Decision of the French Council of State of 31 January 2020, No 431143

Elections to the European Parliament (EP) – Determination of the number of representatives elected in France – Principle of degressive proportionality – Principle laid down in Article 14 TEU, which refers the determination of the composition of the EP to a decision of the European Council – Decision of the European Council determining the principle (Article 1) and the number of representatives (Article 3(1)).

Firstly, it is clear from the provisions of Article 14 of the Treaty on European Union (TEU) that, while the TEU lays down in general terms the principle that the representation of citizens in the European Parliament should be ‘degressively proportional’, it refers the determination of the composition of the European Parliament to a unanimously adopted decision of the European Council. European Council Decision (EU) 2018/937 of 28 June 2018, taken on the basis of these stipulations, defined, in its Article 1, the principle of proportional degressivity as implying that ‘the ratio between the population and the number of seats of each Member State before rounding to whole numbers is to vary in relation to their respective populations in such a way that each Member of the European Parliament from a more populous Member State represents more citizens than each Member of the European Parliament from a less populous Member State and, conversely, that the larger the population of a Member State, the greater its entitlement to a large number of seats in the European Parliament (…)’. The same decision, fixing in Article 3(1) the number of representatives in the European Parliament for each of the Member States for the 2019-2024 legislature, decided that this number would be 79 for France, thus taking into account a redistribution of five seats following the United Kingdom’s withdrawal from the European Union.

In fixing the number of elected representatives in France in this way, Article 3(1) of the Council Decision has, in any event, complied with the implications of the principle of proportional degressivity arising from Article 1 of the same Decision.

While, by virtue of Article 3(2), until such time as the withdrawal of the United Kingdom produces its legal effects, the number of representatives in the European Parliament per Member State taking up office remains that fixed for the previous term of the European Parliament, i.e. 74 in the case of France, it is clear from the very terms of these provisions that the Council intended, in so doing, to adjust, on a transitional basis, the rules of composition that it had itself defined. It follows that the challenge to the validity of the decision of the European Council of 28 June 2018, in support of protests against the electoral operations leading to the appointment of the representatives to the European Parliament elected in France, which does not raise any serious difficulty, can only be dismissed.

In any case, in application of the decision of the European Council and of the sole article of Act No 2019-487 of 22 May 2019, the National Commission for the General Census of Votes appointed 79 representatives. While it is true that five of them will only take office following the UK’s withdrawal from the European Union, this circumstance is not such as to call into question their appointment. Consequently, the complaint that the principle of proportional degressivity had been disregarded must be dismissed, in that France, with not 79 but 74 representatives sitting in the European Parliament, would have a higher ratio of inhabitants per seat than Germany, even though it is less populated.

Secondly, it is clear from Article 223(1) of the Treaty on the Functioning of the European Union and Articles 3 and 8 of the Act of 20 September 1976 that, in the absence of a uniform electoral procedure in all Member States, the electoral procedure applicable to representatives in the European Parliament falls within the competence of the Member States, subject to
the rules laid down by the Act of 20 September 1976. Within the framework of the empowerment given to the Council to lay down common principles, this Act was able to provide for the possibility, contrary to what is maintained, of setting a threshold for access to the distribution of seats in the European Parliament in order to contribute to the latter’s proper functioning. The determination of this threshold, as is clear from the very terms of Article 3 of the Act, was left to the discretion of each Member State but, to ensure that the national provisions adopted in this context do not undermine the proportional nature of the voting system as a whole, as provided for in Article 8 of the Act, and with due regard for the equal treatment of citizens of the European Union, that same Article 3, as amended by Council Decision 2002/772/EC, Euratom of 25 June and 23 September 2002, stipulated that the threshold should not exceed 5% of the votes cast. In laying down these rules, the Council intended to allow the emergence and consolidation of European political groups of a significant size and to avoid fragmentation of representation within the European Parliament. The challenge, in support of the protest of Ms Hondema-Mokrane and others, to the validity of these rules, which pursue a legitimate aim and are proportionate, does not raise The 5% threshold, set by Article 3 of Act No 77-729 of 7 July 1977, is applicable to the election of representatives elected in France under the same conditions to all lists and to all votes cast in their favour, regardless of the nationality of the voter. Consequently and in any event, the pleas alleging the discriminatory nature of the 5% threshold, the infringement of the representation of European citizens and the equal rights set out in Article 9 of the Treaty on European Union (TEU) and Article 20 of the Charter of Fundamental Rights of the European Union, the lack of awareness of the contribution of political parties at Union level to the expression of the will of the citizens of the Union, recognised by Article 10(4) TEU and Article 12(2) of the Charter of Fundamental Rights of the European Union and the incompatibility with the stipulations of Article 39(1) of the same Charter, which requires that citizens of the European Union residing in a Member State other than that of which they are a national be guaranteed the exercise of their right to vote in European elections under the same conditions as nationals of that State, can only be rejected.