

COUNCIL OF EUROPE

EUROPEAN COMMISSION OF HUMAN RIGHTS

The applicant's identity
may be disclosed.
L'identité du requérant
peut être divulguée.

DECISION OF THE COMMISSION

AS TO THE ADMISSIBILITY

Application No. 11100/84
by FRYSCHE NASJONALE PARTIJ AND OTHERS
against the Netherlands

The European Commission of Human Rights sitting in private
on 12 December 1985, the following members being present:

MM G. SPERDUTI, Acting President
G. JÖRUNDSSON
G. TENEKIDES
S. TRECHSEL
B. KIERNAN
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.C. SOYER
H. DANELIUS
J. CAMPINOS
H. VANDENBERGHE
Sir Basil HALL

Mr H.C. KRÜGER, Secretary to the Commission

Having regard to Art. 25 of the Convention for the Protection
of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 31 January 1984
by Fryske Nasjonale Partij and others against the Netherlands and
registered on 20 August 1984 under file No. 11100/84;

Having regard to the report provided for in Rule 40 of the
Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

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THE FACTS

The facts of the case as they have been submitted by the applicants may be summarised as follows.

The first applicant is a Frisian political party with registered office at Ljouwert (Leeuwarden), the Netherlands.

The second applicant is a member of the Provincial Legislature (Gedeputeerde Staten) of Friesland for the first applicant. She was born in 1931 and resides at Boarnburgum, the Netherlands.

The third applicant was born in 1936, is a veterinary surgeon by profession and resides at Beetsterweach, the Netherlands. He was put forward as a candidate by the second applicant for the August 1983 elections of the First Chamber of the States General (Eerste Kamer der Staten-Generaal).

In the proceedings before the Commission the applicants are represented by Mr. T.Y. de Boer, a notary holding office at Damwâld, the Netherlands.

On 18 June 1981, the first applicant introduced a request in Frisian to be registered with the Electoral Registration Council (Kiesraad), but was informed that this request had to be translated into Dutch.

Since the first applicant refused to do so, it was informed on 25 June 1982 that its request could not be dealt with.

The first applicant thereupon, on 19 July 1982, appealed to the Council of State's Division for Jurisdiction (Afdeling Rechtspraak van de Raad van State). The appeal was introduced in Frisian.

However, on 27 August 1982, the President of the Council declared the appeal inadmissible as it had been introduced out of time.

On 13 October 1982, the first applicant again requested the chairman of the Electoral Registration Council, in Frisian, to be entered on the electoral register, but was informed on 12 November 1982 that the letter could not be dealt with since it was not written in Dutch.

Subsequently, the first applicant appealed to the Council of State's Division for Jurisdiction on 17 November 1982.

However, on 17 February 1983 the Secretary of the Council informed the first applicant that as the Council could not deal with submissions in Frisian, a translation into Dutch should be submitted within thirty days.

The first applicant maintained that it was entitled to use the Frisian language for introducing its appeal and, consequently, refused to submit the translation requested.

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On 14 April 1983, the President of the Council declared the first applicant's appeal inadmissible because it had not been introduced in Dutch.

Thereupon, on 29 April 1983, the first applicant introduced a further appeal (Verzet) with the Council of State, again in Frisian.

On 30 May 1983 the first applicant was again given thirty days to submit a translation into Dutch of its appeal. The first applicant refused but offered to submit a translation into English.

On 4 October 1983 the Council declared the applicant's further appeal inadmissible since it had been introduced in Frisian and since no translation into Dutch had been submitted.

On 28 July 1983, the second applicant, a member of the Provincial legislature and leader of the first applicant's political group therein submitted a list of candidates, including the third applicant, for the election of the members of the First Chamber of the States General to the provincial governor (Commissaris der Koningin) of Friesland.

On 2 August 1983, the chairman of the central polling office (centraal stembureau) of the Electoral Registration Council for the election of the members of the First Chamber, informed the second applicant that on the list of candidates submitted by her, the names and addresses of several candidates had not been listed in Dutch. The second applicant was given the possibility to remedy this shortcoming on 3, 4 or 5 August 1983 at the Ministry of Home Affairs (Ministerie van Binnenlandse Zaken), The Hague.

The second applicant protested against this in a letter, in Frisian, to the Chairman of the Electoral Registration Council.

It appears that, on 8 August 1983, it came to the notice of the applicants, apparently via the radio and the press, that the candidates concerned had been struck off the list.

The second applicant thereupon appealed to the Council of State's Division for Jurisdiction on 9 August 1983.

By telegram of 10 August 1983, the President of the Council of State requested the second applicant to submit a translation into Dutch of her appeal before 12 August 1983.

The second applicant replied on 11 August 1983 that she did not intend to submit such a translation, whilst drawing attention to the fact that the Administrative Litigation Division of the Council of State (Afdeling voor geschillen van bestuur van de Raad van State) did accept letters in Frisian.

On 15 August 1983, the President of the Council of State's Division for Jurisdiction declared the second applicant's appeal inadmissible since she had failed to submit a translation into Dutch of her complaints.

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COMPLAINTS

The applicants complain that their party and its members were prevented from taking part in parliamentary elections by the decisions of the Electoral Registration Council and the Council of State. They submit that this constitutes a violation of Art. 3 of Protocol No. 1 to the Convention.

The applicants further complain that they have been prevented from using the Frisian language for administrative and political purposes in violation of Arts. 9 and 10 of the Convention. They submit that the interference with their rights under these provisions was arbitrary, in particular given the fact that the Electoral Registration Office had accepted lists in Frisian for the 1971 and 1974 elections of the First Chamber. The applicants therefore claim that the interference cannot be justified on any of the grounds listed in the second paragraph of these provisions.

The applicants also complain that they were denied access to court and a fair trial. They refer to the decision of the Council of State's Division for Jurisdiction of 27 August 1982 to demonstrate that the Council did not appear to have any difficulty with the Frisian language. They allege a violation of Art. 6, para. 1 of the Convention, as well as of Art. 13 of the Convention.

Moreover, the applicants complain that they have been discriminated against and they allege a violation of Art. 14 of the Convention, read in conjunction with, in particular, Arts. 6 and 13 of the Convention.

Finally, the applicants allege that their rights under the Convention have been limited to a greater extent than provided for by the Convention and they invoke Art. 17 of the Convention in this respect.

THE LAW

1. The applicants have introduced various complaints about the refusal by the Netherlands authorities to allow them to use the Frisian language.

The Commission notes that the applicants did bring the substance of the complaints they now bring before the Commission, before the competent national authorities, but that these complaints were declared inadmissible since they were introduced in Frisian.

The question thus arises whether the applicants can be considered to have properly exhausted domestic remedies within the meaning of Art. 26 of the Convention.

The Commission notes that the use of the Frisian language constitutes the very essence of the complaints the applicants bring before the Commission. It further notes that the Council of State's Division for Jurisdiction decided, in final instance, that the applicants were not entitled to use the Frisian language when introducing their complaints.

Therefore, the Commission is of the opinion that the applicants, in the circumstances of the present case, cannot be said to have failed to exhaust the domestic remedies available to them.

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2. The applicants have complained that by preventing them to take part in parliamentary elections the Netherlands authorities violated Art. 3 of Protocol No. 1 to the Convention, which reads:

"The High Contracting parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

The Commission recalls that this provision guarantees in principle the right to vote and the right to stand as a candidate at the election of the legislative body (cf Dec.No. 6850/74, 18.5.76, DR 5, p. 90).

The Commission notes that the applicants were not as such prevented from standing as candidates, but that problems arose concerning the language in which their registration for election should take place.

However, the Commission finds that nothing prevented the applicants from submitting a translation into Dutch of their request for registration of the name of the party and the list of candidates respectively. Moreover, neither Art. 3 of Protocol No. 1 to the Convention, nor any other provision of the Convention guarantees the right to use a particular language for electoral purposes. Consequently, the Commission is of the opinion that the applicants may not claim that their right to stand as a candidate for election was limited by the requirement that registration could only take place in Dutch (cf. Dec. No. 10650/83, 17.5.85, unpublished).

It follows that this part of the application must be rejected as manifestly ill-founded within the meaning of Art. 27, para. 2 of the Convention.

3. The applicants have further complained that the refusal to allow them to use the Frisian language for administrative and political purposes constituted a violation of Arts. 9 and 10 of the Convention.

According to Art. 9 of the Convention everyone has the right to freedom of thought, conscience and religion. Art. 10 of the Convention guarantees the right to freedom of expression, including freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

However, the Commission recalls that these provisions do not guarantee "linguistic freedom" as such. In particular, they do not guarantee the right to use the language of one's choice in administrative matters (cf Dec.No. 2333/64, 15.7.65, Collection 16, p. 58 at p. 71).

The Commission further notes that the applicants have failed to demonstrate that they were also prevented from using the Frisian language for other purposes.

This part of the application must therefore be rejected under Art. 27, para. 2 of the Convention as being incompatible ratione materiae with the provisions of the Convention.

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4. The applicants have further complained that they were denied access to court and that they were not given a fair trial. They have invoked Art. 6 of the Convention in this respect which provides, inter alia, that

"In the determination of his civil rights and obligations....everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law..."

However, the Commission finds that the right to use a particular language in administrative matters does not fall within the scope of this provision of the Convention.

It follows that this part of the application must also be rejected under Art. 27, para. 2 as being incompatible ratione materiae with the provisions of the Convention.

5. The applicants have also complained that they did not have an effective remedy before a national authority in respect of their complaints and they have invoked Art. 13 of the Convention which provides that

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity. "

However, the Commission notes that the applicants' complaints to the Council of State were declared inadmissible since they were introduced in Frisian and since the applicants failed to provide a translation into Dutch. Since nothing prevented the applicants from submitting such a translation, the Commission finds that they may not now complain that they did not have an effective remedy in respect of the alleged violations of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Art. 27, para. 2 of the Convention.

6. Furthermore, the applicants have complained that they have been discriminated against contrary to the provisions of the Convention, and they have invoked Art. 14 of the Convention, read in conjunction with, in particular, Arts. 6 and 13 of the Convention.

Art. 14 of the Convention provides that

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

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The Commission refers to its findings above that the applicants' complaints under Arts. 6, 9 and 10 of the Convention were incompatible ratione materiae with the provisions of the Convention. It follows that the applicants' complaints under Art. 14 of the Convention, read in conjunction with these provisions, must also be declared incompatible ratione materiae with the provisions of the Convention, within the meaning of Art. 27, para. 2 of the Convention.

With regard to the applicants' complaints under Art. 14 of the Convention, read in conjunction with Art. 13 of the Convention as well as in conjunction with Art. 3 of the Protocol No. 1 to the Convention, the Commission is of the opinion that these do not disclose any appearance of a violation of the Convention and, accordingly, they must be rejected as manifestly ill-founded within the meaning of Art. 27, para. 2 of the Convention.

7. Finally, the applicants have complained that their rights under the Convention have been limited to a greater extent than provided for by the Convention and they invoke Art. 17 of the Convention which provides that

"Nothing in this Convention may be interpreted as implying for any State or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

However, the Commission considers that the applicants' complaints do not raise any issue under this provision and it follows that in this respect, they must also be rejected as being manifestly ill-founded within the meaning of Art. 27, para. 2 of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE

Secretary to the Commission

President of the Commission

(H.C. KRÜGER)

(G. SPERDUTI)