COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

COURT (PLENARY)

CASE OF MATHIEU-MOHIN AND CLERFAYT v. BELGIUM

(Application no. 9267/81)

JUDGMENT

STRASBOURG

2 March 1987

In the case of Mathieu-Mohin and Clerfayt[*],

The European Court of Human Rights, taking its decision in plenary session in pursuance of Rule 50 of the Rules of Court and composed of the following judges:

Mr. R. RYSSDAL, *President*,
Mr. J. CREMONA,
Mr. Thór VILHJÁLMSSON,
Mrs. D. BINDSCHEDLER-ROBERT,
Mr. G. LAGERGREN,
Mr. F. GÖLCÜKLÜ,
Mr. F. MATSCHER,
Mr. J. PINHEIRO FARINHA,
Mr. L.-E. PETTITI,
Mr. B. WALSH,
Sir Vincent EVANS,
Mr. R. MACDONALD,
Mr. C. RUSSO,
Mr. R. BERNHARDT,
Mr. J. GERSING,
Mr. A. SPIELMANN,
Mr. N. VALTICOS,
Mr. W. GANSHOF VAN DER MEERSCH, *ad hoc judge*,

and also of Mr. M.-A. EISSEN, *Registrar*, and Mr. H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 26 September 1986 and on 27 and 28 January 1987,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The present case was referred to the Court by the European Commission of Human Rights ("the Commission") on 11 July 1985, within the three-month period laid down in Article 32 § 1 and Article 47 (art. 32-1, art. 47) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). The case originated in an

[*] Note by the Registrar: The case is numbered 9/1985/95/143. The second figure indicates the year in which the case was referred to the Court and the first figure its place on the list of cases referred in that year; the last two figures indicate, respectively, the case's order on the list of cases and of originating applications (to the Commission) referred to the Court since its creation.

application (no. 9267/81) against the Kingdom of Belgium lodged under Article 25 (art. 25) on 5 February 1981. The original application was made by fifteen members of the Belgian House of Representatives and Senate, but the Commission declared it admissible in respect of only two of the applicants, Mrs. Lucienne Mathieu-Mohin and Mr. Georges Clerfayt (see paragraphs 40-41 below).

2. The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Belgium recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The purpose of the request was to obtain a decision from the Court as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 3 of Protocol No. 1 (P1-3), taken either alone or together with Article 14 (art. 14+P1-3) of the Convention.

3. In response to the enquiry made in accordance with Rule 33 § 3 (d) of the Rules of Court, the applicants stated that they wished to take part in the proceedings pending before the Court and designated the lawyers who would represent them (Rule 30).

4. The Chamber of seven judges to be constituted included, as ex officio members, Mr. W. Ganshof van der Meersch, the elected judge of Belgian nationality (Article 43 of the Convention) (art. 43), and Mr. R. Ryssdal, the President of the Court (Rule 21 § 3 (b)). On 2 October 1985, in the presence of the Registrar, the President drew by lot the names of the other five members, namely Mr. J. Cremona, Mrs. D. Bindschedler-Robert, Mr. D. Evrigenis, Mr. R. Macdonald and Mr. J. Gersing (Article 43 in fine of the Convention and Rule 21 § 4) (art. 43).

5. On 22 October 1985, the Chamber decided unanimously, pursuant to Rule 50 of the Rules of Court, to relinquish jurisdiction forthwith in favour of the plenary Court.

6. Through the Registrar, the President of the Court consulted those who would be appearing before the Court on the need for a written procedure (Rule 37 § 1). On 21 January 1986, he decided that the Agent of the Belgian Government ("the Government") and the applicants' lawyers should have until 21 March to file memorials, and that the Commission's Delegate should be entitled to file a memorial in reply within two months. On 18 March, he agreed to extend to 21 May the period granted to the Government and the second applicant's lawyers.

The memorials from Mrs. Mathieu-Mohin's lawyers, Mr. Clerfayt's lawyers and the Government reached the registry on 19 March, 28 May and 3 June 1986 respectively. On 18 July, the Secretary to the Commission indicated that the Delegate would submit his observations at the hearing.

7. Having been elected a member of the Court on 29 January 1986 in succession to Mr. Ganshof van der Meersch, whose term of office had just expired, Mr. J. De Meyer was called upon to sit on the case by reason of his nationality (Article 43 of the Convention and Rule 2 § 3) (art. 43), but in a

letter of 12 February 1986 to the President he said he wished to withdraw as he had taken part in the preparation of the impugned Act (Rule 24 § 2). On 27 March 1986, the Government's Agent notified the Registrar of the appointment of Mr. Ganshof van der Meersch as an ad hoc judge (Article 43 of the Convention and Rule 23 § 1) (art. 43).

8. After consulting, through the Registrar, the Agent of the Government, the Commission's Delegate and the applicants' lawyers, the President directed on 1 July 1986 that the oral proceedings should open on 24 September (Rule 38).

9. The hearing was held in public in the Human Rights Building, Strasbourg, on the appointed day. The Court had held a preparatory meeting immediately beforehand.

There appeared before the Court:

- for the Government
  Mr. J. NISET, Legal Adviser,
  Ministry of Justice, *Agent*,
  Mr. E. JAKHIAN, avocat, *Counsel*;
- for the Commission
  Mr. J.A. FROWEIN, *Delegate*;
- for Mrs. Mathieu-Mohin
  Mr. J.-J. PEGORER, avocat, *Counsel*;
- for Mr. Clerfayt
  Mr. B. MAINGAIN,
  Mr. J.-P. LAGASSE, avocats, *Counsel*.

The Court heard addresses by Mr. Jakhian for the Government, by Mr. Frowein for the Commission and by Mr. Lagasse, Mr. Maingain and Mr. Pegorer for the applicants, as well as their replies to questions put by the Court and several of its members individually.

10. On 17, 23 and 24 September 1986, the Commission, the applicants and the Government variously produced a number of documents, either at the President's request or of their own accord.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Mrs. Mathieu-Mohin

11. Mrs. Mathieu-Mohin, who is a French-speaking Belgian citizen, currently lives in Brussels but was living in Vilvoorde (Vilvorde) at the time

she made her application to the Commission. Vilvoorde is in the administrative district of Halle-Vilvoorde (Hal-Vilvorde), in the Flemish Region, and in the electoral district of Brussels (see paragraphs 19, 21 and 37-38 below).

The applicant had been elected by direct universal suffrage in the latter constituency and at the time sat in the Senate, one of the two Houses of the national Parliament. As she had taken the parliamentary oath in French, she could not be a member of the Flemish Council (see paragraphs 16, 27 and 30 below). She was, on the other hand, a member of the French Community Council, but not of the Walloon Regional Council (see paragraphs 27 and 30 below).

She was not re-elected on 8 November 1981 and did not stand in the general election of October 1985.

B. Mr. Clerfayt

12. Mr. Clerfayt, who is likewise a French-speaking Belgian national, was living - and still lives - in Sint-Genesius-Rode (Rhode-Saint-Genèse). Like Vilvoorde, this municipality is in the administrative district of Halle-Vilvoorde and the electoral district of Brussels. Together with five other localities on the outskirts of the capital, however, it was given a "special status" by Parliament because of its large number of French-speaking inhabitants (see paragraph 37 below).

Mr. Clerfayt was from the outset active in the ranks of the Brussels French-Speakers' Democratic Front. Since 1968 he has sat in the national Parliament - in the House of Representatives - as a member for the electoral district of Brussels. He took the parliamentary oath in French, which prevents him from belonging to the Flemish Council; on the other hand, he was and is a member of the French Community Council, but not of the Walloon Regional Council.

13. On 28 November 1983, Mr. Clerfayt sought leave from the Speaker of the House of Representatives to put a question to the member of the Flemish Executive (see paragraph 27 below) responsible for matters relating to regional planning, land policy, subsidised housing and compulsory purchase in the public interest, on a number of relevant issues arising in Sint-Genesius-Rode and in other municipalities in the electoral district of Brussels. The next day, leave was refused him on the ground that his request was inadmissible. He accordingly approached the Speaker of the Flemish Council on 13 December, who gave him a similar reply on 15 December.

II. THE CONSTITUTIONAL AND LEGISLATIVE BACKGROUND

14. The Kingdom of Belgium was initially conceived, in 1831, as a unitary State although divided into provinces and municipalities with a large degree of autonomy (Articles 1, 31 and 108 of the Constitution of 7 February 1831), but it is gradually moving towards a federal pattern of organisation.

This process of change, in which the main landmarks have been the constitutional reforms of 24 December 1970 and 17 July 1980, is not yet over. Apart from a number of repercussions on central national institutions, it has been reflected in the creation of Regions and Communities; and the position of elected representatives and electors resident in the administrative district of Halle-Vilvoorde has not remained unaffected.

A. Development of central national institutions

15. Legislative power at national level is exercised jointly by the King and both Houses of Parliament, i.e. the House of Representatives and the Senate (Article 20 of the Constitution). The House of Representatives has 212 members elected for four years by direct universal suffrage in a compulsory secret ballot, under a system of proportional representation (Articles 47, 48, 49 § 1 and 51); the Senate's membership is made up of 106 Senators elected in the same manner, together with a further number either elected by the provincial councils or else co-opted, again for four years (Articles 53-55).

As regards the House of Representatives, each electoral district has as many seats as the number of times by which its population can be divided by the national factor, which is calculated by dividing the population of the Kingdom by 212; the remaining seats are allotted to the districts with the largest surplus unrepresented populations (Article 49(2)). In order to win a seat, a candidate must poll about 20,000 votes, the exact quota varying slightly from one constituency to another.

16. For certain decisions specified in the Constitution, the elected members of each House are divided into a French-language group and a Dutch-language group in the manner prescribed by law and irrespective of the language each member personally speaks (Article 32 bis of the Constitution).

In the House of Representatives the French-language group includes as of right the members elected by the constituencies of the French-speaking region and by the constituency of the district of Verviers, while the Dutch-language group contains the members elected by the constituencies of the Dutch-speaking region (see paragraph 19 below); the members elected in the Brussels electoral district belong to one or the other group, according as

they choose to take the parliamentary oath in French or in Dutch (section 1(1) of the Act of 3 July 1971).

Similar criteria apply to the language groups in the Senate (section 1(2) of the same Act).

17. The language groups have a role to play, inter alia, in the making of various decisions - decisions to withdraw a territory from the scheme of division into provinces in order to give it a special status (Article 1 of the Constitution, last paragraph); to rectify or otherwise alter the boundaries of the language regions (Article 3 bis); to lay down the composition and manner of functioning of the Community Councils and Executives (Article 59 bis § 1 in fine); to specify the scope of the powers of the aforesaid Councils (Article 59 bis §§ 2 in fine, 2 bis in fine and 4 bis); and to determine the powers and territorial jurisdiction of regional institutions (Article 107 quater, last paragraph). In such cases the Constitution requires "a majority of votes in each language group of each House"; further conditions are that "the majority of the members of each group is present" and that "the total of the affirmative votes cast in the two language groups amounts to at least two-thirds of the votes cast".

In addition to this there is the system - sometimes called the "alarm bell" - provided for in Article 38 bis of the Constitution:

> "Other than for the budgets and for Acts requiring a special majority, a reasoned motion signed by at least three-quarters of the members of one of the language groups may be moved after the report has been tabled and before the final vote is taken in public session, stating that the provisions of a specified Bill are likely to be seriously detrimental to relations between the Communities.
>
> In that case the parliamentary proceedings shall be suspended and the motion referred to the Cabinet, which shall give a reasoned opinion on it within thirty days and request the House concerned to vote either on this opinion or on the Bill, possibly in amended form.
>
> This procedure shall not be used more than once by the members of a language group in respect of any one Bill."

These provisions are designed primarily to protect the speakers of the country’s minority language, i.e. French.

On the other hand, membership of a language group does not entail any obligation to use the language concerned during parliamentary debates. Furthermore, by the terms of Article 32 of the Constitution, members of the House of Representatives and the Senate "represent the nation" as a whole, "not solely the province or subdivision of a province which has sent them to Parliament".

18. As to the Cabinet, it shall have "as many French-speaking Ministers as Dutch-speaking ones", "with the possible exception of the Prime Minister" (Article 86 bis of the Constitution).

B. Regions and Communities

1. Description

(a) Language regions

19. By Article 3 bis of the Constitution, added on 24 December 1970, Belgium is divided into "four language regions: the French-language region, the Dutch-language region, the bilingual region of Brussels-Capital and the German-language region"; each municipality "shall belong to one of these".

The first language region comprises the provinces of Hainaut, Luxembourg and Namur, the province of Liège excluding the municipalities in the German-language region, and the district of Nivelles in the province of Brabant; the second region contains the provinces of Antwerp, West Flanders, East Flanders and Limbourg and also the districts of Halle-Vilvoorde - in which Vilvoorde and Sint-Genesius-Rode lie (see paragraphs 11 and 12 above) - and Louvain in Brabant; the third, Brussels and eighteen municipalities on its outskirts; and the fourth, twenty-five of the municipalities in the district of Verviers (sections 3-6 of the Acts on the use of languages in administrative matters, consolidated on 18 July 1966, hereinafter referred to as "the 1966 consolidated Acts").

(b) Regions

20. The language regions serve to define the territorial scope of Acts on the use of languages in administrative and judicial matters as well as in education; they do not have their own powers or institutions. In this they differ from the Regions - sometimes described as "political" - which were set up under the constitutional reform of 24 December 1970.

21. By Article 107 quater, first paragraph, of the Constitution, Belgium has "three Regions: the Walloon Region, the Flemish Region and the Brussels Region"; there is no "German Region".

The Special Act on Institutional Reform of 8 August 1980 ("the 1980 Special Act") "transitionally" demarcates the territory of the first two Regions: the Flemish Region comprises exactly the same provinces and administrative districts as the Dutch-language region, while the Walloon Region includes, in addition to the provinces of Hainaut, Luxembourg and Namur and the district of Nivelles, the whole of the province of Liège not excluding the municipalities of the German-language region (section 2 of the 1980 Special Act).

On the other hand, the 1980 Special Act makes no mention of the Brussels Region. The boundaries of this continue to be governed by the final paragraph of section 1 of the Act, consolidated on 20 July 1979, "establishing temporary Community and regional institutions"; they

correspond to the "territory of the administrative district of Brussels-Capital".

22. The 1980 Special Act was passed with the special majorities required under Articles 59 bis and 107 quater of the Constitution (see paragraph 17 above) and which would be required for any subsequent amendments. In the Senate it was passed by 137 votes to 22, with 3 abstentions, and in the House of Representatives by 156 votes to 19, with 5 abstentions.

(c) Communities

23. Lastly, Article 3 ter, first paragraph, of the Constitution, which dates back to the revision of 17 July 1980, establishes "three Communities: the French Community, the Flemish Community and the German-speaking Community", all of which - like the Walloon and Flemish Regions - have legal personality (section 3 of the 1980 Special Act).

2. Spheres of competence

(a) Regions

24. Section 6(1) of the 1980 Special Act was enacted to implement Article 107 quater, second paragraph, of the Constitution and it sets out, at length and in detail, the competence of the Walloon and Flemish Regions in matters of regional planning, the environment, rural renewal and nature conservation, housing, water policy, economic policy, energy policy, subordinate authorities, employment policy and applied research.

It does not apply to the Brussels Region, which continues to come under the national Parliament as regards regional matters or those which can be regarded as local (section 48 of the "ordinary" Act on Institutional Reform of 9 August 1980, taken together with section 2 of the "consolidated" Act of 20 July 1979).

(b) Communities

25. Article 59 bis §§ 2, 2 bis and 3 of the Constitution confers powers on the French and Flemish Communities in cultural matters, education (with certain exceptions), co-operation between the Communities, international cultural co-operation, matters on which members of the public may correspond with the authorities in their own language even if it is not the local official language (matières "personnalisables") and - in some fields - language use. Sections 4 and 5(1) of the 1980 Special Act contain detailed provisions as to cultural matters and matières personnalisables; the latter relate to health policy, aid for individuals and applied scientific research. The German-speaking Community, to which little further reference will be

made hereinafter, has slightly less extensive powers (Article 59 ter §§ 2-4 of the Constitution).

3. Institutions

(a) Description

26. Article 107 quater, second paragraph, of the Constitution leaves it to Parliament to set up the necessary regional bodies.

Article 59 bis § 1, on the other hand, provides that the French Community and the Flemish Community shall each have a Council and an Executive. Under the following paragraph, these Councils and Executives "shall be able to exercise the powers of the Walloon Region and the Flemish Region respectively, in the circumstances and the manner prescribed by law".

27. The legislature has availed itself of this possibility in respect of the Flemish Region only. By section 1(1) of the 1980 Special Act, "the Council and the Executive of the Flemish Community", referred to as "the Flemish Council" ("de Vlaamse Raad") and "the Flemish Executive" ("de Vlaamse Executieve"), are vested with powers not only in respect of the Community matters listed in Article 59 bis of the Constitution but also, in the Flemish Region, in respect of the regional matters listed in Article 107 quater.

On the other hand, there is a Council and an Executive of the French Community for Community matters and a Walloon Regional Council and Executive for regional matters (section 1(2) and (3) of the 1980 Special Act). Subsection 4 of section 1 of the 1980 Special Act admittedly authorises the two Councils to "decide by common accord" that "the Council and Executive of the French Community" shall exercise, in the Walloon Region, "the powers of the regional institutions in respect of the matters referred to in Article 107 quater of the Constitution", but it has not been applied hitherto.

28. The Brussels Region continues for the time being to be regulated by the consolidated Act of 1979 which has been referred to previously. It does not have any legislative assembly similar to the Flemish Council or the Walloon Regional Council or any executive elected by such an assembly; it has only a "ministerial committee" appointed by royal decree (section 4).

According to the Government, this is a "'wait-and-see' situation". In 1980, the Legislation Section of the Conseil d'Etat, which had been asked for its opinion, expressed the view that the Bill that was to become the 1980 Special Act was "constitutionally admissible only on condition that implementation of Article 107 quater [of the Constitution] in respect of the Brussels Region is merely postponed and not abandoned and that failure to implement it does not continue beyond a reasonable time".

In a statement on 29 November 1985, the government elected the previous month made it clear that the Study Centre for Reform of the State

(Centre d'études pour la réforme de l'État) would have to "pay particular attention to the problems of Brussels". The Study Centre was set up under a royal decree of 14 March 1983 and is staffed by parliamentarians and practising or former university teachers of constitutional law. Its remit is to prepare the ground for the "continuation, amendment and improvement of reform of the State".

(b) Membership

(i) Councils

29. The Constitution indicates only, in Article 59 bis § 1 in fine (French and Flemish Communities), Article 59 ter § 1, second sub-paragraph (German-speaking Community), and Article 107 quater, second paragraph (Regions), that the Councils shall consist of elected delegates.

When required to prescribe how these were to be appointed, the legislation provided for two consecutive transitional periods designed to ease the change to a permanent system. The first period, during the course of which the application to the Commission was lodged (5 February 1981), ended with the complete renewal of both Houses of Parliament on 8 November 1981; the second period, which is not yet over, will end once Articles 53 and 54 of the Constitution, concerning the Senate, have been revised.

30. During the first transitional period the Flemish Council and the French Community Council comprised the members of the Dutch- and French-language groups of the two Houses respectively; the Walloon Regional Council was composed of those members of the same French-language groups who were elected either in the provinces of Hainaut, Liège, Luxembourg or Namur, or alternatively in Brabant or by the Senate if, additionally, they were resident in the Walloon Region on the day of their election (section 28(1) of the 1980 Special Act).

31. For the duration of the second transitional period, which has not yet ended, the Flemish Council, the French Community Council, and the Walloon Regional Council consist respectively of the members of:

- the Dutch-language group in the House of Representatives and, if they have been directly elected by the electorate, in the Senate;

- the French-language group in the House of Representatives and, subject to the same condition, in the Senate; and

- the French-language group in either House, provided that they are Representatives or Senators directly elected in the provinces of Hainaut, Liège, Luxembourg or Namur or in the district of Nivelles.

This is the provision made in section 29 of the 1980 Special Act, to which the applicants' complaints are primarily directed (see paragraph 44 below). The section was passed by the special majorities required under Articles 59 bis and 107 quater of the Constitution. In the Senate it was

passed by 127 votes to 19, with 4 abstentions, and in the House of Representatives by 160 votes to 16, with 2 abstentions.

32. Once the permanent system has come into force, the three Councils will consist solely of members of the Senate directly elected by the electorate, viz.:

- the Senators of the Dutch-language group in the case of the Flemish Council; and

- the Senators of the French-language group in the case of the French Community Council and, if they were elected in the provinces of Hainaut, Liège, Luxembourg or Namur or in the district of Nivelles, in the case of the Walloon Regional Council (sections 24 and 25 of the 1980 Special Act).

33. The first paragraph of section 50 of the 1980 Special Act makes a special provision in respect of the "members of the Flemish Council elected by the constituency for the Brussels district and who, for as long as that electoral district shall comprise [as it does today (see paragraph 38 below)] several administrative districts, are resident in the Brussels-Capital bilingual region on the day of their election": although they are on the same footing as their colleagues in Community matters, they "shall not vote within the Flemish Council on matters for which the Flemish Region has responsibility".

(ii) Executives

34. The three Executives are elected by the Councils from among their own members (sections 59 and 60 of the 1980 Special Act). The Flemish Executive has nine members, the French Community Executive three and the Walloon Regional Executive six; at least one member of the Flemish Executive and the French Community Executive "shall belong to the Brussels-Capital bilingual region" (section 63).

> "Whenever the Flemish Executive discusses matters for which the Flemish Region has responsibility, any members elected by the constituency of the Brussels district and who, for as long as that electoral district shall comprise several administrative districts, are resident in the Brussels-Capital bilingual region on the day of their election shall sit only in an advisory capacity" (section 76(1)).

35. The Brussels Region Ministerial Committee (see paragraph 28 above) consists of three members appointed "by royal decree after deliberation in Cabinet" and not elected by an assembly. The members are: one Minister, who acts as Chairman, and two Ministers of State "one of whom shall be from a different language group from the [Chairman's]" (section 4, first paragraph, of the 1979 consolidated Act).

(c) Powers

36. The French and Flemish Communities, like the Walloon and Flemish Regions, have power to issue decrees, and this power is exercised jointly by their respective institutions (Article 26 bis and Article 59 bis §§ 2,

2 bis and 3 of the Constitution, sections 17 and 18 of the 1980 Special Act); additionally, their Executives have power to make regulations (section 20 of the 1980 Special Act). The Executives each work in only one language (French or Dutch, as appropriate), without interpreters for the other language.

A decree has "the force of law" and "may abrogate, supplement, amend or replace existing provisions of law" (section 19(2) of the 1980 Special Act). The constitutional reforms of 1970 and 1980 thus resulted in the rule-making function being shared by three distinct legislative bodies: the national Parliament, the Community Councils and the Regional Councils.

Subject to a number of exceptions, the French Community Council's decrees and, in Community matters, those of the Flemish Council apply in the French-language region and the Dutch-language region respectively, "and also to institutions established in the Brussels-Capital bilingual region which, by reason of their activities, must be regarded as belonging exclusively to one of the Communities" (Article 59 bis §§ 4 and 4 bis of the Constitution); the Walloon Regional Council's decrees and, in regional matters, those of the Flemish Council apply "in the Walloon Region or the Flemish Region, as appropriate" (section 19(3) of the 1980 Special Act); and the decrees of the Flemish Council indicate whether "they regulate any of the matters referred to in Article 59 bis or in Article 107 quater of the Constitution", in other words Community or regional matters (section 19(1), second paragraph, of the 1980 Special Act).

By Article 107 ter of the Constitution, "the procedure for the avoidance of conflict between statutes, decrees and the rules referred to in Article 26 bis, and between different decrees or different [rules] shall be prescribed by law". "For the whole of Belgium there shall be a Court of Arbitration" responsible for resolving such conflicts and whose membership, jurisdiction and manner of functioning is to be laid down by law (Act of 28 June 1983).

C. The special position of voters and elected representatives resident in the administrative district of Halle-Vilvoorde

37. The administrative district of Halle-Vilvoorde was created in 1983, and today it comprises the municipalities of the former administrative district of Brussels, excluding those in the bilingual district of Brussels, but including the six "peripheral municipalities with special status", of which Sint-Genesius-Rode is one (sections 3(2), 7 and 23-31 of the 1966 consolidated Acts).

Halle-Vilvoorde comes within the Dutch-language region and the Flemish Region and thus under the authority of the Flemish Council and Executive, and is accordingly not subject to the authority of the French Community institutions or those of the Walloon Region (see paragraphs 19, 21 and 36 above). It nevertheless contains a sizable French-speaking

minority: according to the applicants (whose figures were not disputed by the Government), at least 100,000 people out of a total population of 518,962 at 1 January 1982. The French-speakers are even claimed to be in the majority in the six "peripheral municipalities", and the Belgian State is alleged to have acted against their wishes in hitherto refusing to incorporate these municipalities into the Brussels Region.

38. Ordinarily, electoral districts in Belgium correspond to administrative ones (Article 87 of the Electoral Code). There is one exception, however. The administrative districts of Brussels-Capital and Halle-Vilvoorde together form a single electoral district for parliamentary and provincial elections, with Brussels as the principal town (section 3(2), second paragraph, of the 1966 consolidated Acts). The votes cast in the two administrative districts are consequently counted together, and it is impossible to distinguish between candidates elected by the one district and those elected by the other. The applicants claim that the French-speaking voters in the Halle-Vilvoorde district can expect - given their numbers and the statutory quota (see paragraphs 15 and 37 above) - to return three or four members to the House of Representatives by their own votes alone.

In the general election of 8 November 1981 there were 999,601 registered voters in the Brussels electoral district, who had to elect 34 Representatives and 17 Senators (Royal Decree of 1 December 1972 and Act of 19 July 1973).

39. Nothing prevents French-speaking candidates - whether resident in Halle-Vilvoorde or not - from standing for election in that district, or the voters - whether French-speaking or not - from voting for them. If they are elected, they may take the parliamentary oath in French or Dutch as they wish, irrespective of the language they personally speak (see paragraph 16 above).

If they take the oath in French (as the applicants did), their membership of the French-language group in the House of Representatives or the Senate entitles them to sit on the French Community Council (which has no responsibility for the district of Halle-Vilvoorde) but not on the Flemish Council - whether exercising its Community or its regional functions - nor on the Walloon Regional Council (see paragraphs 30-32 and 36 above).

Conversely, if they take the oath in Dutch, they will be members of a Dutch-language group and will accordingly sit on the Flemish Council but not on the French Community Council nor on the Walloon Regional Council (see paragraphs 30-32 above); and they will lose the right to vote in a French-language group on those matters in respect of which the Constitution requires special majorities (see paragraph 17 above).

Correspondingly, the French-speaking voters in Halle-Vilvoorde cannot be represented on the Flemish Council other than by parliamentarians who have taken the oath in Dutch.

Candidates are not under any obligation to state in advance which language group they will join, and they do not usually do so.

PROCEEDINGS BEFORE THE COMMISSION

40. The application was lodged with the Commission on 5 February 1981 and registered on 12 February under file no. 9267/81. It was originally made by eight members of the Belgian Senate and seven members of the Belgian House of Representatives, all of whom were resident in Brussels except for Mrs. Mathieu-Mohin and Mr. Clerfayt.

The signatories objected to a number of clauses in the 1980 Special Act, and in particular to those governing the method of appointing members of the Community and regional Councils and Executives; they also criticised Parliament on the ground that it had not provided the Brussels Region with institutions comparable to those of the Walloon and Flemish Regions. They relied on Articles 1 and 3 of Protocol No. 1 (P1-1, P1-3), taken alone or together with Article 14 (art. 14+P1-1, art. 14+P1-3) of the Convention.

41. The Commission took its decision on the admissibility of the application on 12 July 1983.

It dismissed, as incompatible ratione materiae with the provisions of the Convention, the complaint regarding Article 1 of Protocol No. 1 (P1-1) and, as manifestly without foundation, the complaints concerning the absence of any institutions specific to the Brussels Region and the fact that the Dutch-speaking elected representatives resident in Brussels-Capital took part in the deliberations of the Flemish Council in an advisory capacity, with the right of initiative, whereas the same was not true of the French-speaking elected representatives (section 50, first paragraph, of the 1980 Special Act - see paragraph 33 above).

It declared the application admissible, on the other hand, inasmuch as Mrs. Mathieu-Mohin and Mr. Clerfayt complained, as voters living in municipalities in the administrative district of Halle-Vilvoorde, that they could not elect French-speaking representatives to the regional assembly under which Halle-Vilvoorde came and, as elected representatives, that they could not sit in that assembly, whereas, mutatis mutandis, Dutch-speaking voters and elected representatives in the same municipalities could.

42. In its report of 15 March 1985 (made under Article 31) (art. 31), the Commission expressed the opinion

- by ten votes to one that there had been a failure to comply with the requirements of Article 3 of Protocol No. 1 (P1-3), taken alone, in respect of the applicants as electors;
- that it was unnecessary to consider the case from the point of view of Article 14 (art. 14) of the Convention or to consider separately the question

whether there had been a breach of the Convention and of Protocol No. 1 (P1) in respect of the applicants as elected representatives.

The full text of the Commission's opinion is reproduced as an annex to this judgment.

FINAL SUBMISSIONS BY THOSE APPEARING BEFORE THE COURT

43. The Court was requested by the Government in their memorial "to decide that, in respect of the applicants, there has been no violation of any provision of the Convention ... or of the First Protocol (P1) thereto"; by Mrs. Mathieu-Mohin in hers "to hold that the Belgian Act of 8 August 1980 ... violates her rights as an elector and elected representative resident in the administrative district of Halle-Vilvoorde under Article 3 of the First Protocol, taken together with Article 14 (art. 14+P1-3) of the Convention"; and by Mr. Clerfayt in his "to declare his application well-founded and to accede to it in all respects".

These submissions were maintained in substance at the hearing on 24 September 1986; Mrs. Mathieu-Mohin also claimed just satisfaction under Article 50 (art. 50) in the sum of 50,000 BEF for costs.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL No. 1 (P1-3) TAKEN ALONE

44. The applicants complained in two respects of section 29(1) of the 1980 Special Act, which for the time being determines the membership of the Flemish Council (see paragraph 31 above). Firstly, they claimed that it does not in practice enable French-speaking electors in the administrative district of Halle-Vilvoorde - which comes within the territory of the Flemish Region but forms a single electoral district with the bilingual administrative district of Brussels (see paragraphs 37-38 above) - to appoint French-speaking representatives to the Flemish Council, while Dutch-speaking electors can appoint Dutch-speaking representatives (see paragraph 39, fourth sub-paragraph, above). Secondly, they claimed that it prevents any parliamentarian elected in that electoral district and resident in one of the municipalities of the administrative district of Halle-Vilvoorde from sitting on the Flemish Council if he belongs to the French-language group in the

House of Representatives or the Senate, and that this is an obstacle not encountered by the elected representatives who belong to a Dutch-language group and are resident in one of the same municipalities (see paragraph 39 above).

According to Mrs. Mathieu-Mohin and Mr. Clerfayt, this entails a breach of Article 3 of Protocol No. 1 (P1-3), 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."

45. The Commission accepted the applicants' argument in substance. The Government rejected it, pointing out that a French-speaking representative from the electoral district of Brussels who was resident in the administrative district of Halle-Vilvoorde would sit on the Flemish Council and represent his constituents if he took his parliamentary oath in Dutch (see paragraphs 16, 31 and 39, third sub-paragraph, above). The Government also emphasised the provisional nature of the situation complained of (see paragraphs 14, 21, 24, 28 and 29 above).

A. Interpretation of Article 3 of Protocol No. 1 (P1-3)

46. Since the Court is being asked to determine complaints under Article 3 of Protocol No. 1 (P1-3) for the first time, it deems it necessary to indicate the meaning it ascribes to that Article (P1-3) in the context of the instant case.

47. According to the Preamble to the Convention, fundamental human rights and freedoms are best maintained by "an effective political democracy". Since it enshrines a characteristic principle of democracy, Article 3 of Protocol No. 1 (P1-3) is accordingly of prime importance in the Convention system.

48. Where nearly all the other substantive clauses in the Convention and in Protocols Nos. 1, 4, 6 and 7 (P1, P4, P6, P7) use the words "Everyone has the right" or "No one shall", Article 3 (P1-3) uses the phrase "The High Contracting Parties undertake". It has sometimes been inferred from this that the Article (P1-3) does not give rise to individual rights and freedoms "directly secured to anyone" within the jurisdiction of these Parties (see the Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 91, § 239), but solely to obligations between States.

If that were so, Mrs. Mathieu-Mohin and Mr. Clerfayt's application to the Commission would not have been admissible, since - under Article 25 (art. 25) of the Convention - only a person claiming to be the victim of a violation of one of his own rights and freedoms has standing to petition the Commission.

49. Such a restrictive interpretation does not stand up to scrutiny. According to its Preamble, Protocol No. 1 (P1) ensures "the collective enforcement of certain rights and freedoms other than those already included in Section I of the Convention"; furthermore, Article 5 of the Protocol (P1-5) provides: "as between the High Contracting Parties the provisions of Articles 1, 2, 3 and 4 (P1-1, P1-2, P1-3, P1-4) ... shall be regarded as additional Articles to the Convention", all of whose provisions - including Article 25 (art. 25) - "shall apply accordingly". Moreover, the Preamble to Protocol No. 4 (P4) refers, inter alia, to the "rights and freedoms" protected in "Articles 1 to 3" of Protocol No. 1 (P1-1, P1-2, P1-3).

Nor do the travaux préparatoires of Protocol No. 1 (P1) disclose any intention of excluding the operation of the right of individual petition as regards Article 3 (P1-3), whereas for a long time the idea was canvassed - only to be finally abandoned - of withholding the subject from the Court's jurisdiction. The travaux préparatoires also frequently refer to "political freedom", "political rights", "the political rights and liberties of the individual", "the right to free elections" and "the right of election".

50. Accordingly - and those appearing before the Court were agreed on this point - the inter-State colouring of the wording of Article 3 (P1-3) does not reflect any difference of substance from the other substantive clauses in the Convention and Protocols. The reason for it would seem to lie rather in the desire to give greater solemnity to the commitment undertaken and in the fact that the primary obligation in the field concerned is not one of abstention or non-interference, as with the majority of the civil and political rights, but one of adoption by the State of positive measures to "hold" democratic elections.

51. As to the nature of the rights thus enshrined in Article 3 (P1-3), the view taken by the Commission has evolved. From the idea of an "institutional" right to the holding of free elections (decision of 18 September 1961 on the admissibility of application no. 1028/61, X v. Belgium, Yearbook of the Convention, vol. 4, p. 338) the Commission has moved to the concept of "universal suffrage" (see particularly the decision of 6 October 1967 on the admissibility of application no. 2728/66, X v. the Federal Republic of Germany, op. cit., vol. 10, p. 338) and then, as a consequence, to the concept of subjective rights of participation - the "right to vote" and the "right to stand for election to the legislature" (see in particular the decision of 30 May 1975 on the admissibility of applications nos. 6745-6746/76, W, X, Y and Z v. Belgium, op. cit., vol. 18, p. 244). The Court approves this latter concept.

52. The rights in question are not absolute. Since Article 3 (P1-3) recognises them without setting them forth in express terms, let alone defining them, there is room for implied limitations (see, mutatis mutandis, the Golder judgment of 21 February 1975, Series A no. 18, pp. 18-19, § 38).

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 (P1-3) (Collected Edition of the "Travaux Préparatoires", vol. III, p. 264, and vol. IV, p. 24). 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 (P1) 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 (see, amongst other authorities and mutatis mutandis, the Lithgow and Others judgment of 8 July 1986, Series A no. 102, p. 71, § 194). In particular, such conditions must not thwart "the free expression of the opinion of the people in the choice of the legislature".

53. Article 3 (P1-3) applies only to the election of the "legislature", or at least of one of its chambers if it has two or more ("Travaux Préparatoires", vol. VIII, pp. 46, 50 and 52). The word "legislature" does not necessarily mean only the national parliament, however; it has to be interpreted in the light of the constitutional structure of the State in question.

The Court notes at the outset that the 1980 reform vested the Flemish Council with competence and powers wide enough to make it, alongside the French Community Council and the Walloon Regional Council, a constituent part of the Belgian "legislature" in addition to the House of Representatives and the Senate (see paragraphs 24-25, 27 and 37 above); those appearing before the Court were agreed on this point.

54. As regards the method of appointing the "legislature", Article 3 (P1-3) 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" ("Travaux Préparatoires", vol. VII, pp. 130, 202 and 210, and vol. VIII, p. 14) such as proportional representation or majority voting with one or two ballots.

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) (art. 10) - 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".

For the purposes of Article 3 of Protocol No. 1 (P1-3), any electoral system must be assessed in the light of the political evolution of the country concerned; features that would be unacceptable in the context of one system may accordingly be justified in the context of another, at least so long as the chosen system provides for conditions which will ensure the "free expression of the opinion of the people in the choice of the legislature".

B. Application of Article 3 of Protocol No. 1 (P1-3) in the instant case

55. The Court has to consider the applicants' complaints from the point of view of Article 3 (P1-3) thus interpreted.

56. The Government pointed out that nothing prevented the French-speaking electors in the district of Halle-Vilvoorde from knowingly voting for a candidate who was likewise French-speaking but willing to take his parliamentary oath in Dutch; once elected, such a candidate would sit on the Flemish Council as of right and represent his constituents.

This argument is not decisive. Admittedly, electors cannot be defined wholly in terms of their language and culture; political, economic, social, religious and philosophical considerations also influence their votes. Linguistic preferences, however, are a major factor affecting the way citizens vote in a country like Belgium, especially in the case of the residents of a "sensitive" area, such as the municipalities on the outskirts of Brussels. An elected representative who took his parliamentary oath in Dutch would not belong to the French-language group in the House of Representatives or the Senate; and these groups, like the Dutch-language groups, play an important role in those areas in which the Constitution requires special majorities (see paragraph 17 above).

57. The 1980 Special Act, however, fits into a general institutional system of the Belgian State, based on the territoriality principle. The system covers the administrative and political institutions and the distribution of their powers. The reform, which is not yet complete, is designed to achieve an equilibrium between the Kingdom's various regions and cultural communities by means of a complex pattern of checks and balances. The aim is to defuse the language disputes in the country by establishing more stable and decentralised organisational structures. This intention, which is legitimate in itself, clearly emerges from the debates in the democratic national Parliament and is borne out by the massive majorities achieved in

favour - notably - of the Special Act, including section 29 (see paragraphs 22 and 31 above).

In any consideration of the electoral system in issue, its general context must not be forgotten. The system does not appear unreasonable if regard is had to the intentions it reflects and to the respondent State's margin of appreciation within the Belgian parliamentary system - a margin that is all the greater as the system is incomplete and provisional. One of the consequences for the linguistic minorities is that they must vote for candidates willing and able to use the language of their region. A similar requirement is found in the organisation of elections in a good many States. Experience shows that such a situation does not necessarily threaten the interests of the minorities. This is particularly true, in respect of a system which makes concessions to the territoriality principle, where the political and legal order provides safeguards against inopportune or arbitrary changes - by requiring, for example, special majorities (see paragraph 17 above).

The French-speaking electors in the district of Halle-Vilvoorde enjoy the right to vote and the right to stand for election on the same legal footing as the Dutch-speaking electors. They are in no way deprived of these rights by the mere fact that they must vote either for candidates who will take the parliamentary oath in French and will accordingly join the French-language group in the House of Representatives or the Senate and sit on the French Community Council, or else for candidates who will take the oath in Dutch and so belong to the Dutch-language group in the House of Representatives or the Senate and sit on the Flemish Council. This is not a disproportionate limitation such as would thwart "the free expression of the opinion of the people in the choice of the legislature" (see paragraphs 51, 52 and 53 in fine above).

The Court accordingly finds that there has been no breach of Article 3 of Protocol No. 1 (P1-3) taken alone.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN TOGETHER WITH ARTICLE 3 OF PROTOCOL NO. 1 (art. 14+P1-3)

58. Mrs. Mathieu-Mohin and Mr. Clerfayt also claimed to be the victims of a difference of treatment in comparison with the Dutch-speaking electors and elected representatives resident, like themselves, in the administrative district of Halle-Vilvoorde. This difference of treatment - allegedly the result of a "policy of assimilation" and a determination to carry through a "Flemish re-conquest" - was said to amount to discrimination on grounds of language and membership of a national minority and to contravene Article 14 of the Convention taken together with Article 3 of Protocol No. 1 (art. 14+P1-3).

59. The arguments on which the claim just summarised rests are the same as those relied on by the applicants in respect of Article 3 of Protocol No. 1 (P1-3) taken in isolation. The Court accordingly simply refers to the reasons for which it has already rejected those arguments (see paragraph 57 above). Those reasons make it clear that there is no "discrimination" prejudicial to the applicants.

No breach of Article 14 (art. 14) of the Convention has been made out, therefore.

FOR THESE REASONS, THE COURT

1. Holds by thirteen votes to five that there is no violation of Article 3 of Protocol No. 1 (P1-3), taken alone;

2. Holds by fourteen votes to four that there is no violation of Article 14 of the Convention, taken together with Article 3 of Protocol No. 1 (art. 14+P1-3).

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 2 March 1987.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar

In accordance with Article 51 § 2 (art. 51-2) of the Convention and Rule 52 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- joint dissenting opinion of Mr. Cremona, Mrs. Bindschedler-Robert, Mr. Bernhardt, Mr. Spielmann and Mr. Valticos, together with a declaration by Mr. Bernhardt;

- concurring opinion of Mr. Pinheiro Farinha.

R. R.
M.-A. E.

JOINT DISSENTING OPINION OF JUDGES CREMONA, BINDSCHEDLER-ROBERT, BERNHARDT, SPIELMANN AND VALTICOS

(Translation)

To our regret we are unable to share the opinion of the majority of the Court, since it appears to us that in law the position in which the French-speaking electorate and the French-speaking elected representatives of the administrative district of Halle-Vilvoorde are placed is not compatible with Belgium's obligations under Article 3 of Protocol No. 1 (P1-3), whether taken by itself or together with Article 14 (art. 14+P1-3) of the Convention.

The system currently in force in respect of that district (which as an administrative district comes within the Flemish Region, while for electoral purposes - with different boundaries - it is part of the electoral district of Brussels) has the effect in substance, under the Special Act of 8 August 1980 (section 29(1)), that the members of the House of Representatives and the Senate elected in the district of Halle-Vilvoorde cannot, if they take the parliamentary oath in French, sit on the Flemish Council (a body which indisputably has legislative powers) and are therefore unable to defend their Region's interests in a number of important fields (such as regional planning, environment, housing, economic policy, energy and employment), whereas elected representatives who take the oath in Dutch are automatically members of the Flemish Council. Halle-Vilvoorde has a population of more than 100,000 French-speakers out of a total population of more than 500,000, the average number of votes required to elect a member of the House of Representatives varying from 22,000 to 25,000.

The practical consequence is that unless they vote for Dutch-speaking candidates, the French-speaking voters in this district will not be represented on the Flemish Council.

In our opinion, such a situation, excluding, as it does in practice, representation of the French-speaking electorate of Halle-Vilvoorde at regional level, does not ensure "the free expression of the opinion of the people in the choice of the legislature" as stipulated in Article 3 of Protocol No. 1 (P1-3), and it creates a language-based distinction contrary to Article 14 (art. 14) of the Convention.

None of the reasons put forward to justify this incompatibility appears to us to be convincing.

In the first place, it is true that the French-speakers elected in Halle-Vilvoorde could belong to the (Flemish) regional Council if they agreed to take the oath in Dutch. In that eventuality, however, the representatives concerned would lose their status as French-speakers in Parliament, and this - in addition to the psychological and moral aspect of the issue - would have

important political consequences, given the role played by the parliamentary language groups.

The argument based on the fact that under the Belgian Constitution elected representatives are considered as representatives of the whole nation is irrelevant in the case of the regional Councils, which are vested under the Constitution itself with the responsibility of watching over the interests of the Regions concerned and to which the elected representatives of those Regions should therefore be entitled to belong.

Nor can the limitations in question be compared with those often found in electoral systems (such as those inherent in majority systems or various systems of proportional representation, or again in the fact that a minimum percentage of votes is sometimes required for election). These various limitations are general in nature and apply to all voters without distinction, whereas the system applicable to Halle-Vilvoorde restricts the right of only the French-speaking voters and elected representatives of the Region, and on the sole basis of the language criterion.

It was also argued that despite its limitations, the position of the French-speaking voters of Halle-Vilvoorde was more favourable than that of the French-speaking voters in the Flemish Region in general. One of the specific features of the Halle-Vilvoorde district is that it contains a large concentration of French-speaking voters, who are in a position to elect a substantial number of candidates to Parliament. In any case, apart from the fact that the position of the other parts of the Flemish Region was not in issue in the instant case, a relative advantage of this kind cannot compensate for the effective loss by the French-speaking voters of Halle-Vilvoorde of their right to be represented on the regional Council.

It has been pointed out that the current system was adopted in 1980 by a very large majority in both the language groups in Parliament. But this was by definition a transitional stage, and from this point of view the argument is more an empirical one than a legal one and is of very doubtful force. In our opinion, the system should be assessed on its own merits. Furthermore, the transitional nature of the current system was itself relied on in argument. This transitional state of affairs, however, has already lasted for over six years and, while a Study Centre for Reform of the State has indeed been set up, the Government has not indicated to the Court even an approximate date on which a permanent system might be adopted, let alone what kind of change might be made.

Lastly, it cannot be said that the state of affairs submitted to the Court represents the only conceivable solution of the problem; indeed, the very fact that it is regarded as transitional indicates that other acceptable arrangements are contemplated or are at least not being ruled out. Merely by way of example and without in any way claiming to offer practical proposals (which we are not qualified to do), one could imagine allowing the various French-speaking elected representatives of the Halle-Vilvoorde

district to belong to the Flemish Council even if they have taken the parliamentary oath in French - which does not preclude their speaking Dutch in the Flemish Council. Or again, one might envisage holding separate elections at regional level and national level, on the understanding that the representatives elected at regional level would have to be able to be members of the relevant regional Council. But obviously it is for the Government themselves to find the best means of solving the problem.

Falling back on the margin of appreciation is no answer in this case, because that margin is subject to effective respect for the rights protected in the Convention.

DECLARATION BY JUDGE BERNHARDT

The joint dissenting opinion sets out the reasons why I voted in favour of finding a violation of Article 3 of Protocol No. 1 (P1-3). On the other hand, I voted against finding a violation of Article 14 of the Convention (taken together with Article 3 of the Protocol) (art. 14+P1-3), since in my view no separate issue arises under this heading. It is the exclusion of certain representatives from the regional Council and not any discrimination which is decisive.

CONCURRING OPINION OF JUDGE PINHEIRO FARINHA

(Translation)

1. I concurred in the result but, with all the respect due to my learned brethren, I must state that paragraph 51 causes me great difficulty.

2. The problem of legislatures with two or more chambers does not arise in the instant case, and the matter is not before the Court. In my view, we should confine ourselves to the case in issue and keep the question of two chambers for such time as it may arise in a case before the Court.

3. At all events, the wording "or at least of one of its chambers if it has two or more" is inadequate and dangerous.

As it stands, it would allow of a system at variance with "the opinion of the people in the choice of the legislature" and might even lead to a corporative, elitist or class system which did not respect democracy.

In my opinion, we should say "or at least of one of its chambers if it has two or more, on the two-fold condition that the majority of the membership of the legislature is elected and that the chamber or chambers whose members are not elected does or do not have greater powers than the chamber that is freely elected by secret ballot".