CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF PY v. FRANCE

(Application no. 66289/01)

JUDGMENT
(Extracts)

FINAL

06/06/2005

STRASBOURG

11 January 2005

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Py v. France,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr A.B. BAKA, *President*,
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr K. JUNGWIERT,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI, *judges*,
Mr R. DE GOUTTES, ad hoc *judge*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 13 November 2003 and on 7 December 2004,

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

PROCEDURE

1. The case originated in an application (no. 66289/99) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a French national, Mr Bruno Py ("the applicant"), on 15 December 2000.

2. The French Government ("the Government") were represented by their Agent, Mr R. Abraham, Director of Legal Affairs at the Ministry of Foreign Affairs.

3. The applicant complained that the restrictions on the right to take part in elections to Congress and the provincial assemblies in New Caledonia infringed the right to free elections guaranteed by Article 3 of Protocol No. 1 and gave rise to discrimination on the ground of national origin, in breach of Article 14 of the Convention.

4. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1. Mr J.-P. Costa, the judge elected in respect of France, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr R. de Gouttes to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

6. In a decision of 13 November 2003 the Chamber declared the application admissible.

7. The applicant and the Government each filed written submissions and additional observations on the merits of the case (Rule 59 § 1). In addition, third-party comments were received from Mr Pichon and Ms Gillot, residents of New Caledonia, who had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2). The respondent Government replied to those comments (Rule 44 § 5).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1964 and lives in Nancy. He is a university lecturer and researcher in private law and is a member of the French civil service.

9. On 1 September 1995 he was appointed to a post at the French University of the Pacific in Nouméa, New Caledonia, which at the material time was a French overseas territory. The holder of the post was required to live in the territory.

10. The applicant applied to be registered on the electoral rolls for his place of residence. He was entered on the general electoral roll for the municipality of Nouméa but was refused registration on the special electoral roll for the 1998 ballot on self-determination. On 7 April 1997 the mayor of Nouméa notified him that he had been deemed not to satisfy the residence requirements laid down in section 2 of the Act of 9 November 1988 in that he could not show that he had been permanently resident in New Caledonia since 6 November 1988. The applicant did not appeal against that decision.

11. On 5 May 1998 the Nouméa Accord was signed. It laid down transitional arrangements for the political organisation of New Caledonia and for its move to self-determination. It altered New Caledonia's constitutional status, making it a *sui generis* territory with its own specially designed institutions. Article 77 of the Constitution was consequently amended to provide that the measures required for the implementation of the Accord were to be laid down in an institutional Act.

12. Institutional Act no. 99-209 of 19 March 1999 brought about the twelfth institutional reform in New Caledonia since 1853, giving it its ninth different status since 1976. It strengthened Congress's powers and introduced a ten-year residence requirement for taking part in the election of members of Congress and the provincial assemblies.

13. On 9 April 1999 the applicant applied to be registered on the special electoral roll for the elections to Congress and the provincial assemblies on 9 May 1999 in the municipality of Nouméa. He was refused registration on the ground that he could not show that he had been permanently resident in New Caledonia in the ten years prior to 9 May 1999.

14. The applicant applied to the Nouméa Court of First Instance for a review of the conformity of the Act with the Convention, and for registration on the special electoral roll for the municipality of Nouméa. On 3 May 1999 the court dismissed his applications.

15. The applicant appealed on points of law to the Court of Cassation, complaining that the Court of First Instance had found against him despite the fact that the refusal to register him contravened various provisions of domestic and international law, in particular Articles 1 and 3 of the Constitution of 4 October 1958, Articles 2, 7, 21-1 and 21-3 of the Universal Declaration of Human Rights of 10 December 1948, Article 14 of the Convention, Articles 2-1, 25 and 26 of the New York Covenant of 19 December 1966, Article 6 of the Declaration of the Rights of Man and the Citizen of 26 August 1789, Articles 225-1 and 432-7 of the new Criminal Code, and the Preamble to the Constitution of 27 October 1946.

16. On 13 July 2000 the Court of Cassation dismissed his appeal on the ground that the conditions for taking part in elections to Congress and the provincial assemblies followed from an institutional Act which ranked as constitutional law in that it reproduced the wording of the Nouméa Accord, which itself had constitutional status by virtue of Article 77 of the Constitution. It dismissed the applicant's arguments concerning the provisions of the Convention, holding in particular that the precedence accorded to international undertakings did not apply in the domestic legal order in relation to provisions ranking as constitutional law.

17. The applicant also produced to the Court a decision of 2 June 2000 in which the Court of Cassation had dismissed, on the same grounds, an appeal which was similar to his but which alleged a violation of Article 3 of Protocol No. 1.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL CASE-LAW

...

C. New Caledonia Institutional Act (no. 99-209) of 19 March 1999

Chapter I: Distribution of powers among the State, New Caledonia, provinces and municipalities

...

Section 1: Powers vested in the State and New Caledonia

...

Article 62

"Congress shall be the deliberative body of New Caledonia. It shall have fifty-four members: seven from the Loyalty Islands provincial assembly, fifteen from the Northern provincial assembly and thirty-two from the Southern provincial assembly.

Members of Congress shall be elected for a five-year term in the manner prescribed in Part V. ..."

Article 73

"The power to initiate territorial laws and regulations shall be vested conjointly in the Government and the members of Congress."

Section 2: Powers assigned to Congress

Article 83

"The powers assigned to New Caledonia by Chapter I of Part II shall be exercised by Congress, with the exception of those conferred by this Act on the Government or the President of the Government."

Article 84

"Congress shall adopt the budget and approve the accounts for New Caledonia. ..."

Article 86

"In criminal matters, Congress may make offences against territorial laws and regulations punishable by fines that are commensurate with the classification of petty and more serious offences [*contraventions et délits*] and do not exceed the maximum amount applicable for offences of the same nature under national legislation and regulations. It may also make such offences subject to such additional penalties as are provided for in national legislation and regulations for offences of the same nature.

Congress may also make provision for administrative penalties for any offence."

...

Chapter II: Territorial laws

Article 99

"Instruments by which Congress enacts provisions on the matters listed in the following paragraph shall be designated as 'territorial laws'.

Territorial laws may be enacted in the following areas, being those in which powers are exercised by New Caledonia, or from the date on which they are transferred pursuant to this Act:

(1) symbols of identity and name as referred to in Article 5;

(2) rules on the assessment and collection of taxes, duties or charges of any kind;

(3) basic principles governing labour law, trade-union law and social-security law;

(4) rules on aliens' access to employment;

(5) customary civil status, rules governing customary land and customary assemblies; boundaries of customary areas; procedure for appointing members of the Customary Senate and the customary councils;

(6) rules governing hydrocarbons, nickel, chromium and cobalt;

(7) rules governing publicly owned land in New Caledonia and the provinces, subject to the provisions of Article 127, point (13);

(8) rules on access to employment, pursuant to Article 24;

(9) rules on civil status and capacity, systems of matrimonial property, inheritance and voluntary dispositions;

(10) basic principles concerning ownership, rights *in rem* and civil and commercial obligations;

(11) apportionment among the provinces of the operating grant and the equipment grant referred to in paragraphs I and II of Article 181; and

(12) powers transferred and the schedule for their transfer, as provided in Section 1 of Chapter I of Part II."

...

Part V: Elections to Congress and the provincial assemblies
Chapter II: Electorate and electoral rolls

Article 188

"I. Congress and the provincial assemblies shall be elected by an electorate composed of persons who

(a) satisfy the conditions for registration on New Caledonia's electoral rolls for the ballot of 8 November 1998; or

(b) are listed in the appended table and have been resident in New Caledonia for ten years on the date of the election to Congress and the provincial assemblies; or

(c) have reached the age of majority after 31 October 1998 and can either show that they have been resident in New Caledonia for ten years prior to 1998, or have a parent who was eligible to vote in the ballot of 8 November 1998, or have a parent who is listed in the appended table and has been resident in New Caledonia for ten years on the date of the election. ..."

D. Views of the United Nations Human Rights Committee, dated 15 July 2002

"Examination of the merits

11.2 The Committee has to determine whether the restrictions imposed on the electorate for the purposes of the local referendums of 8 November 1998 and in 2014 or thereafter constitute a violation of articles 25 and 26 of the Covenant, as the authors maintain.

...

13.3 In the present case, the Committee has taken note of the fact that the local ballots were conducted in the context of a process of self-determination of the population of New Caledonia. ...

13.5 In relation to the authors' complaints, the Committee observes, as the State party indeed confirms, that the criteria governing the right to vote in the referendums have the effect of establishing a restricted electorate and hence a differentiation between (a) persons deprived of the right to vote, including the author(s) in the ballot in question, and (b) persons permitted to exercise this right, owing to their sufficiently strong links with the territory whose institutional development is at issue. The question which the Committee must decide, therefore, is whether this differentiation is compatible with article 25 of the Covenant. The Committee recalls that not all differentiation constitutes discrimination if it is based on objective and reasonable criteria and the purpose sought is legitimate under the Covenant.

13.6 The Committee has, first of all, to consider whether the criteria used to determine the restricted electorates are objective.

...

13.8 The Committee considers that the above-mentioned criteria are based on objective elements for differentiating between residents as regards their relationship with New Caledonia, namely the different forms of ties to the territory, whether specific or general – in conformity with the purpose and nature of each ballot. The question of the discriminatory or non-discriminatory effects of these criteria nevertheless arises.

...

13.10 ... the Committee considers that the criterion used for the 1998 referendum establishes a differentiation between residents as regards their relationship to the territory, on the basis of the length of 'residence' requirement (as distinct from the question of cut-off points for length of residence), whatever their ethnic origin or national extraction. ...

13.11 The Committee therefore considers that the criterion used for the 1998 referendum did not have the purpose or effect of establishing different rights for different ethnic groups or groups distinguished by their national extraction.

...

13.13 Finally, the Committee considers that in the present case the criteria for the determination of restricted electorates make it possible to treat differently persons in objectively different situations as regards their ties to New Caledonia.

13.14 The Committee also has to examine whether the differentiation resulting from the above-mentioned criteria is reasonable and whether the purpose sought is lawful *vis-à-vis* the Covenant.

...

13.16 The Committee recalls that, in the present case, article 25 of the Covenant must be considered in conjunction with article 1. It therefore considers that the criteria established are reasonable to the extent that they are applied strictly and solely to ballots held in the framework of a self-determination process. ...

...

13.18 Consequently, the Committee considers that the criteria for the determination of the electorates for the referendums of 1998 and 2014 or thereafter are not discriminatory, but are based on objective grounds for differentiation that are reasonable and compatible with the provisions of the Covenant.

...

14.2 The Committee considers that it is not in a position to determine the length of residence requirements. It may, however, express its view on whether or not these requirements are excessive. In the present case, the Committee has to decide whether the requirements have the purpose or effect of restricting in a disproportionate manner, given the nature and purpose of the referendums in question, the participation of the 'concerned' population of New Caledonia.

...

14.5 The Committee considers, first, that the cut-off points adopted do not have a disproportionate effect, given the nature and purpose of the referendums in question, on the authors' situation, particularly since their non-participation in the first referendum manifestly has no consequences for nearly all of them as regards the final referendum.

14.6 The Committee further considers that each cut-off point should provide a means of evaluating the strength of the link to the territory, in order that those residents able to prove a sufficiently strong tie are able to participate in each referendum. The Committee considers that, in the present case, the difference in the cut-off points for each ballot is linked to the issue being decided in each vote: the 20-year cut-off point – rather than 10 years as for the first ballot – is justified by the time frame for self-determination, it being made clear that other ties are also taken into account for the final referendum.

14.7 Noting that the length of residence criterion is not discriminatory, the Committee considers that, in the present case, the cut-off points set for the referendum

of 1998 and referendums from 2014 onwards are not excessive inasmuch as they are in keeping with the nature and purpose of these ballots, namely a self-determination process involving the participation of persons able to prove sufficiently strong ties to the territory whose future is being decided. This being the case, these cut-off points do not appear to be disproportionate with respect to a decolonization process involving the participation of residents who, over and above their ethnic origin or political affiliation, have helped, and continue to help, build New Caledonia through their sufficiently strong ties to the territory.

15. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it do not disclose a violation of any article of the Covenant."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL No. 1

A. The parties' submissions

18. The applicant relied on 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."

19. He submitted that as a university lecturer, he was bound by a residency rule and that, moreover, he could not remain registered on the electoral rolls of a municipality in mainland France. Accordingly, although he was obliged to live in the place where he worked, he was not able to vote in the territory. He pointed out that he had applied to be registered on the special electoral roll for the election of members of Congress. What that entailed, in his submission, was not a ballot on self-determination which could be restricted to the population concerned. Rather, it involved the election of a body empowered to pass legislation in the form of "territorial laws", which could, among other things, establish criminal offences punishable by up to ten years' imprisonment.

20. The Government relied as their main submission on Articles 21 and 99 of the Institutional Act of 19 March 1999. They acknowledged that the powers conferred on Congress were extensive, but considered that on account of the significance of the areas in which the State retained jurisdiction, Congress did not have sufficient powers to be regarded as a "legislature" within the meaning of Article 3 of Protocol No. 1 in the same way as the National Assembly and the Senate.

21. In the alternative, they submitted that the residence criterion pursued a legitimate aim and was not disproportionate.

They observed, firstly, that the cut-off points as to length of residence addressed the concern expressed by representatives of the local population during the negotiation of the Nouméa Accord that the ballots should reflect the will of the population "concerned" and that their results should not be affected by mass voting by recent arrivals in the territory who did not have strong ties with it.

The Government pointed out that the ballots were being held as part of a self-determination process and that the system described was incomplete and provisional, as in the case of *Mathieu-Mohin and Clerfayt v. Belgium* (judgment of 2 March 1987, Series A no. 113).

22. Conditions had been attached to the right to vote since 1988 with a view to increasing cohesion across the territory, enabling it to achieve a better geographical and economic balance and allowing the population to make a free and informed decision about the nature of links between the territory and France by exercising their constitutional right to self-determination. Voters had been eligible to take part in the ballot if they were registered on the territory's electoral roll on polling day and had been continuously resident since the date of the referendum approving the bill.

23. The Government added that the restriction on the right to vote was the direct and necessary consequence of establishing New Caledonian citizenship and that the conditions for being registered on the special electoral roll were identical to those for obtaining such citizenship.

Lastly, they stressed that the residence requirement had been instrumental in alleviating a particularly acute and bloody conflict. They accordingly submitted that the aim pursued by the requirement in question was perfectly legitimate.

24. They further submitted that the residence requirement was not disproportionate. The applicant had been registered on the ordinary electoral rolls until his departure and there had been no restriction on his enjoyment of the right to vote in general ballots – in other words, those not solely concerning the territory of New Caledonia. The Government added that only 7.5% of the electorate had been excluded from the referendum of 8 November 1998 and the elections of 9 May 1999, and that most of those had not intended to remain in New Caledonia. Accordingly, the voters excluded had been those who were less concerned by issues relating to the administration of the territory's autonomy and had less of a lasting interest in its problems.

25. The Government relied on the findings of the United Nations Human Rights Committee, which, when the same problem had been referred to it, had expressed the view on 15 July 2002 that the facts before it did not disclose any violation of the International Covenant on Civil and Political Rights.

26. In the further alternative, the Government submitted that the restriction had been justified by compelling local requirements. They referred to Article 56 § 3 of the Convention and to the drafting history of the Convention, emphasising that the purpose of that provision had been to "take into account the autonomy afforded in such matters to certain overseas territories". They added that when France had ratified the Convention and Protocols Nos. 1 and 4, it had declared that each of those instruments would "apply to the whole territory of the Republic, having due regard, where the overseas territories are concerned, to local requirements, as mentioned in Article 63 [current Article 56]".

27. The Government submitted that in the instant case there was positive and conclusive proof of a compelling requirement within the meaning of the *Tyrer v. the United Kingdom* judgment (25 April 1978, Series A no. 26). After a turbulent political and organisational history, the process of institutional development set out in the Institutional Act of 19 March 1999 struck a balance that had created a more peaceful political climate in New Caledonia and enabled the territory to continue its economic and social development.

28. As to the observations by the third parties, the Government observed at the outset that they had been resident in New Caledonia for more than ten years on the date of their intervention and that the outcome of the application was therefore no longer relevant to them, in the light of Article 188 of the Institutional Act of 19 March 1999.

29. The Government further pointed out that the third parties had already referred the same facts to the United Nations Human Rights Committee, which had expressed the view on 15 July 2002 that there had been no violation of the International Covenant on Civil and Political Rights.

30. Having regard to those considerations, the Government submitted that the complaint under Article 3 of Protocol No. 1 did not disclose a violation.

B. The third parties' submissions

31. The third parties observed, firstly, that France had not made any reservations limiting the territorial application of the Convention under Article 56 § 1 (former Article 63). They submitted that local requirements, if they referred to the specific legal status of a territory, had to be of a compelling nature. In their submission, there was no objective indication of any such requirements, since a system of universal suffrage was in place.

32. With regard to Article 3 of Protocol No. 1, the third parties emphasised that the word "legislature" did not necessarily mean only the national parliament. The New Caledonian Congress was thus a legislature with the power to enact "territorial laws".

They added that, as one of them had continuously enjoyed the unrestricted right to vote in elections to the legislative bodies in New Caledonia since settling permanently in the territory, the very essence of his right to vote had been impaired. Furthermore, the State's margin of appreciation, they argued, was strictly limited by the obligation to observe the fundamental principle underlying Article 3, namely "the free expression of the opinion of the people in the choice of the legislature".

They submitted that that obligation could not be met where New Caledonian electoral legislation provided that each list had to obtain the votes of at least 5% of registered voters to qualify for a share of the seats and that registered voters not satisfying the residence requirement were excluded from the electorate in question. They added that, in such circumstances, the electorate could not even be regarded as representative of the territory in which they lived.

They further argued that this withdrawal of an acquired right breached Article 17 of the Convention.

33. The third parties did not dispute that a State could set a minimum length-of-residence requirement for voters. They contended, however, that such a condition should be interpreted strictly and relied on the freedom to choose one's residence within the meaning of Article 2 of Protocol No.4.

34. The third parties submitted that on account of their respective professions, they would be affected by "territorial laws" and would be denied the right to vote for their representatives in Congress despite the fact that they had settled in New Caledonia on a permanent and full-time basis since 1991 and were intending to stay and even retire there.

35. They further maintained that the exclusion of French nationals or naturalised citizens from the New Caledonian electorate as a result of discrimination on the ground of national extraction or parentage infringed Article 14 of the Convention.

C. The Court's assessment

36. The Court reiterates at the outset that the word "legislature" does not necessarily mean the national parliament; it has to be interpreted in the light of the constitutional structure of the State in question. In the case of *Mathieu-Mohin and Clerfayt*, the 1980 constitutional reform in Belgium had vested in the Flemish Council sufficient competence and powers 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 *Mathieu-Mohin and Clerfayt*, cited above, p. 23, § 53, and *Matthews v. the United Kingdom* [GC], no. 24833/94, § 40, ECHR 1999-I; see also the Commission's decisions on the application of Article 3 of Protocol No. 1 to regional parliaments in Austria (*X v. Austria*, no. 7008/75, decision of 12 July 1976, Decisions and

Reports (DR) 6, p. 120) and in Germany (*Timke v. Germany*, no. 27311/95, decision of 11 September 1995, DR 82-A, p. 158).

37. The Court notes that in the instant case the Institutional Act of 19 March 1999 establishes the principle of New Caledonian citizenship, which was one of the major innovations resulting from the Nouméa Accord and the Act of 9 November 1988, and provides for the successive transfer of powers from the State to New Caledonia. General power is vested in the provinces, while the State and New Caledonia are assigned powers in specified areas.

38. Part III of the 1999 Institutional Act deals with the institutions in place in New Caledonia, in particular Congress. It is described as the deliberative assembly of New Caledonia (Article 62) and its members, elected for a five-year term, are members of the provincial assemblies. It manages the ordinary affairs of New Caledonia. The power to initiate territorial laws and regulations is vested conjointly in the Government and the members of Congress (Article 73).

39. Chapter 2 establishes a new category of "territorial laws", which are passed by Congress and rank as statute. Territorial laws, whose scope is clearly delimited and extends to only some of the fields in which New Caledonia has rule-making powers, are systematically submitted to the *Conseil d'Etat* for its opinion and, once enacted, have statutory force. They may also be reviewed by the Constitutional Council, prior to enactment, on an application by the High Commissioner, the Government, the speaker of Congress, the speaker of a provincial assembly or at least eighteen members of Congress.

40. Among its other powers, Congress adopts the budget and approves the accounts for New Caledonia. In criminal matters, it may make offences against territorial laws and regulations punishable by fines that are commensurate with the classification of petty and more serious offences (*contraventions et délits*) and do not exceed the maximum amount applicable for offences of the same nature under French national legislation and regulations. Subject to validation of its decision by means of a law, it may also make provision, in the case of offences against the territorial laws and regulations it passes, for prison sentences that are commensurate with the classification of relatively serious offences (*délits*) and do not exceed the maximum sentences applicable for offences of the same nature under French national legislation and regulations.

41. The Court must ensure that "effective political democracy" is properly served in the territories to which the Convention applies, and in this context, it must have regard not solely to the strictly legislative powers which a body has, but also to that body's role in the overall legislative process.

42. Having regard to the powers conferred on Congress in the 1999 Institutional Act, the Court considers that it is no longer a purely

consultative body but has become an institution with a decisive role to play, depending on the issues being dealt with, in the legislative process in New Caledonia.

43. It therefore finds that Congress is sufficiently involved in this specific legislative process to be regarded as part of the "legislature" of New Caledonia for the purposes of Article 3 of Protocol No. 1.

44. The Court must next determine whether it is compatible with that Article to restrict the right to vote in elections to the New Caledonian Congress to persons who have been resident for at least ten years in the territory.

45. The Court reiterates that the rights set out in Article 3 of Protocol No. 1 are not absolute, but may be subject to limitations. Since Article 3 recognises them without setting them forth in express terms, let alone defining them, there is room for "implied limitations" (see *Labita v. Italy* [GC], no. 26772/95, § 201, ECHR 2000-IV).

46. Contracting States have a wide margin of appreciation, given that their legislation on elections varies from place to place and from time to time. The rules on granting the right to vote, reflecting the need to ensure both citizen participation and knowledge of the particular situation of the region in question, vary according to the historical and political factors peculiar to each State. The number of situations provided for in the legislation on elections in many member States of the Council of Europe shows the diversity of possible choice on the subject. However, none of these criteria should in principle be considered more valid than any other provided that it guarantees the expression of the will of the people through free, fair and regular elections. For the purposes of applying Article 3, any electoral legislation must be assessed in the light of the political evolution of the country concerned, so that features that would be unacceptable in the context of one system may be justified in the context of another.

47. The State's margin of appreciation, however, is not unlimited. 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 any such 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 *Gitonas and Others v. Greece*, judgment of 1 July 1997, *Reports of Judgments and Decisions* 1997-IV, p. 233, § 39; *Matthews v. the United Kingdom* [GC], no. 24833/94, § 63, ECHR 1999-I; *Podkolzina v. Latvia*, no. 46726/99, § 33, ECHR 2002-II; and *Mathieu-Mohin and Clerfayt*, cited above, p. 23, § 52).

48. The former Commission and the Court have taken the view that having to satisfy a residence or length-of-residence requirement in order to

have or exercise the right to vote in elections is not, in principle, an arbitrary restriction of the right to vote and is therefore not incompatible with Article 3 of Protocol No. 1 (see *Hilbe v. Liechtenstein* (dec.), no. 31981/96, ECHR 1999-VI, and *Polacco and Garofalo v. Italy*, no. 23450/94, Commission decision of 15 September 1997, DR 90-A, p. 5).

49. In the instant case the 1999 Institutional Act provides for a restricted electorate for elections to the provincial assemblies and Congress. It limits the possibility of taking part in those elections to voters satisfying certain conditions, in particular that of residence in the territory for more than ten years. The applicant's application to be registered on the electoral rolls for elections to the provincial assemblies and Congress was refused on that account.

50. According to the French Government, the cut-off points as to length of residence address the concern expressed by representatives of the local population during the negotiation of the Nouméa Accord that ballots should reflect the will of the population "concerned" and that their results should not be affected by mass voting by recent arrivals in the territory who do not have strong ties with it. Furthermore, the restriction on the right to vote is, in their submission, the direct and necessary consequence of establishing New Caledonian citizenship.

51. The Court considers it possible that the applicant has established ties with New Caledonia and may therefore have felt that some of the above factors were not applicable to his case.

However, the law cannot take account of every individual case but must lay down a general rule. Furthermore, the applicant, who has since returned to mainland France, cannot argue that he is affected by the acts of political institutions to the same extent as resident citizens. His position is therefore different from that of a resident citizen, a fact capable of justifying the residence requirement (see *Hilbe*, cited above).

52. Having regard to those various considerations, the Court finds that the residence requirement pursues a legitimate aim in the instant case.

53. It remains to be determined whether the requirement of ten years' residence in order for the applicant to take part in elections to Congress is proportionate to the aim pursued.

54. It is not disputed in the instant case that the decision not to register the applicant on the special electoral roll was taken in circumstances which left no room for arbitrariness.

55. The Court reiterates, however, that the object and purpose of the Convention requires its provisions to be interpreted and applied in such a way as to make their stipulations not theoretical or illusory but practical and effective (see, for example, *United Communist Party of Turkey and Others v. Turkey*, judgment of 30 January 1998, *Reports* 1998-I, p. 18, § 33, and *Matthews*, cited above, § 34).

56. In the *Polacco and Garofalo* case cited above, only those who had been living continuously in the Trentino-Alto Adige Region for at least four years could be registered to vote in elections for the Regional Council, which were held every five years. The former Commission took the view that that requirement was not disproportionate to the aim pursued, given the region's particular social, political and economic situation. It accordingly considered that it could not be regarded as unreasonable to require voters to reside there for a lengthy period of time before they could take part in local elections, in order to acquire a thorough understanding of the regional context so that their vote could reflect the concern for the protection of linguistic minorities.

57. In the instant case, although the applicant did not intend to remain in New Caledonia, he was nonetheless subject to the legislation passed by Congress and, in particular, to criminal statutes which could provide for sentences of up to ten years' imprisonment. The ten-year residence requirement, moreover, corresponds to two terms of office of a member of Congress.

Accordingly, that requirement might appear disproportionate to the aim pursued.

58. However, it remains to be determined whether there are local requirements in New Caledonia, within the meaning of Article 56, such that the restriction in question on the right to vote may be deemed not to breach Article 3 of Protocol No. 1.

59. The Court observes that, when depositing the instruments of ratification of the Convention and of Protocol No. 1 on 3 May 1974, France declared that these would apply to "the whole territory of the Republic, having due regard, where the overseas territories are concerned, to local requirements, as mentioned in Article 63 [current Article 56] of the Convention".

60. In *Tyrer v. the United Kingdom* (cited above, pp. 18-19, § 38) the Court held that before (former) Article 63 could apply, there would have to be "positive and conclusive proof of a requirement". Local requirements, if they refer to the specific legal status of a territory, must be of a compelling nature if they are to justify the application of Article 56 of the Convention.

61. The Court notes that New Caledonia's current status reflects a transitional phase prior to the acquisition of full sovereignty and is part of a process of self-determination. The system in place is "incomplete and provisional", like that examined by the Court in the *Mathieu-Mohin and Clerfayt* case cited above.

62. After a turbulent political and institutional history, the ten-year residence requirement laid down in the Institutional Act of 19 March 1999 has been instrumental in alleviating the bloody conflict. This local factor, resulting from problems that are more deep-seated and have more far-reaching consequences than the linguistic disputes at the origin of the

Polacco and Garofalo and *Mathieu-Mohin and Clerfayt* cases cited above, has brought about a more peaceful political climate in New Caledonia and has enabled the territory to continue its political, economic and social development.

63. As the United Nations Human Rights Committee noted on 15 July 2002 (see above, paragraph 14.7 of the Views):

> "... the cut-off points set for the referendum of 1998 and referendums from 2014 onwards are not excessive inasmuch as they are in keeping with the nature and purpose of these ballots, namely a self-determination process involving the participation of persons able to prove sufficiently strong ties to the territory whose future is being decided. This being the case, these cut-off points do not appear to be disproportionate with respect to a decolonization process involving the participation of residents who, over and above their ethnic origin or political affiliation, have helped, and continue to help, build New Caledonia through their sufficiently strong ties to the territory."

64. The Court therefore considers that the history and status of New Caledonia are such that they may be said to constitute "local requirements" warranting the restrictions imposed on the applicant's right to vote.

65. In those circumstances, the very essence of the applicant's right to vote, as guaranteed by Article 3 of Protocol No. 1, has not been impaired.

It follows that there has been no violation of that provision.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 3 OF PROTOCOL No. 1

66. The applicant alleged in addition that, as a resident of New Caledonia, he had been the victim of discrimination contrary to Article 14 of the Convention, which provides:

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

67. The Government did not address this complaint separately.

68. In view of its above conclusion that there has been no violation of Article 3 of Protocol No. 1 taken alone, the Court does not consider it necessary to consider the complaint under Article 14 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been no violation of Article 3 of Protocol No. 1;

2. *Holds* that it is not necessary to examine separately the complaint under Article 14 of the Convention;

Done in French, and notified in writing on 11 January 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

A.B. BAKA
President