[TRANSLATION]

...

THE FACTS

The applicant, Federación Nacionalista Canaria, is a federation of political parties which was founded on 14 August 1998 and is based in Arrecife (Lanzarote). It was represented before the Court by Mr F. Fernández Camero and Ms J.M. Fernández de las Heras, lawyers practising in Lanzarote.

A. The circumstances of the case

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

On 18 June 1999 general elections to the legislative assembly of the Autonomous Community of the Canary Islands took place. The applicant federation submitted various observations on the results issued by certain polling stations in the constituency of the island of Lanzarote.

On 19 June 1999 the applicant federation lodged a complaint on the matter with the Canary Islands Electoral Council, which dismissed the complaint in a decision of 20 June 1999.

On 21 June 1999 the applicant federation lodged an ordinary appeal against that decision with the Central Electoral Council, which dismissed the appeal in a decision of 23 June 1999.

On 28 June 1999 the Canary Islands Electoral Council announced the names of the candidates who had been elected to the eight seats representing Lanzarote in the regional legislative assembly. The applicant federation, which had obtained 28.13% of the valid votes cast in the Lanzarote constituency, was not awarded any seats in the regional assembly. Nor was it awarded any seats in respect of the other constituencies of the Autonomous Community of the Canary Islands, although it had obtained 4.81% of the valid votes cast in the Autonomous Community as a whole.

The applicant federation applied to the Canary Islands High Court of Justice for judicial review of the election results, alleging that there had been irregularities and claiming approximately 100 additional votes, which it maintained had not been counted. In a judgment of 22 September 1999 the court dismissed the application. It stated, firstly, that it had no jurisdiction to rule on the applicant federation's objections concerning the thresholds for parliamentary representation (*barreras electorales*) laid down in the Canary Islands' Statute of Autonomy. Next, it examined the applicant federation's allegations of irregularities in the vote count and upheld the decisions which the electoral councils had taken to the federation's detriment. Thirdly, it

added that the other alleged irregularities, which had not been sufficiently established, did not form a basis on which the elections could be declared void or the list of elected candidates amended in accordance with the applicant federation's wishes.

The applicant federation lodged an appeal with the Constitutional Court (*recurso de amparo*) on the basis of Article 23 § 2 of the Constitution. In a decision of 8 October 1999 the Constitutional Court dismissed the *amparo* appeal. It held:

> "The application of statutory thresholds or exclusion clauses has been endorsed by this court's case-law as a means of refining the principle of proportionality, a 'guiding imperative' that shapes, but does not predetermine, the decision-making freedom of a democratic legislature, with a view to avoiding the excessive and dysfunctional fragmentation of Parliament, thereby facilitating governance and the work of the parliamentary bodies ... representing the various political forces...
>
> Consequently, the imposition of an electoral threshold or barrier – that is to say, a requirement that a fixed percentage of the vote must be obtained for candidates to be eligible to take part in the distribution of seats in accordance with established models – cannot be said to infringe the rights enshrined in Article 23 of the Constitution (the right to participate in public affairs and the right of access to public posts on equal terms).
>
> Furthermore, the prior allocation, regardless of population size, of a set number of seats to each constituency of an electoral region, is not unconstitutional... Quite apart from the 'guiding imperative' referred to above, other constitutionally valid concerns, such as the need to ensure, for geographical or, indeed, demographic reasons, that all the territorial areas making up the electoral region are adequately represented, serve in themselves as justification for the electoral system in question. The system established by the Statute of Autonomy, whereby the number of residents per seat must lie within specified limits in each of the constituencies, is in no way manifestly disproportionate or arbitrary.
>
> The appeal is therefore inadmissible and the reasons given for the application of electoral legislation in the judgment appealed against are sufficient from a constitutional standpoint."

B. Relevant domestic law

1. The Constitution

Article 66

> "1. Parliament (*Cortes Generales*) shall represent the Spanish people and shall be composed of the Congress of Deputies and the Senate.
>
> 2. Parliament shall exercise the legislative power of the State..."

Article 147 § 1

“By virtue of the ... Constitution, each Autonomous Community shall have as its basic institutional law a Statute, which the State shall recognise and protect as an integral part of its legal system.”

Article 148

“1. The Autonomous Communities may exercise powers in the following areas:

(i) organisation of their institutions of self-government;

...”

Article 149 § 3

“Responsibilities not expressly conferred on the State by the Constitution may fall to the Autonomous Communities, in accordance with their Statutes. ...”

Article 150

“1. In matters within the State’s field of competence, Parliament may endow all or some of the Autonomous Communities with powers to enact legislative provisions for themselves in accordance with the principles, bases and guidelines set out in national legislation. ...

2. The State may, by means of an institutional Act, transfer or delegate to the Autonomous Communities powers within its own sphere of competence that are, by their very nature, capable of being transferred or delegated. ...”

Article 152 § 1

“In the Statutes approved by means of the procedure laid down in the foregoing Article, the institutional organisation of the Autonomous Community shall be based on: a legislative assembly elected by universal suffrage according to a system of proportional representation that also ensures that the various geographical areas of the Community are represented; a Governing Council with executive and administrative functions; and a President, who shall be elected by the assembly from among its members and appointed by the King, and who shall preside over the Governing Council and act as the supreme representative of the Autonomous Community and the ordinary representative of the State within the Community. ...”

2. Statute of Autonomy of the Canary Islands (as amended by Institutional Act no. 4/1996 of 30 December 1996)

Article 9

> "1. Parliament, the representative body of the people of the Canary Islands, shall be composed of regional deputies (*autonómicos)* elected by direct universal suffrage in an equal, free and secret ballot.
>
> 2. The electoral system shall be one of proportional representation.
>
> 3. The number of deputies shall be neither lower than 50 nor higher than 70.
>
> 4. The islands of Hierro, Fuerteventura, Gran Canaria, Gomera, Lanzarote, La Palma and Tenerife shall each form an electoral constituency."

First transitional provision

> "...
>
> 2. ... in accordance with Article 9 of this Statute, and save where a law passed by a two-thirds majority of the members of the Canary Islands' legislative assembly provides otherwise, the only lists to be taken into account shall be those of the parties or coalitions that have obtained the greatest number of valid votes in each of the constituencies and the other [lists] that have obtained at least 30% of the valid votes cast in a single constituency or, adding together the votes for each constituency, at least 6% of the valid votes cast in the Autonomous Community as a whole."

COMPLAINTS

1. Relying on Article 3 of Protocol No. 1, the applicant federation complained that the amendment of the Statute of Autonomy by Institutional Act no. 4/1996 of 30 December 1996 benefited the three parties most firmly established in the Autonomous Community as a whole and interfered with the free expression of the opinion of the people in the choice of the legislature. It acknowledged that the setting of thresholds for parliamentary representation was, in principle, a legitimate means of avoiding the excessive "atomisation" of political representation, but considered that where such thresholds were excessive, as in the instant case, the right of citizens to participate in political life on equal terms, to vote and to stand for election might be affected in a disproportionate manner. It noted that Spain's other Autonomous Communities had imposed thresholds of between 3% and 5% of the vote in a particular constituency. It further observed that the modification of the electoral system, which had purportedly been a transitional measure, had in practice become permanent, as two-thirds of the members of the legislative assembly – the proportion required to amend the provision in question – belonged to the three mainstream parties that had benefited from the reform.

2. Relying on Article 14 of the Convention, the applicant federation argued that setting a threshold as high as 30% of the vote in any given

constituency effectively precluded the election of parties and coalitions standing in a single constituency. Such discrimination was present on several levels – for example, between citizens of the Canary Islands and the rest of the population of Spain, between smaller and larger islands, and between candidates from regional or national parties and candidates from parties representing a particular island. The applicant federation noted that the threshold of 6% for the Autonomous Community as a whole could not even be attained by the entire electorate of islands such as Fuerteventura, Hierro and Gomera. That meant that political parties participating in regional elections in only one constituency could obtain a quarter of the vote there and still fail to win a seat in the legislative assembly; their voters would thus be denied the opportunity of direct representation.

The applicant federation complained that the thresholds for parliamentary representation laid down in the Statute of Autonomy by Institutional Act no. 4/1996 of 30 December 1996 were disproportionate and prevented citizens from participating in political life on equal terms. The thresholds benefited the mainstream political parties alone and excluded parties and coalitions that put forward candidates in only one constituency.

THE LAW

The applicant federation complained that the thresholds for parliamentary representation laid down in the Statute of Autonomy by Institutional Act no. 4/1996 of 30 December 1996 were disproportionate and prevented citizens from participating in political life on equal terms. The thresholds benefited the mainstream political parties alone and excluded parties and coalitions that put forward candidates in only one constituency.

The applicant federation relied on Article 3 of Protocol No. 1 and Article 14 of the Convention, which provide:

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 [the] Convention shall be secured without discrimination on any ground such as ... other status."

1. As regards the applicant federation's complaint under Article 3 of Protocol No. 1, the Court reiterates that the word "legislature" does not necessarily mean the national parliament: the word has to be interpreted in the light of the constitutional structure of the State in question (see *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, Series A no. 113, p. 23, § 53, and *Matthews v. the United Kingdom* [GC], no. 24833/94, § 40, ECHR 1999-I).

In relation to Spain, the Court notes that Article 66 of the Constitution confers the exercise of legislative power on Parliament (*Cortes Generales*). In the instant case, however, the applicant federation's complaint concerned proceedings for judicial review of decisions relating to the election of the legislative assembly of the Autonomous Community of the Canary Islands. The Court notes that in accordance with the structure of the Spanish State's Autonomous Communities (*Comunidades autónomas*), their legislative assemblies participate in the exercise of legislative power and are therefore part of the "legislature" within the meaning of Article 3 of Protocol No. 1 (see, *mutatis mutandis,* Timke v. Germany, application no. 27311/95, Commission decision of 11 September 1995, Decisions and Reports (DR) 82-A, p. 158; see also "Relevant domestic law" above).

The Court reiterates that the rights set out in Article 3 of Protocol No. 1 are not absolute, but may be subject to limitations. The Contracting States enjoy a wide margin of appreciation in imposing conditions on the right to vote, 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 people in the choice of the legislature" (see *Mathieu-Mohin and Clerfayt*, cited above, p. 23, § 52, and *Matthews*, cited above, § 63).

The Court further notes that the choice of electoral system by which the free expression of the opinion of the people in the choice of the legislature is ensured – whether it be based on proportional representation, the "first-past-the-post" system or some other arrangement – is a matter in which the State enjoys a wide margin of appreciation (see *Matthews*, cited above, § 64).

In *Informationsverein Lentia and Others v. Austria* (24 November 1993, Series A no. 276, p. 16, § 38) the Court described the State as the ultimate guarantor of the principle of pluralism. In the political sphere that responsibility means that the State is under the obligation, among others, to hold, in accordance with Article 3 of Protocol No. 1, 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. Such expression is inconceivable without the participation of a plurality of

political parties representing the different shades of opinion to be found within a country's population. By relaying this range of opinion, not only within political institutions but also – with the help of the media – at all levels of social life, political parties make an irreplaceable contribution to political debate, which is at the very core of the concept of a democratic society (see the following judgments: *Lingens v. Austria*, 8 July 1986, Series A no. 103, p. 26, § 42, *Castells v. Spain*, 23 April 1992, Series A no. 236, p. 23, § 43, and *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, *Reports of Judgments and Decisions* 1998-I, p. 21, § 44).

In the instant case the applicant federation asserted that because of the system of proportional representation in force in the Autonomous Community of the Canary Islands and the thresholds set in order to avoid the "atomisation" of political representation, it had been denied the opportunity to represent, in the Autonomous Community's legislative assembly, more than 28% of those who had voted on the island of Lanzarote.

The Court notes in this connection that in considering the applicant federation's *amparo* appeal the Constitutional Court examined the basis for such thresholds, which were intended as a means of refining the general principle of proportionality, in order to prevent the excessive and dysfunctional fragmentation of Parliament. It further held that the prior allocation, irrespective of population size, of a set number of seats in respect of each of the constituencies forming an electoral region, in this case the Autonomous Community of the Canary Islands, was not unconstitutional and that, quite apart from the "guiding imperative" of proportionality, other constitutionally valid concerns, such as the need to ensure, for geographical and demographic reasons, that all the areas making up the electoral region were adequately represented, served in themselves as justification for the electoral system in question. It considered that the system established by the Statute of Autonomy, whereby the number of residents per seat in each of the constituencies had to lie within specified limits, was in no way manifestly disproportionate or arbitrary.

The Court notes that the second paragraph of the first transitional provision of the Canary Islands' Statute of Autonomy (see "Relevant domestic law" above) lays down two alternative conditions: either at least 30% of all valid votes must be obtained in an individual constituency or at least 6% of all valid votes must be obtained in the Autonomous Community as a whole. It considers that a system of that kind, far from hindering election candidates such as those put forward by the applicant federation, affords smaller political groups a certain degree of protection. It emphasises that in the instant case the applicant federation did not satisfy either of the conditions prescribed by law.

The Court considers that in the instant case there is nothing in the Constitutional Court's decision to suggest that the electoral legislation in

issue was arbitrary or disproportionate or thwarted "the free expression of the opinion of the people in the choice of the legislature". That conclusion is supported by the fact that "even a system which fixes a relatively high threshold, e.g. as regards the number of signatures required in order to stand for election or, as in the present case, a minimum percentage of votes on the national level, may be regarded as not exceeding the margin of appreciation permitted to States in the matter" (see Magnago and Südtiroler Volkspartei v. Italy, application no. 25035/94, Commission decision of 15 April 1996, DR 85-A, p. 112). The Court reiterates in this connection that it is not its task to take the place of the national courts. It is primarily for the national authorities, notably the courts, to interpret domestic law (see, *mutatis mutandis*, the following judgments: *Bulut v. Austria*, 22 February 1996, *Reports* 1996-II, p. 356, § 29, *Brualla Gómez de la Torre v. Spain*, 19 December 1997, *Reports* 1997-VIII, p. 2955, § 31, and *Edificaciones March Gallego S.A. v. Spain*, 19 February 1998, *Reports* 1998-I, p. 290, § 33), and the Court will not substitute its own assessment of the law for that of the national authorities in the absence of any element of arbitrariness (see, among other authorities, *Tejedor García v. Spain*, 16 December 1997, *Reports* 1997-VIII, p. 2796, § 31). In the light of the principles established by the case-law of the Convention institutions, the Court considers that none of the evidence before it discloses any appearance of a violation by the Spanish courts of the right relied on by the applicant federation.

In view of the foregoing, the Court considers that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. As regards the applicant federation's complaint under Article 14 of the Convention, the Court considers that the arguments on which the allegation rests are the same as those relied on under Article 3 of Protocol No. 1 taken alone. Accordingly, the Court simply refers to the reasons for which it has already rejected those arguments and concludes that this part of the application is likewise manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.