



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

THIRD SECTION

DECISION

Application no. 58369/10  
STAATKUNDIG GEREFORMEERDE PARTIJ  
against the Netherlands

The European Court of Human Rights (Third Section), sitting on 10 July 2012 as a Chamber composed of:

Josep Casadevall, *President*,

Corneliu Bîrsan,

Alvina Gyulumyan,

Egbert Myjer,

Ineta Ziemele,

Luis López Guerra,

Kristina Pardalos, *judges*,

and Santiago Quesada, *Section Registrar*,

Having regard to the above application lodged on 6 October 2010,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant body is an association under Netherlands law. Named the Reformed Protestant Party (*Staatkundig Gereformeerde Partij*, hereinafter “SGP” as per its acronym in Dutch), it functions as a political party. Before the Court the SGP is represented by Messrs J.-P. Heering, S.O. Voogt and G.J.H. van Hoof, lawyers practising in The Hague, Rotterdam and Nieuwegein, respectively. The Netherlands Government

(“the Government”) were represented by their Agent, Mr R.A.A. Böcker, of the Ministry of Foreign Affairs.

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

### A. The applicant political party

3. The SGP was founded in 1918 and has, since 1922, consistently held one to three seats in the Lower House (*Tweede Kamer*) of the Netherlands Parliament.

4. The SGP is a confessional political party firmly rooted in historical Dutch Reformed Protestantism. Both the SGP’s Statement of Principles (*Program van Beginselen*) and its articles of association (*statuten*) state that the party bases itself directly on the infallible Word of God as revealed in the Bible. In addition to the Bible, the SGP acknowledges the Three Forms of Unity (*Drie Formulieren van Enigheid*) accepted by churches of the Dutch Reformed tradition, namely the Belgic Confession (*Nederlandse Geloofsbelijdenis*), the Heidelberg Catechism (*Heidelbergse Catechismus*) and the Canons of Dort (*Dordtse Leerregels*)<sup>1</sup>.

5. With its strong emphasis on religion as the inspiration of its politics, the SGP draws its membership from among Reformed Protestant believers of a traditional inclination but it has no formal links with any particular church.

6. It is a basic tenet of the SGP that Government should govern as God’s servant according to the Word of God. Government derives its authority not from the people, but from God Himself. This view is derived from scripture (Romans 13:1 and 13:4)<sup>2</sup>.

7. The SGP does not aim, in the first place, to win the majority of votes of the electorate, but rather it strives to promote and implement its principles. It uses Parliament as its arena to express those principles.

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<sup>1</sup> The “Three Forms of Unity” were adopted as statements of doctrine by the Synod of Dordrecht in 1618-19. The Belgic Confession was originally written in 1561 and summarises the Reformed Protestant faith in terms of the teachings of the reformer John Calvin (1509-1564). The Heidelberg Catechism, which dates from 1563, is a Reformed Protestant catechism in question-and-answer form. The Canons of Dort (or Dordrecht) are a five-point statement of dogma laid down by the Synod itself in response to Arminian, or Remonstrant, teaching which is dismissed as heretical. All three remain to this day reference documents of churches of the Dutch Reformed tradition, in the Netherlands and elsewhere (e.g. in Germany, North America, South Africa).

<sup>2</sup> Romans 13:1: “Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God.” Romans 13:4: “For he [i.e. the ruler] is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain: for he is the minister of God, a revenger to *execute* wrath upon him that doeth evil.” (KJV)

8. The SGP professes the absolute authority of the Word of God over all areas of societal life. The SGP rejects the idea of absolute equality of human beings, which it sees as false teaching of the French Revolution. In essence, the SGP believes that, although all human beings are of equal value as God's creatures, differences in nature, talents and place in society should be recognised. Scripture (in particular 1 Corinthians 11:3)<sup>1</sup> teaches that men and women have different roles in society. Thus, women are not inferior to men as human beings; but unlike men, women should not be eligible for public office.

9. Articles 7 and 10 of the applicant party's Statement of Principles spell out this view. They read as follows:

#### Article 7

"The Word of God holds that, on the basis of the order of creation, man and woman have each been given their own and distinct mission and place. In this order the man is the head of the woman. Any measures aimed at acknowledging the equality of men and women are to be regarded positively. Every effort at emancipation that negates the God-given mission and place of men and women is considered revolutionary and has to be combated forcefully."

#### Article 10

"The notion of [the existence of] a right to vote for women which results from a revolutionary striving for emancipation is incompatible with woman's calling. The latter equally holds true for the participation of women in both representative and administrative political organs. Women shall be led by their consciences as regards the question whether casting their vote is in accordance with their God-given place."

10. In its application form, the SGP emphasises that it considers its scriptural points of departure and principles to be crucial. They constitute the ultimate foundation for the functioning of the party in practice and they represent the deeply-rooted and profoundly-felt religious convictions of the party itself and its members. They are, indeed, felt to be the SGP's *raison d'être*.

11. The SGP maintains a political youth organisation, "SGP Youth" (*SGP-jongeren*), and a political science institute, the Guido de Brès Foundation (*Guido de Brès-Stichting*, named after the author of the Belgic Confession).

12. The SGP's income consists of membership fees, Government subsidy, donations and bequests, proceeds from the sale of its periodical, interest payments and income not elsewhere included. According to the SGP's 2011 annual report, the party's total income in 2011 was 1,536,922 euros (EUR), of which EUR 517,069 (including arrears referable

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<sup>1</sup> "But I would have you know, that the head of every man is Christ; and the head of the woman is the man; and the head of Christ is God." (KJV)

to 2010 in an amount of some EUR 45,000) consisted of Government subsidy.

13. On 24 June 2006 – after the rulings of the Regional Court in the civil proceedings (see below) – the SGP amended its Principles to enable women to become members of the party. Since 2007 the SGP has admitted women members, though still without allowing them to stand for election to public office.

## **B. The domestic proceedings**

### *1. Civil proceedings in the Regional Court*

14. A group of non-governmental organisations, the Clara Wichmann test case foundation (*Stichting proefprocessenfonds Clara Wichmann*, named after an early twentieth-century suffragette), the Netherlands section of the International Commission of Jurists (*Nederlands Juristen Comité voor de Mensenrechten*), the Humanist Committee on Human Rights (*Stichting Humanistisch Overleg Mensenrechten*), the Netherlands Association for Women’s Interests, Women’s Labour and Equal Citizenship (*Nederlandse Vereniging voor Vrouwenbelangen, Vrouwenarbeid en Gelijk Staatsburgerschap*), the Women’s Network Association (*Vereniging Vrouwennetwerk Nederland*) and other private associations and foundations which later abandoned the proceedings (hereinafter “Clara Wichmann Foundation and Others”) lodged a pair of actions under Netherlands civil law, one against the SGP, the other against the State, with the civil section of the Regional Court (*rechtbank*) of The Hague.

15. Their actions were brought pursuant to article 3:305a of the Netherlands Civil Code (*Burgerlijk Wetboek*). They were based on the associations’ and foundations’ goals as stated in their articles of association; as relevant to the case before the Court, these included the protection of women’s rights and interests. The grounds on which these actions were brought were, for all practical purposes, the same.

16. Clara Wichmann Foundation and Others stated that owing to the differential treatment according to gender laid down in its articles of association, the SGP violated fundamental rights of equal treatment of men and women and fundamental rights in terms of the right of women to political participation. In this sense, so it was argued, the general interest of society as such in the elimination of discrimination was being violated. It was claimed that the SGP would not allow women membership of the party and consequently to stand for election to organs of general representation, nor certain other privileges reserved to men. This violated Article 3 of Protocol No. 1 of the Convention in conjunction with Article 14 of the Convention, Article 1 of Protocol No. 12 of the Convention, Articles 25 and 26 of the 1966 International Covenant on Civil and Political Rights,

Article 7 of the 1979 Convention on the Elimination of All Forms of Discrimination against Women and relevant provisions of the Netherlands Constitution.

17. In the proceedings against the SGP Clara Wichmann Foundation and Others asked the Regional Court to hold that the SGP's position was in violation of the treaty and constitutional provisions aforementioned and consequently wrongful in respect of themselves and/or the persons whose interests they defended; to order SGP to change its bye-laws accordingly; and to annul the provisions of the SGP's bye-laws that created differential membership status between men and women. In the proceedings against the State, they sought the same finding of violations of treaty and constitutional provisions and an order for measures to put an end to what they argued was an unlawful situation.

18. On 7 September 2005 the Regional Court delivered judgments in both cases.

**(a) The judgment in the case against the SGP**

19. In the judgment given in the case against the SGP itself, the Regional Court found that the plaintiffs lacked standing on the ground that they had no legal interest. This finding was based essentially on the fact, as established, that no women had come forward who subscribed to the principles of the SGP and wished to become members for that reason. Although an appeal was lodged against this judgment with the Court of Appeal (*gerechtshof*) of The Hague, the proceedings were not actively pursued and the Court of Appeal eventually struck the case out of its list.

**(b) The judgment in the case against the State**

20. In the judgment given in the case against the State, the Regional Court found that the State had violated Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women by having granted subsidies to the SGP pursuant to the Political Parties Subsidies Act (*Wet subsidiëring politieke partijen*). Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women was held to be binding and to have direct effect in accordance with the Netherlands constitution. The Regional Court held that in having granted subsidies to the SGP, the State had acted unlawfully against Clara Wichmann Foundation and Others, having regard to the State's obligation to protect women's rights based on, in particular, Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women. The State was ordered to refrain from granting any such subsidy to the SGP for as long as the party continued to deny women membership of the party on an equal footing with men.

21. Based on this judgment two rather distinct sets of proceedings and appeals ensued, the first under Netherlands administrative law, the second under Netherlands civil law. They will be discussed separately below.

2. *Administrative proceedings concerning subsidies refused to the SGP*

22. On 20 December 2005 the Minister of the Interior and Kingdom Relations (*Minister van Binnenlandse Zaken en Koninkrijksrelaties* – “the Minister”), taking the view that he was bound by the Regional Court’s judgment, rejected the SGP’s application for a subsidy pursuant to the Political Parties Subsidies Act.

23. The SGP lodged an objection (*bezwaar*) with the Minister against this decision. With the Minister’s permission, the objection was referred to the administrative law section of the Regional Court of The Hague for adjudication without a prior administrative decision.

24. By decision of 30 November 2006 the Regional Court rejected the SGP’s appeal against the refusal to grant a subsidy, holding that, in view of the Regional Court’s judgment in the civil proceedings, the Minister would have acted unlawfully if he had granted the subsidy.

25. On 22 December 2006 the SGP lodged further appeal with the Administrative Jurisdiction Division of the Council of State (*Afdeling Bestuursrechtspraak van de Raad van State* – “the Administrative Jurisdiction Division”).

26. Clara Wichmann Foundation and Others were granted leave to join the proceedings as a third party.

27. In its judgment of 5 December 2007 the Administrative Jurisdiction Division acknowledged that Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women was binding and had direct effect but should not be construed as precluding the Minister from granting subsidies to the SGP pursuant to the Political Parties Subsidies Act as long as that party continued to bar women from membership of the party and, consequently, from standing for office in, among other legislative bodies, the Netherlands Parliament.

28. The Administrative Jurisdiction Division considered that while Article 7 (c) of the Convention on the Elimination of All Forms of Discrimination against Women provided that women should be ensured, on equal terms with men, the right to participate in non-governmental organisations and associations – which included political parties –, the text did not require that women should be ensured the right to participate in “all” such organisations and associations. Nor did the *travaux préparatoires* of the Convention on the Elimination of All Forms of Discrimination against Women admit of such an interpretation of Article 7.

29. The Administrative Jurisdiction Division went on to consider that in many States, including the Netherlands, the democratic structure of the state (*democratisch staatsbestel*), including the right to vote, was – like the

women's rights codified in the Convention on the Elimination of All Forms of Discrimination against Women – imposed by public international law. Application of Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women to a political party would, so it was held, encroach not only on the freedom rights of political parties, but also on the public interest of sufficient representation of the full electorate, as foreseen in the Netherlands constitutional order. This included the representation in the elected bodies of small minorities with views divergent from those held by the majority, as long as any such views did not violate criminal law.

30. The rights of women as found, for the purposes of this case, in Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women should be weighed against other internationally recognised rights of political parties: those of freedom of religion and conscience, freedom of assembly and association and freedom of expression.

31. The Political Parties Subsidies Act was aimed not at the financial stimulation of individual political parties, but served the public interest of creating a situation in which – among other things – the various religious beliefs that might exist in society were broadly reflected. The fact that the Political Parties Subsidies Act provided that all parties represented in the Netherlands parliament be granted subsidies on the same conditions – except when their conduct had led to a criminal conviction of illegal discrimination as provided for in article 16 of the Act – showed that the Netherlands legislature had explicitly chosen to leave to the judiciary any issues of denying subsidies to particular parties based on discrimination. The Administrative Jurisdiction Division endorsed this approach by holding that political parties, even those with opinions deviating from the majority, should not be excluded from participation in the public debate, provided that such deviating opinions did not violate criminal law. Otherwise, the legitimacy of the public debate would be compromised.

32. The Administrative Jurisdiction Division also attached value to the fact that in the Netherlands women were not precluded from joining – other – political parties and stand for election on equal terms with men. It held that nothing prevented women wishing to stand for office but otherwise adhering to views and convictions like those adhered to by the SGP from founding their own political party and possibly benefiting from subsidies granted pursuant to the Political Parties Subsidies Act. Therefore no real infringement of the rights guaranteed to women by Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women obtained in the Netherlands.

33. With reference to the Strasbourg Court's judgments in the cases of *Freedom and Democracy Party (ÖZDEP) v. Turkey* ([GC], no. 23885/94, § 44, ECHR 1999-VIII) and *Refah Partisi (the Welfare Party) and Others v. Turkey* ([GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 102,

ECHR 2003-II), the Administrative Jurisdiction Division also pointed out that the Court considered that States should show restraint in limiting the freedoms of political parties since they were essential for the proper functioning of a pluralistic and democratic society. Intervention in the functioning of political parties could only be justified in cases where a domestic court had found that a political party constituted a danger to the democratic legal order (*democratische rechtsorde*). This was not so in the present case.

34. The Administrative Jurisdiction Division thus granted the appeal lodged by the SGP and ordered the Minister to take a fresh decision based on its judgment.

### 3. *Proceedings in the Court of Appeal*

35. The State appealed to the civil section of the Court of Appeal of The Hague against the judgment of the civil section of the Regional Court of The Hague of 7 September 2005. The Court of Appeal granted the SGP leave to join the State as a party to the proceedings.

36. In its judgment of 20 December 2007 the Court of Appeal reiterated that the SGP had codified in its Statement of Principles, which were based on the Word of God, that the man is the head of the woman and that the woman was not allowed to be elected to Government office. It further held that Clara Wichmann Foundation and Others, the respondents in appeal, were not to be denied standing and that Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women was directly binding on the State. It remained to be assessed whether the State had violated said provision.

37. The Court of Appeal noted that the SGP distinguished between men and women to the extent that women were not allowed by the party to stand for election, without there being an objective justification for this difference in treatment. Women were, by that time, allowed to become members of the party, but were explicitly barred from standing for election. The SGP had sought to justify this distinction solely with reference to its religion, which was dismissed as not constituting objective justification.

38. In failing to take adequate measures to prevent the SGP from proceeding in this manner, the State had acted in violation of Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women as well as of Articles 25 and 26 of the International Covenant on Civil and Political Rights.

39. In the proceedings before the Court of Appeal, the SGP had argued that forcing the party to allow women to stand for election would violate its right to freedom of religion, of expression and of association as laid down in Articles 9-11 of the Convention. The Court of Appeal considered that the breach of the prohibition of discrimination based on gender of which Clara Wichmann Foundation and Others accused the SGP should be weighed

against the rights invoked by the SGP, provided those latter rights were indeed infringed by the finding that the prohibition of discrimination had been breached.

40. As regards Article 9 of the Convention, the Court of Appeal held that this provision did not guarantee an absolute right to freedom of religion. Expressions of religious belief should only be protected when they were a direct expression of that religion. The Court of Appeal found that, in spite of the deeply religious motives underpinning it in this particular case, preventing women from standing for election did not constitute conduct protected by Article 9 of the Convention as such conduct could not be defined as a direct expression of the SGP's religious beliefs. The Court of Appeal similarly failed to see how the SGP would be hindered in exercising its religious beliefs if it did not, or were forced not to, deny its female members the right to stand for election. Even if compelling the SGP to allow women to stand for election was to be construed as an infringement of its right to freedom of religion, such compulsion would not touch upon the core of that right; that core was the protection of personal religious beliefs and acts closely connected to it, such as acts of worship in the context of generally accepted religious ceremonies. The connection between the core of Article 9 and the practice of excluding women from the right to stand for election was therefore relatively tenuous.

41. As regards Article 11, the SGP had argued that granting the female members of the party the right to stand for election would violate the party's members' right, protected by Article 11, to assemble and to organise their party in accordance with their principles and, secondly, to their right freely to choose, without State intervention, who to elect as their representatives.

42. The Court of Appeal agreed with the SGP that forcing the party to allow women to stand for election would conflict with its ideological basic principles and would thus infringe its rights under Article 11. However, there was nothing preventing the SGP from organising itself otherwise and, bar this particular element, wholly in accordance with its basic principles. The Court of Appeal further held that if and when the SGP was forced to allow women to stand for election, nothing precluded it from freely deciding on such issues as composition of lists of candidates standing for elections and what political opinions such candidates should express. Such political opinions, the Court of Appeal held, could also include those not shared by the majority in the Netherlands, namely that women were by definition not suited for any Government office.

43. The Court of Appeal considered that neither the State nor the SGP had substantiated how having to allow female members to be able to stand for elections would infringe the SGP's rights under Article 10. It reiterated that nothing would preclude the SGP from expressing its opinions about women while allowing women to stand for election.

44. In terms of balancing these conflicting rights, the Court of Appeal had regard to the fact that the Convention did not allow any exceptions to the prohibition of discrimination based on gender, whereas it did allow certain limitations to the rights of freedom of religion, of assembly and association and of expression. Although not considering it to be decisive, it did attach value to this difference.

45. The Court of Appeal attached great importance to the fact that the alleged discrimination of women occurred in the context of a political party, rather than some other association that did not manifest itself in the public domain. It considered that political parties played an essential role within the democracy and a central one within the Netherlands electoral system, where one could only stand for office as a candidate for a political party. The Court of Appeal concluded that a democracy based on the rule of law (*rechtsstaat*) was fundamentally affected if representative bodies were formed, albeit to a small extent, through a process that violated the prohibition of discrimination based on gender. It had to be weighed against this that, as the Court of Appeal had already held, allowing women to stand for election did not infringe in their core the rights invoked by the SGP.

46. The Court of Appeal therefore concluded that the interest of maintaining the prohibition of discrimination should outweigh the rights invoked by the SGP, and that it was thus for the State to take measures effectively leading the SGP to grant women the right to stand for election. It added that the State ought to deploy a measure that was both effective while at the same time not impinging on the fundamental rights of the (members of the) SGP any more than was necessary.

47. Unlike the Regional Court, however, the Court of Appeal found that the State could not be ordered to stop granting subsidies to the SGP pursuant to the Political Parties Subsidies Act as the judiciary in the Netherlands had not the competence to order the State to take specific measures of any kind. Consequently the Court of Appeal overruled the Regional Court's judgment on this particular point.

#### 4. *Proceedings in the Supreme Court*

48. The State and the SGP each lodged a separate appeal on points of law (*cassatie*) to the Supreme Court (*Hoge Raad*). The Supreme Court joined the cases. All three appeals – Clara Wichmann Foundation and Others, the State and the SGP – were declared admissible.

49. The Supreme Court's reasoning on the merits included the following:

“4.1.1. The central issue in this case is the SGP's view that women should not enjoy the right to stand for election to the general representative bodies of government. This view is expressed in Article 10 of the SGP's Statement of Principles.

The rejection of the right of women to stand for election is grounded in the SGP's conviction that in God's order of creation men and women are admittedly complete

equals (they are ‘an equal bi-union within creation’ (*een gelijkwaardige tweedeling binnen de schepping*) but not the same and that they each have received their own specific, distinct calling and place. In this order, the man is the head of the woman: ‘The man was created first by God. The woman was taken from the man. In this [order], the woman is “subordinate” to the man, who is invested with “responsibility”, but definitely not inferior’ (Article 7 of the Statement of Principles with explanatory report). For that reason government is reserved for the man. This excludes the woman from government, which means that she should not be a member of political organs, whether representative or executive. The consequence of that, in the SGP’s view, is that women do not enjoy the right to stand for election (explanatory report on Article 10 [of the Statement of Principles]).

4.1.2. The SGP as a political party expresses its rejection in practice of women’s right to stand for election by not nominating women as candidates for election to general representative government bodies. The issue in the present case is whether the State should take action against this.

4.1.3. It is no longer an issue that the SGP did not admit women as (ordinary) party members either, as since the change in the bye-laws of 2006 women can be members of the SGP with voting rights in the general assembly and the right to be office-holders within the party. In the view of the SGP, incidentally, one can only become a member of the SGP if one subscribes to its basic principles and aims, including the Statement of Principles, so that all members, including female members, are legally bound to the Statement of Principles and the consequent view that government office and therefore the right to stand for election to general representative organs is not for women. The SGP is considering requiring new members to sign a written statement to the effect that the aspiring member subscribes to the basic principles and aims of the SGP.

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4.5.1. It follows [from the direct applicability of Article 7 (c) of the Convention on the Elimination of All Forms of Discrimination against Women] that the State has the duty towards its citizens, based on the provisions mentioned of the Convention on the Elimination of All Forms of Discrimination against Women, to ensure that political parties do not merely admit women as members, in so far as membership of a party is required for nomination as a candidate, but also to admit them to nomination as candidates itself. Only thus can the State effectively secure to women the right to stand for election as the Convention on the Elimination of All Forms of Discrimination against Women demands. The Convention on the Elimination of All Forms of Discrimination against Women does not leave the State any margin of appreciation on this point.

4.5.2. The above does not alter the fact that the right of women to equal treatment, as set out in, *inter alia*, Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women, may in particular cases come into conflict with other equally important basic rights, including freedom of religion and freedom of association, and that these rights must be weighed against each other in order to decide which should prevail. There is no reason to assume, as Clara Wichmann and Others argue, that this balancing exercise has been done already in Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women.

The State's and the SGP's position therefore raises the question whether an exception to equal rights for women, as set out in Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women, can be accepted in relation to the right to stand for election in a case like the present, in which a political party whose political aims are grounded on its religious convictions, based on these convictions deny women nomination as candidates for election to public elected bodies. In view of what follows, this question must be answered in the negative.

4.5.3. The basic rights of freedom of religion and freedom of association – and of course also freedom of expression, which, for the matter now in issue, has little if any independent significance next to the basic rights just mentioned – guarantee that citizens may unite in a political party on the basis of a religious or philosophical conviction and may express their conviction and the political principles and programmes based thereon within the framework of that party.

In a democratic state governed by the rule of law, however, those principles and programmes may only be given practical effect within the limits posed by laws and treaties.

4.5.4. The general representative bodies represent the entire population without making distinctions among the citizens of whom it is made up. They form the heart of the democracy and a guarantee for the democratic content of the State. The rights to vote and to stand for election are essential to guarantee the democratic content of these bodies. Both Article 4 of the Constitution and Article 25 of the International Covenant on Civil and Political Rights taken together with its Article 2 and, as far as women are concerned, Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women guarantee to everyone, without any distinction based on gender, the right to elect members of these bodies as well as to be elected to them. The said provisions mention the right to vote and the right to stand for election in the same breath, thus expressing that in a democracy they are each other's necessary pendant, since the voters must be able to determine for themselves who among them should be eligible.

4.5.5. Seen thus, since the possibility to exercise the right to stand for election goes to the core of the State's democratic functioning, it is unacceptable that a political formation in composing its lists of candidates violates a basic right that guarantees the elective rights of all citizens, regardless of whether such action reposes on a principle rooted for that formation in its religious or philosophical convictions. To that extent, the prohibition of discrimination set forth in Article 4 of the Constitution, Article 25 taken together with Article 2 of the International Covenant on Civil and Political Rights and, in the particular context of the present case, Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women outweighs the other basic rights in issue.

It follows from the above that the SGP's violation of the basic right, guaranteed by the Constitution and the said treaties, to be allowed to stand for election on an equal footing with men is not justified by the fact that its view of woman's calling and place in society is directly rooted in its religious conviction. Admittedly the SGP cannot be denied its conviction and the civil courts are not even competent to express an opinion on the question whether that conviction is of greater or lesser importance in the faith of the members of the party, and admittedly a democratic legal order requires tolerance in relation to opinion rooted in religious or philosophical convictions. All that, however, does not prevent the courts from finding the way in which the SGP puts

its convictions into practice in nominating candidates for general representative bodies unacceptable.

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#### 4.6. The State's specific obligations and the claims of Clara Wichmann and Others

4.6.1. It follows from the above that the State was wrong to take the position that its own balancing exercise entitled it not to take any measures against the SGP's failure to admit women to its lists of candidates for election to the general representative bodies.

The Court of Appeal was therefore right to conclude in [its] judgment that the State is under an obligation to take measures that will actually lead to the SGP granting the right to stand for election to women and that the State must adopt a measure to that purpose that will at the same time be effective and impinge as little as possible on the basic rights of the (members of the) SGP.

4.6.2. It does not follow, however, that the courts are competent or able to order the State to take specific measures to put a stop to the SGP's discrimination as regards the right of its female members to stand for election.

As was held in the Supreme Court's judgment of 21 March 2003, [(*Landelijk Jurisprudentie Nummer* [National Jurisprudence Number], "LJN") AE8462], the courts have not the competence to order the State to enact statutory legislation. The cross-appeal brought by Clara Wichmann and Others fails on this point. Leaving aside the fact that Clara Wichmann and Others have not, even in their cross-appeal in both cases, indicated what other measures the State would be in a position to take (apart from blocking the subsidy, which will be discussed hereafter), it is in the present case, which concerns the interrelation between a political party and the State, all the less possible in principle to give a court order for specific measures to meet the requirements of Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women because the choice of such measures to be taken by the State requires a balancing of interests which coincides with political assessments to a degree that cannot be expected from the courts.

This also applies to an order blocking the subsidy allotted to the SGP by the State. Moreover, as the Administrative Jurisdiction Division of the Council of State held [see paragraphs 27-34 above], neither Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women, nor the International Covenant on Civil and Political Rights, nor the Convention requires this and present legislation does not offer that possibility apart from the situation, which does not obtain in the present case, of a final and binding judgment of a criminal court convicting of discrimination within the meaning of the penal provisions contained in section 16 of the Political Parties Subsidies Act.

For the same reason set out in the second sub-paragraph, the Court of Appeal rightly denied Clara Wichmann and Others' claim for an order to put an end to an unlawful situation within a time-limit to be set by the court at its discretion, quite apart from the fact that the ground on which any court might consider ordering such a vague and general prohibition is unclear."

50. The Supreme Court delivered its judgment on 9 April 2010. No further appeal lay against it.

### C. Subsequent events

#### *1. Proceedings in the Administrative Jurisdiction Division of the Council of State*

51. By letter of 16 February 2011 the applicant party informed the Court of the following developments.

52. On 27 January 2011 the Administrative Jurisdiction Division adjudicated a case relating to the present one, in which the SGP was the defendant party. An appeal had been lodged by an interested party against the decision of 21 January 2011 of the principal electoral committee (*hoofdstembureau*) to declare valid the list of candidates submitted by the SGP for the elections of the members of the Provincial Council (*Provinciale Staten*).

53. It was argued before the Administrative Jurisdiction Division that the list submitted by the SGP should have been declared invalid as the SGP discriminated against women by, in breach of Article 7 the Convention on the Elimination of All Forms of Discrimination against Women, not allowing them to become eligible for public office, including the Provincial Council. Since the State had failed to take appropriate measures against the SGP's conduct, as ordered by the Supreme Court by judgment of 9 April 2010 (*supra*), the list submitted should have been declared invalid.

54. The Administrative Jurisdiction Division rejected the appeal. It noted that the Supreme Court's judgment had held, specifically, that it was to be left to the Netherlands legislature to take appropriate measures to end the illegal situation.

55. The Elections Law (*Kieswet*), the Administrative Jurisdiction Division further considered, was also specifically drafted so as to leave issues pertaining to legitimacy of political parties' goals and motives to the prerogative of the judiciary, with article I 5 of that Act enumerating, exhaustively, grounds rendering lists of candidates invalid. The principal electoral committee had thus been limited by law to scrutinising lists of candidates only against those grounds for invalidity found in the Elections Law. Given that a failure to comply with Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women did not feature in article I 5, the Administrative Jurisdiction Division concluded that the principal electoral committee had correctly not examined the compatibility of the list of candidates submitted by the SGP with said Article 7.

## 2. Action taken pursuant to the judgment of the Supreme Court

56. On 22 March 2011 the Minister of the Interior and Kingdom Relations wrote to the SGP's governing body (*hoofdbestuur*) in the following terms:

“The Supreme Court, in its judgment of 9 April 2010 on the subject of the passive voting rights of women in your party, has held that the State must take a measure that is at once effective and interferes as little as possible with the basic rights of (members of ) the SGP.

I am aware that you have since lodged an application against the judgment with the European Court of Human Rights. I am proceeding on the assumption that some time will elapse before the Court will give its decision in the case, the more so if it has to deal with the substance of the extremely fundamental questions of principle here in issue. For me too, it is important in taking such a measure that I should be in a position to take into account the Court's view on these matters of principle. However, I feel that I cannot wait if at this time there is a legal obstacle to a woman to exercise her passive voting rights in your party (*indien er op dit moment in juridische zin een beletsel zou zijn voor een vrouw om haar passief kiesrecht uit te oefenen in uw partij*).

In view of the above, I would appreciate your Party's answers to the following questions:

1. Do your bye-laws or rules, including the Statement of Principles, impose impediments (*belemmeringen*) in a legal sense on women who are members of your party to stand for election to a representative body?
2. In drawing up your lists of candidates, do you follow procedures which hinder the eligibility of women?
3. In considering the candidates who come forward, do you apply any selection criteria other than their suitability to act as members of representative bodies on behalf of your Party?
4. If there are any impediments on any one of the former points, are you prepared to remove them?”

57. On 6 April 2011 the governing body of the SGP replied in the following terms:

1. “In your letter of 22 March 2011 you have put several questions to the governing body of the SGP. The governing body will deal with them in succession.
2. Your first question is whether the bye-laws, rules or Statement of Principles impose impediments in a legal sense on women who are members of the SGP to stand for election to a representative body.
3. In 2006 the bye-laws and rules of the SGP were modified by a decision of its members at a general meeting, so that members of the SGP are now referred to as ‘persons’, see section 4 of the bye-laws. The same applies to standing for election to representative bodies, see sections 13-17 of the

rules. A difference made between men and women members was actually removed from these provisions in 2006.

4. Your second question concerns the possible use of procedures in drawing up lists of candidates which might hinder women in standing for election. The SGP applies no formal selection criteria other than the general standard set out in sections 14-17 of the rules, which require that candidates should be members considered to be faithful to the Party's principles and suitable, in which age, church involvement and occupation are relevant factors. Women members, like all members, have the possibility to contribute actively in the selection of candidates for election to representative bodies (*een actieve bijdrage te vervullen bij de kandidaatstelling van volksvertegenwoordigers*), and also to add items to the agenda, etc.
5. Lists of candidates are drawn up after the advice of a selection advisory board has been obtained. The only formal restrictions in the rules are constituted by the length of membership of the Party (two years) and where appropriate an age criterion for persons who are not yet members of the representative body concerned. No further procedural restrictions can be derived from the rules.
6. You next ask whether within the Party, in considering the candidates who come forward, any selection criteria are applied other than their suitability to act as members of representative bodies on behalf of the SGP. Every selection advisory board must, as in any party, seek out members who can be considered to promote the Party's principles. These principles, as set out in the Statement of Principles, form the core of the Party. SGP members have been pursuing politics based on these principles for decades. The SGP's so-called 'position on women' (*vrouwenstandpunt*) is a part of a more enveloping view of Bible-based politics (*meeromvattende visie op Bijbelgenormeerde politiek*) on which the SGP operates. Every candidate is expected to be able to be politically active on the basis of this more enveloping view of Bible-based politics. It is for the various selection advisory boards to give a reasoned opinion on this point.
7. In view of the negative answers to your above questions, the governing body cannot answer your last question, that is, whether the governing body is prepared to remove any impediments.
8. That concludes the answers to your questions.
9. The governing body would wish to make the following, perhaps entirely unnecessary, remark. The governing body has submitted an application to the European Court of Human Rights in Strasbourg because the SGP finds the Supreme Court's judgment of 9 April 2012 unacceptable. The grassroots support of the SGP across its full width considers itself deeply affected and harmed in its constitutionally protected freedoms, including freedom of religion, freedom of expression and the freedom to set up a political association and promote its principles in representative bodies."

58. On 8 April the Minister of the Interior and Kingdom Relations wrote to the Speaker of the Lower House of Parliament in the following terms:

“In a judgment of 9 April 2010 the Supreme Court has held that the Court of Appeal of The Hague was correct in finding that the State was under a duty to take measures to ensure that the SGP grants the right to stand for election to women; the State is required, in so doing, to apply a measure that is at once effective and least liable to impinge on the basic rights of (members of the) SGP. Following this judgment, the SGP has lodged an application with the European Court of Human Rights in Strasbourg (‘the Court’), because the SGP considers as a matter of principle that it ought to be free to act according to the principles held within the party. The lodging of this application does not suspend the execution of the judgment of the Supreme Court.

This does not alter the fact that executing the judgment of the Supreme Court can make serious inroads and requires care and preparation, also in view of the fundamental rights at stake. For that reason I consider it indicated to take the Court’s judgment into consideration before arriving at a final decision in this complex matter.

In preparing to execute the judgment of the Supreme Court I have ascertained, among other things, whether there is at this time a formal (legal) impediment preventing women from exercising their right to stand for election within the SGP.

Against this background, I have asked the SGP’s governing body whether there are currently any restrictions for women in bye-laws, or related rules, or in the procedures or selection criteria operated by the governing body, other than suitability of the candidates as perceived by the governing body. The governing body has informed me that no such formal impediments exist. I attach the relevant correspondence. I am of the view that this will suffice for now and will consider the need and desirability of possible legal measures after the Court has expressed itself.”

This letter was the subject of debate in the Standing Parliamentary Committee for the Interior (*Vaste Kamercommissie voor Binnenlandse Zaken*) of the Lower House of Parliament on 7 June 2011. A majority of the Members present, including those elected in respect of the SGP, supported the Minister’s proposal to await the outcome of the present proceedings before the Court before deciding whether to take any action.

## **D. Relevant domestic law**

### *1. The Constitution for the Kingdom of the Netherlands*

59. Provisions of the Constitution for the Kingdom of the Netherlands (*Grondwet voor het Koninkrijk der Nederlanden*) relevant to the case are the following:

#### **Article 1**

“All persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race or sex or on any other grounds whatsoever shall not be permitted.”

#### Article 4

“Every Netherlands national shall have an equal right to elect the members of the general representative bodies and to stand for election as a member of those bodies, subject to the limitations and exceptions prescribed by Act of Parliament.”

#### Article 6

“1. Everyone shall have the right to profess freely his religion or belief, either individually or in community with others, without prejudice to his responsibility under the law.

2. Rules concerning the exercise of this right other than in buildings and enclosed places may be laid down by Act of Parliament for the protection of health, in the interest of traffic and to combat or prevent disorder.”

#### 2. *The Civil Code*

60. Article 3:305a of the Civil Code, in its relevant part, provides as follows:

“1. A foundation (*stichting*) or association with full legal personality (*vereniging met volledige rechtsbevoegdheid*) can bring an action purporting to protect other persons’ interests of like nature (*gelijsoortige belangen van andere personen*), in so far as it protects these interests pursuant to its articles of association. ...”

#### 3. *The Political Parties Subsidies Act*

61. Provisions of the Political Parties Subsidies Act relevant to the case include the following:

#### Section 2

“1. The Minister [of the Interior and Kingdom Relations] shall grant a subsidy to a political party that has taken part in the last elections held for the Upper or Lower House of Parliament with its name (*aanduiding*) above the list of its candidates and to whose list one or more seats have been assigned as a result.

2. The subsidy shall be granted per calendar year.

3. No subsidy shall be granted to a political party which, [on the first day of the calendar year], does not have at least 1,000 members.”

#### Section 3

“1. For the purpose of the application of this Act, a political party can designate one political youth organisation and enter into a written subsidy agreement with it. A political youth organisation can be designated by no more than one political party.

...

3. For the purpose of the application of this Act, a political party can designate one political science institute and enter into a written subsidy agreement with it. A political science institute can be designated by no more than one political party. ...”

### Section 5

“1. The subsidy shall be granted for expenses directly connected with the following activities:

- a. political training and education activities (*politieke vormings- en scholingsactiviteiten*);
- b. providing information;
- c. maintaining contacts with sister parties outside the Netherlands;
- d. supporting training and education activities for the cadre of sister parties outside the Netherlands;
- e. political science activities;
- f. activities aimed at promoting political participation by young people;
- g. recruiting members;
- h. involving non-members in subsidisable activities of the political party;
- i. recruiting, selecting and supporting political office holders;
- j. activities within the framework of election campaigns.”

### Section 16

“1. If a political party has been sentenced to a non-suspended fine for contravening one of the Articles 137c, d, e, f or g or Article 429 *quater* of the Criminal Code (*Wetboek van Strafrecht*), its entitlement to subsidy shall lapse automatically for a period beginning on the day on which the conviction becomes final. This period shall be:

- a. one year if the fine is 1.125 euros (EUR) or less;
- b. two years if the fine is more than EUR 1.125 but less than EUR 2.250;
- c. three years if the fine is more than EUR 2.250 but less than EUR 3.375;
- d. four years if the fine is more than EUR 3.375. ...”

62. The provisions of the Criminal Code referred to in section 16(1) prohibit public insult of groups on the ground of race, religion or philosophical conviction, heterosexual or homosexual orientation, or physical, mental or intellectual handicap (Article 137c); public incitement to

hatred, discrimination or violence against others on the same grounds (Article 137d: this Article also mentions discrimination on the ground of gender); public expressions, other than in the context of factual reporting, containing such insult or incitement (Article 137d: this Article also mentions discrimination on the ground of gender); participating in, or supporting, activities aimed at discriminating on the above grounds, and on gender (Article 137f); and discrimination on the ground of race, committed professionally or in office (Article 137g).

## **E. Relevant public international law**

### *1. The Convention on the Elimination of All Forms of Discrimination against Women*

63. Article 7 of the 1979 Convention on the Elimination of All Forms of Discrimination against Women provides as follows:

“States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.”

### *2. The International Covenant on Civil and Political Rights*

64. Provisions of the 1966 International Covenant on Civil and Political Rights relevant to the case are the following:

#### **Article 2**

“1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.”

#### **Article 25**

“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country. “

#### **Article 26**

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

## **COMPLAINTS**

65. The applicant party complains under Articles 9, 10 and 11 of the Convention that the Supreme Court, in finding as it did, deprived it and its individual members of their right to freedom of religion, their right to freedom of expression and their right to freedom of assembly and association. The applicant party attached value to the Administrative Jurisdiction Division’s earlier decision on the matter, which, so the applicant party alleges, was, unlike the Supreme Court’s judgment, just and in accordance with this Court’s case law.

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66. The applicant party alleges violations of Articles 9, 10 and 11 of the Convention, which provide as follows:

### Article 9

“1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

### Article 10

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

### Article 11

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state.”

67. The Court observes at the outset that no action has so far been taken to compel the applicant party actually to admit women candidates to the extent, if any, that it did not do so before; in fact, the respondent

Government have made public their decision to refrain from taking any such action. The question is therefore legitimate whether the applicant party can, at the present time, be considered a “victim” of the violations which it alleges. However, the Court sees no need to address it as the application is in any event inadmissible on other grounds.

68. The Court will proceed on the assumption that there has been an “interference” with the SGP’s rights under the above-mentioned substantive provisions of the Convention and that this interference was “prescribed by law”. It will also assume that the interference pursued, at least, the legitimate aim (which appears in all three Articles) of protecting “the rights of others”.

69. In the very Preamble of the Convention, the importance of democracy is expressed in the following terms:

“The Governments signatory hereto ...

Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights on which they depend; ...”

70. As the Court has stated many times in its case-law, not only is democracy a fundamental feature of the European public order but the Convention was designed to promote and maintain the ideals and values of a democratic society. Democracy, the Court has stressed, is the only political model contemplated in the Convention and the only one compatible with it. By virtue of the wording of the second paragraph of Article 11, and likewise of Articles 8, 9 and 10 of the Convention, the only necessity capable of justifying an interference with any of the rights enshrined in those Articles is one that may claim to spring from a “democratic society” (see, among many other authorities, *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 45, *Reports of Judgments and Decisions* 1998-I; *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 86, ECHR 2003-II; *Christian Democratic People’s Party v. Moldova*, no. 28793/02, § 63, ECHR 2006-II; and *Hyde Park and Others v. Moldova* (no. 4), no. 18491/07, § 50, 7 April 2009).

71. The Court has also held that a political party may, under the Convention, pursue its political aims on two conditions: firstly, the means used to those ends must be legal and democratic; secondly, the changes proposed must themselves be compatible with fundamental democratic principles (see *Refah Partisi and Others*, cited above, § 98). Provided that it satisfies these conditions, a political party animated by the moral values imposed by a religion cannot be regarded as intrinsically inimical to the fundamental principles of democracy, as set forth in the Convention (*Refah Partisi and Others*, § 100).

72. Turning to the present matter, the Court reiterates that the advancement of the equality of the sexes is today a major goal in the member States of the Council of Europe. This means that very weighty reasons would have to be advanced before a difference of treatment on the ground of sex could be regarded as compatible with the Convention (see, among other authorities and *mutatis mutandis*, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 78, Series A no. 94; *Schuler-Zgraggen v. Switzerland*, 24 June 1993, § 67, Series A no. 263; *Burghartz v. Switzerland*, 22 February 1994, § 27, Series A no. 280-B; *Karlheinz Schmidt v. Germany*, 18 July 1994, § 24, Series A no. 291-B; *Van Raalte v. the Netherlands*, 21 February 1997, § 39, *Reports of Judgments and Decisions* 1997-I; *Willis v. United Kingdom*, no. 36042/97, § 39, ECHR 2002-IV; *Ünal Tekeli v. Turkey*, no. 29865/96, § 53, ECHR 2004-X (extracts); *Zarb Adami v. Malta*, no. 17209/02, § 80, ECHR 2006-VIII; and *Konstantin Markin v. Russia* [GC], no. 30078/06, § 127, ECHR 2012 (extracts)).

73. Moreover, the Court has held that nowadays the advancement of the equality of the sexes in the member States of the Council of Europe prevents the State from lending its support to views of the man's role as primordial and the woman's as secondary (see, *mutatis mutandis*, *Ünal Tekeli*, cited above, § 63, and *Konstantin Markin*, cited above, *ibidem*).

74. In addition to the case-law cited above, the Court finds the following Articles relevant to the case:

#### **Article 14**

“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.”

#### **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.”

75. No woman has expressed the wish to stand for election as a candidate for the applicant party. However, the Court does not consider that decisive.

76. The issue in the present case is the applicant party's position, restated in the present proceedings before the Court, that women should not be allowed to stand for elected office in general representative bodies of the State on its own lists of candidates. It makes little difference whether or not the denial of a fundamental political right based solely on gender is stated explicitly in the applicant party's bye-laws or in any other of the applicant

party's internal documents, given that it is publicly espoused and followed in practice.

77. The Supreme Court, in paragraphs 4.5.1 to 4.5.5 of its judgment, concluded from Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women and from Articles 2 and 25 of the International Covenant on Civil and Political Rights taken together that the SGP's position is unacceptable regardless of the deeply-held religious conviction on which it is based (see paragraph 49 above). For its part, and having regard to the Preamble to the Convention and the case-law cited in paragraphs 70, 71 and 72 above, the Court takes the view that in terms of the Convention the same conclusion flows naturally from Article 3 of Protocol No. 1 taken together with Article 14.

78. That said, the Court must refrain from stating any view as to what, if anything, the respondent Government should do to put a stop to the present situation. The Court cannot dictate action in a decision on admissibility; it is, in any case, an issue well outside the scope of the present application.

79. It follows that the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

*Declares* the application inadmissible.

Santiago Quesada  
Registrar

Josep Casadevall  
President