groups of electors wishing to present candidates in elections to the Congress of Deputies and the Senate must receive the signatures of at least 1% of those registered to vote in the constituency

## COMPLAINTS

The applicant considers that the refusal to allow him to stand for election to the Senate violates numerous provisions of domestic constitutional law and international law. In particular, he complains of violations of Articles 1, 9, 10, 14, 23 and 48 of the Spanish Constitution. He also relies on Articles 1, 2, 6, 7, 8, 10, 21 and 30 of the Universal Declaration of Human Rights

The applicant also complains of violations of Articles 6, 13, 14, 17 and 60 of the Convention and Article 3 of Protocol No 1 to the Convention

## THE LAW

1) The applicant complains that the refusal to allow him to stand for election to the Senate violates certain provisions of the Spanish Constitution and the Universal Declaration of Human Rights

However, the Commission notes that, according to Article 25 para 1 of the European Convention of Human Rights, applications may only concern alleged violations of rights or freedoms set forth in the Convention or one of its Protocols

It follows that this part of the application must be rejected as being incompatible *ratione materiae* with the provisions of the Convention, pursuant to Article 27 para 2

2) The applicant complains, with no supporting grounds, that the Spanish courts' decisions infringe Article 6 of the Convention

The Commission recalls that proceedings relating to electoral disputes fall outside the scope of Article 6 of the Convention. The legality of an election relates to the exercise of a political right and does not determine civil rights and obligations (see No 11068/84, Dec 6 5 85, D R 43 p 195). Nor does the Commission see what relevance Articles 17 and 60 of the Convention have to the applicant's problem

It follows that these complaints are also incompatible *ratione materiae* with the provisions of the Convention, pursuant to Article 27 para 2

3) The applicant complains that the refusal to allow him to stand for election to the Senate constitutes a violation of Article 3 of Protocol No 1 to the Convention and Articles 14 and 13 of the Convention

The Commission recalls that, in principle, Article 3 of Protocol No 1 to the Convention guarantees the right to vote and the right to stand for elections to the legislature, but that States may impose certain restrictions on these rights (see Nos 6745/74 and 6746/75, Dec 30 5 75, D R 2 p 110). Thus, conditions set by States concerning the number of signatures required to stand for election do not constitute a hindrance to the free expression of the opinion of the people in the choice of the legislature (see No 7008/75, Dec 12 7 76, D R 6 p 120). In considering the complaint in relation to Article 14 of the Convention, the Commission finds that the percentage of signatures required in order to stand for election to the Senate is the same in all constituencies. It considers that the fact that the number of signatures required varies according to each constituency's population does not constitute discrimination within the meaning of Article 14. As to Article 13, the Commission recalls that this guarantees an effective remedy to anyone alleging a violation of the Convention, irrespective of the merits of the allegation, so long as there is an arguable claim, which is not the case here. For the rest the Commission finds that the applicant was able to submit his complaints to two Spanish courts, where he had the opportunity to present the arguments he considered appropriate

It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 27 para 2 of the Convention

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE