

APPLICATION N° 34184/96

Association "ANDECHA ASTUR" v/SPAIN

DECISION of 7 July 1997 on the admissibility of the application

Article 3 of the First Protocol *This provision guarantees, in principle, the right to vote and to stand for election to parliament. States may, however, impose certain restrictions on these rights.*

The right to stand in parliamentary elections is not restricted by a requirement that candidates should be registered in a particular language.

The languages in which candidates could be nominated to stand in parliamentary elections were limited to the official language of the State (Spain) and languages having the status of "co-official languages" in their respective Autonomous Communities. On the facts, the refusal to register the applicant's list of candidates does not amount to a hindrance of the free expression of the opinion of the people in the choice of the legislature since the Asturian language, which the applicant had used, albeit protected under the Statute of Autonomy of the Principality of Asturias, is not an official language in that Autonomous Community.

Article 14 of the Convention in conjunction with Article 3 of the First Protocol *It is not discriminatory to require that candidates be nominated to stand in parliamentary elections only in the official language of the State (Spain) or languages having the status of "co-official language" in their respective autonomous Communities, since the difference in the treatment of the Asturian language (which is not an official language of the relevant Autonomous Community) and Spanish languages which are official languages of their Autonomous Communities is based on two different factual situations.*

Competence *ratione materiae* *The Convention does not, as such, guarantee the right to use any particular language in the context of elections.*

THE FACTS

The applicant is an Asturian political party with its headquarters in Gijón. It was represented before the Commission by Mr Bernardo García Domínguez, a lawyer practising in Madrid.

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

A *The particular circumstances of the case*

The applicant association submitted its list of candidates for the parliamentary elections due to take place on 3 March 1996. On 1 February 1996, the Provincial Election Monitoring Board (*Junta Electoral provincial*) found that the association had used Asturian to make its declaration that none of its candidates was ineligible for election, and that it had failed to submit a certificate of registration on the electoral roll in relation to one of the candidates. The Board informed the applicant association that, in order for its list to be accepted, the relevant declarations should be presented in Spanish (*castellano*), and requested it to comply with these formalities within the statutory time-limits. The association having failed to do so, the Board issued a decision on 5 February 1996 declaring its list invalid.

The applicant association made a contentious administrative law application to the High Court of Justice of the Principality of Asturias, which was dismissed on 10 February 1996 on the grounds that Asturian was not an official language. The judgment referred to the fact that the applicant association itself had refused to fulfil the necessary formalities within the time limit.

The applicant association then made an application for the protection of fundamental rights (an *amparo* application) to the Constitutional Court which, in a judgment of 15 February 1996, dismissed it by three votes, plus the casting vote of the President to three.

The judgment stated that, since the Election Monitoring Boards are administrative authorities, the provisions of Law No. 30/1992 of 26 November 1992 on the legal rules governing public administrative authorities and ordinary administrative proceedings were applicable. The court cited section 36 thereof (see *Relevant domestic law* below) which provides that the official languages of each Autonomous Community may be used in dealing with public authorities in that Community.

In this regard, the judgment recalled that, under Article 3 of the Constitution, Spanish languages other than Castilian may be official languages in Autonomous Communities, if their Statutes of Autonomy so provide. However, the Constitutional Court noted that Article 4 of the Statute of Autonomy of the Principality of Asturias (*Estatuto autonómico del principado de Asturias*) did not define Asturian as an official

language. The court also noted that the applicant association, which could have complied with the formalities necessary for its list of candidates to be accepted, had refused to do so.

Three judges gave a dissenting opinion. They considered that, since the content of the list submitted in Asturian was comprehensible, and Asturian is protected, and its use encouraged, by the Asturian Statute of Autonomy, the judgment under appeal had not taken into account the particular circumstances of the case and had failed to achieve proportionality between formal linguistic requirements on the one hand and, on the other, the right of equal access to public office and employment laid down in Article 23 para. 2 of the Constitution. The dissenting opinion also noted that the applicant's failure to rectify the formal defects within the time allowed was logical in view of its political programme, which aimed in particular to promote the Asturian language.

B *Relevant domestic law*

(Original)

Constitución española

Artículo 3

1 El castellano es la lengua oficial del Estado. Todos los españoles tienen el deber de conocerla y el derecho de usarla.

2 Las demás lenguas españolas serán también oficiales en las respectivas Comunidades Autónomas de acuerdo con sus Estatutos.

Artículo 23

'1 Los ciudadanos tienen el derecho a participar en los asuntos públicos directamente o por medio de representantes libremente elegidos en elecciones periódicas por sufragio universal.

2 Asimismo tienen derecho a acceder en condiciones de igualdad a las funciones y cargos públicos, con los requisitos que señalen las leyes.

Estatuto de autonomía del Principado de Asturias

Artículo 4

[El bable] gozará de protección. Se promoverá su uso, su difusión en los medios de comunicación y su enseñanza respetando, en todo caso, las variantes locales y voluntariedad de su aprendizaje»

Ley 30/1992, de 26 noviembre 1992 de régimen jurídico de las administraciones públicas y del procedimiento administrativo común

Artículo 36

La lengua de los procedimientos tramitados por la Administración General del Estado será el castellano. No obstante lo anterior, los interesados que se dirijan a los Organos de la Administración general del Estado con sede en el territorio de una Comunidad autónoma podrán utilizar también la lengua que sea cooficial en ella

(Translation)

Spanish Constitution

Article 3

' 1 Castilian is the official language of Spain. It is the duty of all Spaniards to know it and all Spaniards have the right to use it

2 The other Spanish languages may also be official languages in the respective Autonomous Communities, subject to their Statutes of Autonomy "

Article 23

1 It is the right of all citizens to participate in public life, whether directly or through representatives who shall be freely elected by universal suffrage in regular elections

2 All citizens also have an equal right of access to public office and employment, subject to the relevant statutory requirements "

Statute of Autonomy of the Principality of Asturias

Article 4

"[Asturian] shall be protected. Its use, including in the media and the teaching thereof shall be encouraged, with due respect for local variations but no one shall be forced to learn it "

Law 30/1992 of 26 November 1992 on the legal rules governing public administrative authorities and ordinary administrative proceedings.

Section 36

"The working language of Spanish state authorities shall be Castilian ... However, persons having dealings with Spanish state authorities based within an Autonomous Community may also use the co-official language of that Community ..."

COMPLAINTS

The applicant association considers that the rejection of its list of candidates for parliamentary elections on the grounds of language constitutes a violation of Article 3 of Protocol No. 1 to the Convention and of the principle of non-discrimination on the ground of language laid down in Article 14 of the Convention. The applicant association claims that Asturian is accepted by society and protected by law.

THE LAW

The applicant association considers that the rejection of its list of candidates for parliamentary elections on the grounds of language constitutes a violation of Article 3 of Protocol No. 1 to the Convention and of the principle of non-discrimination on the ground of language laid down in Article 14 of the Convention. The said provisions provide as follows:

Article 3 of Protocol No. 1

"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."

Article 14 of the Convention

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Commission recalls that Article 3 of Protocol No. 1 guarantees, in principle, the right to vote and to stand for election to the legislature, but that States may impose certain restrictions on these rights (see Nos. 6745/74 and 6746/74, Dec. 30.5.75, D.R. 2 p. 110). The Commission notes that Law No. 30/1992 of 26 November 1992 on the legal rules governing public administrative authorities and ordinary administrative proceedings provides that the "co-official" language of an Autonomous Community may be used in dealings with Spanish state authorities based within that Community.

The Commission notes that, under Article 3 of the Spanish Constitution, Castilian is the official state language, while other Spanish languages may also be official languages in their respective Autonomous Communities if the relevant Statute of Autonomy so provides.

However, the Commission notes that the Constitutional Court, in its judgment, held that, while the Asturian Statute of Autonomy protects and undertakes to promote Asturian, it does not make it an official language in Asturias. Therefore the Commission finds that the language at issue is not, under Spanish law as interpreted by the Spanish courts, an official language within the meaning of Article 3 of the Spanish Constitution.

The Commission recalls that neither Article 3 of Protocol No. 1, nor any other provision of the Convention guarantees the right to use any particular language in elections (cf. No. 11100/84, Dec. 12.12.85, D.R. 45, p. 240).

Hence, the Commission considers that the conditions laid down by the respondent State as to the language in which candidates may be nominated cannot be deemed to be a hindrance to the free expression of the people's opinion in the choice of the legislature, having regard to the fact that the present case involved parliamentary elections affecting the whole of Spain and that the Provincial Election Monitoring Board gave the applicant association the chance to comply with the formalities necessary for its list to be accepted, which the applicant refused to do (see, *mutatis mutandis*, No. 23151/94, Dec. 9.5.94, D.R. 77-A, p. 122).

Nor can these conditions relating to the language in which candidates may be nominated constitute an infringement of the principle of non-discrimination in relation to the use within each Autonomous Community of their official languages, since there is no discrimination where a difference in treatment is based on two different factual situations. The difference in the treatment of Asturian on the one hand, and of Spanish languages which are official languages of their Autonomous Communities on the other, is not, therefore, discriminatory within the meaning of Article 14 of the Convention.

Moreover, the Commission notes that the applicant association has had the opportunity to put its complaints to two Spanish courts and to raise all the arguments it wished before them.

It follows that the application is manifestly ill founded and must be dismissed in accordance with Article 27 para 2 of the Convention

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE