[TRANSLATION]

...

THE FACTS

The applicant, Mrs Marie-Claude Bompard, is a French national who was born in 1954 and lives in Bollène. She was represented before the Court by Mr R. Perdomo, a lawyer practising in Marseilles. The respondent Government were represented by their Agent, Mrs E. Belliard, Director of Legal Affairs at the Ministry of Foreign Affairs.

A. The circumstances of the case

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

The applicant is a member of the French electorate. On 9 and 16 June 2002 parliamentary elections were held in France.

The applicant, together with a number of others, lodged an application with the Constitutional Council to have the elections declared null and void. She relied on Article L. 125 of the Elections Code, under which electoral boundaries must be reviewed according to population changes after the second national population census following the previous boundary review (see "Relevant domestic law and practice" below). The applicant alleged that the last electoral boundary review dated back to 1986. Since that time there had been two national censuses but, contrary to the provisions of electoral law, there had been no review of constituency boundaries according to population changes prior to the parliamentary elections of 9 and 16 June 2002. The applicant considered that, in the light of the statistics from the 1990 and 1999 censuses, it was apparent that the constituencies, whose boundaries had been drawn up in 1986, were unequal and differed significantly in terms of population. She contended in particular that such population differences infringed the principle of equal suffrage.

In a decision of 25 July 2002, the Constitutional Council dismissed the application on the ground that the matter raised fell within its power to review the constitutionality of Acts (Article 61 of the Constitution) and did not constitute an electoral dispute (Article 59 of the Constitution), but that the matter had not been referred to it for such a review. It observed in particular:

> "... In seeking the annulment of the elections held on 9 and 16 June 2002 in the above-mentioned constituencies, the applicants contended that the current distribution of parliamentary seats between constituencies did not have 'an essentially demographic basis', in breach of the principle of equal suffrage.

Whilst it was incumbent upon the legislature, under Article 6 of the Declaration on the Rights of Man and the Citizen of 1789, taken together with Articles 3 and 24 of the Constitution, to change constituency boundaries in order to take into account, whenever necessary, any population changes that may have occurred since the entry into force of the Parliamentary Boundaries Act (Law no. 86-1197) of 24 November 1986, it is not for the Constitutional Council, when ruling, as in the present case, under Article 59 rather than Article 61 of the Constitution, to review the constitutionality of the legislative provisions contained in Table no. 1 annexed to Article L. 125 of the Elections Code. Accordingly, the single complaint submitted by the applicants must be dismissed."

B. Relevant domestic law and practice

1. The Constitution of 4 October 1958

Article 3

"National sovereignty belongs to the people, who shall exercise it through their representatives and by means of referendum.

No section of the people nor any individual may arrogate to itself, or to himself, the exercise thereof.

Suffrage may be direct or indirect as provided by the Constitution. It shall always be universal, equal and secret.

All French citizens of either sex who have reached the age of majority and who enjoy civil and political rights may vote under the conditions to be determined by law."

Article 59

"The Constitutional Council shall rule on the proper conduct of the election of deputies and senators in disputed cases."

Article 61

"Institutional Acts, before their promulgation, and the rules of procedure of parliamentary chambers, before their entry into force, must be referred to the Constitutional Council, which shall rule on their conformity with the Constitution.

To the same end, Acts of Parliament may be referred 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 sixty deputies or sixty senators."

2. The Elections Code

Article L. 125
(Law no. 86-825 of 11 July 1986, section 2, Official Gazette of 12 July 1986)

"Constituencies shall be determined in accordance with Table no. 1 annexed to this Code.

Constituency boundaries shall be reviewed, according to population changes, after the second national population census following the previous boundary review."

3. Law no. 90-1103 of 11 December 1990

Section 7

"Electoral boundaries cannot be redrawn within a period of one year prior to the normal date on which the chambers concerned are to be re-elected."

4. Constitutional Council Decision no. 86-208 of 2 July 1986 concerning the Parliamentary Elections Act, authorising the government to fix electoral boundaries by ordinance (Official Gazette of 3 July 1986 and rectification in Official Gazette of 30 July 1986) (extracts)

"... Section 5 of the Act that has been referred to the Constitutional Council for review provides as follows: 'Within six months following the publication of this Act, the government shall be authorised to draw up, by ordinance, Table no. 1 annexed to the Elections Code. The number of constituencies created in each *département* shall be set out in the table annexed to this Act. Save in the case of *départements* whose territory includes islands or enclaves, constituencies shall consist of contiguous areas. In addition, with the exception of constituencies to be created in the cities of Paris, Lyons and Marseilles and in *départements* which include one or more cantons not consisting of a contiguous area, or of which the population, according to the last national population census of 1982, exceeds 40,000, the constituency boundary shall follow the cantonal boundary. Population discrepancies between constituencies shall be permitted in order to accommodate public-interest imperatives, but in no event may the population of a constituency differ by more than 20% from the average population of constituencies in the same *département*.'

...

As to the complaint relating to the principle of equal suffrage:

... The parties making the referral argued that section 5 of the Act had infringed the principle of equal suffrage as enshrined in Article 3 of the Constitution. Section 5 referred, in its second paragraph, to a table annexed to the text of the Act by which it was established that each *département* was required to return at least two deputies to Parliament; this, they contended, had entailed very significant discrepancies in representation. The infringement of the principle of equal suffrage had been

aggravated by the fact that within any given *département* the population of a constituency could vary, upwards or downwards, by up to 20% of the average constituency population. Such a considerable variation could not be justified by public-interest imperatives, especially as in *départements* where one or more cantons had a population of more than 40,000 the electoral boundaries did not even have to follow cantonal boundaries. The discrepancies in representation authorised by the law were, in their submission, excessive in view of the nature of the election.

... Under the first paragraph of Article 2 of the Constitution, the Republic 'shall ensure the equality of all citizens before the law, without distinction of origin, race or religion'; Article 3 of the Constitution provides, in its first paragraph, that 'national sovereignty belongs to the people, who shall exercise it through their representatives and by means of referendum', and, in its third paragraph, that suffrage 'shall always be universal, equal and secret'. The second paragraph of Article 24 of the Constitution provides: 'The deputies to the National Assembly shall be elected by direct suffrage.' Article 6 of the Declaration on the Rights of Man and the Citizen proclaims that the law 'must be the same for all, whether it protects or punishes. All citizens, being equal in the eyes of the law, are equally eligible to all dignities and to all public positions and occupations, according to their abilities, and without distinction except that of their virtues and talents.'

... It transpires from those provisions that the National Assembly, whose members are returned by direct universal suffrage, must be elected on an essentially demographic basis; whilst the legislature may take account of public-interest imperatives as a result of which that fundamental rule carries less weight, it can do so only to a limited extent.

... In stipulating that each *département* should be represented by at least two deputies, the legislature sought to ensure that a close relationship would be maintained between the elected representative for a constituency and his or her constituents. Having regard, firstly, to the distribution of the population throughout French territory as recorded in the most recent national census to date, and, secondly, to the very limited number of *départements* for which the choice thus made gives the electorate a more favourable degree of representation, the provisions of section 5(2) of the Act are not, *per se*, contrary to the Constitution. They do imply, however, that any resulting inequalities of representation may not be significantly increased by the application of the rules governing the fixing of electoral boundaries within any given *département*.

... As regards the fixing of electoral boundaries within any given *département*, section 5(4) of the Act authorises the government, acting by ordinance, to vary the size of a constituency electorate, upwards or downwards, by up to 20% of the average electorate in the *département*, the legislature's intention being to allow public-interest imperatives to be accommodated. As is apparent from section 5(3), the permitted margin reflects the need for constituency boundaries to follow cantonal boundaries. In the course of parliamentary debate the government explained that a further purpose of such discrepancy in representation was, in cases where cantonal boundaries were not followed, to take account of the 'natural realities constituted by certain geographical entities' and 'the unity between them'.

... Whilst *per se* the derogations from the principle of equal suffrage cannot be attributed, in each case, to a manifest error of judgment, they may in the aggregate lead to the creation of situations where that principle is breached. Consequently, the provisions of section 5(3) and (4) of the Act must be construed as follows: it should be

considered, firstly, that the possibility of not following cantonal boundaries in *départements* where one or more cantons do not have contiguous territory or have a population of over 40,000 can only apply to the cantons in question; secondly, the application of the maximum variance provided for in section 5(4) must be reserved for exceptional and duly substantiated cases; further, that possibility may be used only to a limited extent and must be based, in each individual case, on specific public-interest imperatives; lastly, the fixing of constituency boundaries must never be carried out arbitrarily. Any other interpretation would be unconstitutional.

...

Strictly subject to the interpretation set out above, the Parliamentary Elections Act, authorising the government to fix parliamentary constituency boundaries by ordinance, is not contrary to the Constitution."

5. Constitutional Council Decision no. 86-218 of 18 November 1986 concerning the Parliamentary Boundaries Act (Official Gazette of 19 November 1986, p. 13769) (extracts)

"... The National Assembly, whose members are returned by direct universal suffrage, must be elected on an essentially demographic basis. Whilst the legislature may take account of public-interest imperatives as a result of which that fundamental rule carries less weight, it can do so only to a limited extent and according to specific imperatives.

... It transpires from the Act under review that, save where geographically impossible, constituencies consist of contiguous territories. Cantonal boundaries have generally been followed. The territory of non-contiguous cantons and of cantons with a population of over 40,000 has been split into more than one constituency only in a limited number of cases. The discrepancy between the size of any given constituency electorate and the average electorate in the same *département* is not excessively disproportionate.

... However, the deputies who made the first referral argued that the fixing of boundaries as provided for in the Act, whilst not fundamentally open to criticism from a demographic point of view, was nevertheless arbitrary.

... Regardless of the pertinence of certain criticisms by the deputies who made the first referral against the fixing of electoral boundaries as provided for in the Act, it does not appear, as matters stand, and taking into account the variety and complexity of local situations that may give rise to different solutions whilst abiding by the same demographic rule, that the choices made by the legislature are in manifest breach of constitutional requirements.

... The Parliamentary Boundaries Act is not unconstitutional."

6. Extract from the Constitutional Council Observations concerning the parliamentary elections of June 2002 (session of 15 May 2003)

"Having completed its review of disputes arising from the last parliamentary elections, the Council has the following observations to make, indicating the changes that it finds desirable in four areas.

(I) As regards the general conditions in which the elections were held:

From the experience of the 2002 elections it can be concluded that legislative improvements should be enacted.

The first matter is the fixing of electoral boundaries. The current boundaries are the result of the Parliamentary Boundaries Act (Law no. 86-1197) of 24 November 1986. They were based on the results of the national census of 1982. Since then two national censuses, carried out in 1990 and 1999, have revealed representation discrepancies that are somewhat at odds with the provisions of Article 6 of the 1789 Declaration taken together with Articles 3 and 24 of the Constitution. It is thus incumbent upon the legislature to modify those boundaries, as it is apparently preparing to do for the forthcoming elections to the Senate."

COMPLAINTS

The applicant complained under Article 3 of Protocol No. 1 that the decision of the Constitutional Council had infringed the right to free elections, held under conditions which ensured the free expression of the opinion of the people in the choice of the legislature. She alleged that the equality of voters in electing parliamentary representatives had not been respected.

Relying on Articles 6 and 13 of the Convention, she alleged that the proceedings before the Constitutional Council had been unfair because the subject matter of her application had been misinterpreted. She also submitted that she had been unable to complain of that lack of fairness before a court, as the Constitutional Council ruled in the first and last instance.

THE LAW

1. The applicant alleged that there had been a violation 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."

The Government submitted, as their principal argument, that the application was inadmissible because the applicant lacked *locus standi* and had not exhausted domestic remedies.

They contended that the applicant had not at any time complained of direct and individual damage, not even potential, in relation to the alleged violation. In particular, since she had been unable to show that damage had been caused to her by the failure to review the constituency boundaries in question, she had simply complained of a law *in abstracto* and her application was thus to be regarded as an *actio popularis* that could not be found admissible.

As to the exhaustion of domestic remedies, the Government submitted that this condition of admissibility had not been met, as the applicant had failed to raise before the Constitutional Council her complaint that there had been a violation of Article 3 of Protocol No. 1, a complaint that would have been admissible in the context of an electoral dispute.

In the alternative, the Government argued that the complaint was unfounded, having regard in particular to the wide margin of appreciation afforded to States in such matters. They considered that the fixing of electoral boundaries fell, under domestic law, within a substantial legal framework which guaranteed free elections, and that the lack of a boundary review following the 1990 and 1999 censuses was justified and was not at odds with the requirement of demographic balance.

The applicant did not submit any observations in reply concerning the admissibility or merits of the case.

The Court first notes that the applicant brought proceedings before it, as before the Constitutional Council, in her capacity as elector in the *département* of Vaucluse and more specifically in the fourth constituency of that *département*. Even supposing that as such the applicant may claim to be the "victim", within the meaning of Article 34 of the Convention, of a violation of Article 3 of Protocol No. 1, it is debatable whether she satisfied the requirement to exhaust domestic remedies. It cannot be established with certainty that the applicant, in her constitutional complaint alleging a violation of the principle of equal suffrage, raised, at least in substance, the complaint that she subsequently submitted to the Court. However, the Court does not find it necessary to examine that matter further, given that the complaint is inadmissible on other grounds.

The Court reiterates that the rights set out in Article 3 of Protocol No. 1 are not absolute. Since Article 3 recognises them without setting them forth in express terms, let alone defining them, there is room for "implied limitations". In their internal legal orders the Contracting States make the rights to vote and to stand for election subject to conditions which are not in

principle precluded under Article 3. They have a wide margin of appreciation in this sphere, but it is for the Court to determine in the last resort whether the requirements of Protocol No. 1 have been complied with. It has to satisfy itself that the conditions do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate. In particular, such conditions must not thwart "the free expression of the opinion of the people in the choice of the legislature" (see, among other authorities, *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, § 52, Series A no. 113; *Py v. France*, no. 66289/01, §§ 45-47, ECHR 2005-I; and *Ždanoka v. Latvia* [GC], no. 58278/00, §§ 103-04, ECHR 2006-IV).

The Court further reiterates that, as regards the method of appointing the "legislature", Article 3 provides only for "free" elections "at reasonable intervals", "by secret ballot" and "under conditions which will ensure the free expression of the opinion of the people". Subject to that, it does not create any "obligation to introduce a specific system".

Here too the Court recognises that the Contracting States have a wide margin of appreciation, given that their legislation on the matter varies from place to place and from time to time.

Electoral systems seek to fulfil objectives which are sometimes scarcely compatible with each other: on the one hand, to reflect fairly faithfully the opinions of the people, and on the other, to channel currents of thought so as to promote the emergence of a sufficiently clear and coherent political will. In these circumstances the phrase "conditions which will ensure the free expression of the opinion of the people in the choice of the legislature" 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 their right to vote and their right to stand for election.

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. Thus no electoral system can eliminate "wasted votes" (see *Mathieu-Mohin and Clerfayt*, cited above, § 54).

In the present case, the disputed electoral boundaries resulted from the Parliamentary Boundaries Act (Law no. 86-1197) of 24 November 1986, following Law no. 86-825 of 11 July 1986, which had restored the two-round majority system with single-member constituencies and had amended Article L. 125 of the Elections Code. In decisions of 2 July and 18 November 1986, the Constitutional Council declared those Acts to be compatible with the Constitution (see "Relevant domestic law and practice" above).

Those Acts, in the context of a two-round majority system, provided for the fixing of boundaries on an essentially demographic basis, with the aim

of ensuring balanced representation based on the demographic weight of each constituency. Population differences between constituencies are permitted for the purpose of accommodating public-interest imperatives and in particular to take account of the "natural realities constituted by certain geographical entities" and "the unity between them". Moreover, such differences may exist only to a limited extent and must be based on precise and strictly determined imperatives.

In view of the foregoing, the Court considers that the introduction of such a system of electoral boundaries ensured that the right to vote was granted under conditions that reflected the need to ensure both citizen participation and knowledge of the particular situation of the region in question, fully in accordance with Article 3 of Protocol No. 1 (see *Py*, cited above, § 46). In particular, those conditions could not in themselves have had the effect of impeding the "free expression of the opinion of the people in the choice of the legislature".

The Court further notes that two censuses were taken, in 1990 and in 1999, but that they were not followed by an electoral boundary review as provided for in the above-mentioned Article L. 125. The applicant argued that the failure to conduct a boundary review between 1999 and the June 2002 parliamentary elections had led to a discrepancy in representation.

The Court observes at the outset that, being an elector in the fourth constituency of the *département* of Vaucluse, the applicant could not argue that the lack of a boundary review had had any harmful effect in respect of that constituency. Neither the statistics she provided to the Court, nor the Constitutional Council's observations of 15 May 2003 to which she referred (see "Relevant domestic law and practice" above), clearly establish that there was a demographic discrepancy which led, in the fourth constituency of the *département* of Vaucluse, to an inaccurate reflection of the opinion of the people in the choice of their national representation or, in particular, which was capable of altering the result of the parliamentary elections in issue. The Court notes moreover that, whilst the Constitutional Council did mention "discrepancies in representation", its general observations did not refer to any specific *départements* or constituencies.

As to the reasons given for the lack of a boundary review before 2002, the Government explained that, pursuant to the legislation in force, electoral boundaries could not be redrawn within the year preceding the normal date on which the chambers were to be re-elected, in order to preclude any lack of political transparency or inequality between candidates according to whether or not their constituency had been altered. The results of the 1999 census had become final with the decree of 17 October 2000 amending the population figures. That had only left the very end of the year 2000 for an electoral boundary review, a time frame which, in the Government's submission, had not been sufficient in view of the large number of parliamentary constituencies (577), the variety of local situations, the

factors to be taken into account and the need to carry out consultations, especially at local level.

In view of the foregoing, the Court considers that, even supposing that the failure to review boundaries between 1999 and 2002 had prevented population changes from being taken into account in the constituencies of the *département* of Vaucluse and had precluded a totally balanced distribution of the electorate, which the applicant failed to show, it cannot be maintained that such circumstances curtailed the applicant's rights to such an extent as to deprive them of their effectiveness. The Court considers that the grounds submitted by the Government to explain why a boundary review had not been conducted before 2002 arose from the necessity, legitimate in a democratic society, to carry out such a review only after comprehensive studies and consultations. Having regard to these factors, and to the wide margin of appreciation enjoyed by States in such matters, the Court does not find these electoral conditions to be unjustified or disproportionate. Such conditions could certainly not have interfered with the free expression of the people in the choice of the legislature.

It follows that this complaint is manifestly ill-founded and must be dismissed pursuant to Article 35 §§ 3 and 4 of the Convention.

2. The applicant alleged that there had been a violation of Article 6 of the Convention, the relevant parts of which provide:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law. ..."

The Court reiterates that, whilst the fact that proceedings took place before a constitutional court is not sufficient to remove it from the scope of Article 6 of the Convention, according to its settled case-law, proceedings concerning electoral disputes do not generally fall under Article 6 of the Convention since they concern the exercise of political rights and not "civil rights and obligations" or a "criminal charge" (see *Pierre-Bloch v. France*, 21 October 1997, § 50, *Reports of Judgments and Decisions* 1997-VI, and *Cheminade v. France* (dec.), no. 31599/96, ECHR 1999-II).

In the present case, the Court observes that the purpose of the impugned proceedings was to complain of the failure to review parliamentary constituency boundaries in accordance with population changes, allegedly in breach of the Elections Code. It notes that the proceedings arose from the applicant's rights as elector in the fourth constituency of the *département* of Vaucluse. But the right to vote in an election is a political right and is not covered by the categories "civil rights" and "criminal charges", within the meaning of Article 6 of the Convention; accordingly, any disputes relating to the exercise of such a right do not fall within the scope of that provision.

It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be dismissed pursuant to Article 35 § 4.

3. Lastly, the applicant alleged that there had been a violation of Article 13 of the Convention, which provides:

> "Everyone whose rights and freedoms as set forth in [the] 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."

The Court reiterates that the remedy provided for in Article 13 may only concern a right protected by the Convention (see, among other authorities, *Pierre-Bloch*, cited above, § 64). Accordingly, having regard to its decision as to the complaint under Article 6 (see above), to which the Article 13 complaint is related, the Court finds that Article 13 does not apply in the present case. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be dismissed pursuant to Article 35 § 4. Accordingly, the Court decides to discontinue the application of Article 29 § 3 of the Convention and to reject the application.

For these reasons, the Court unanimously

Declares the application inadmissible.