



MINISTERU TAL-ĠUSTIZZJA U L-INTERN
Ministry for Justice and Home Affairs



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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**in co-operation with
THE CONSTITUTIONAL COURT OF MALTA
AND
THE MINISTRY OF JUSTICE AND HOME AFFAIRS**

UNIDEM SEMINAR

**« CANCELLATION OF
ELECTION RESULTS »**

Malta, 14-15 November 2008

PRACTICAL CASE

- On 12 March 2008 parliamentary elections are being held in “Ruritania”, a unitary republic with a parliamentary government, divided into 9 departments.
- The electoral system is proportional, with a quorum of 7 % at the national level and allocation of seats by simple quotient and according to the largest remainders in each constituency.
- The national territory is divided into 15 constituencies.
- The electoral law provides for apportionment of seats according to population, though without stipulating a date for redistributing the constituencies or reallocating the seats. Consequently, the distribution of seats has remained unchanged for 20 years. Citizens resident in a constituency are automatically placed on the electoral roll. The position is as follows:

Dept*	Const.**	Population (P)	Citizens (C) (including minors)	Registered voters (V)	Seats (S)	P/S	C/S	V/S
A	1	220510	185220	138901	7	31501	26460	19843
	2	21225	20321	13652	1	21225	20321	13652
B	3	57325	49325	36221	2	28662	24663	18111
	4	185321	120309	85360	5	37064	24062	17072
C	5	652001	553611	468231	21	31048	26362	22297
D	6	896541	624231	521362	22	40752	28374	23698
	7	223145	192356	163521	4	55786	48089	40880
E	8	154985	125633	90220	4	38746	31408	22555
F	9	86235	80256	61320	3	28745	26752	20440
	10	120320	75326	55362	2	60160	37663	27681
G	11	352111	332651	267330	7	50302	47522	38190
	12	89623	81254	62110	3	29874	27085	20703
H	13	546210	440365	330225	15	36414	29358	22015
	14	123225	98200	73652	3	41075	32733	24551
I	15	52411	45326	35220	1	52411	45326	35220
Ruritania	1-15	3781188	3024384	2402687	100	37812	30244	24069

* Dept = Department

** Const. = Constituency

- Parties' election campaign expenses are refunded to them at the maximum rate of 100 accounting units per voter, on condition that they poll at least 5% of the votes nationwide.

Results of the elections of 12 March 2008:

Dept*	Const. **	Registered voters (V)	Voters taking part in the election	Turnout	Ballots found	Blank & invalid	Valid ballots
A	1	138901	115403	83.08%	115223	150	115073
	2	13652	10368	75.94%	10325	18	10307
B	3	36221	29551	81.59%	29532	36	29496
	4	85360	66223	77.58%	66203	140	66063
C	5	468231	350226	74.80%	325332	301	325031
D	6	521362	352114	67.54%	351562	154	351408
	7	163521	99352	60.76%	99223	25	99198
E	8	90220	64220	71.18%	63954	32	63922
F	9	61320	44523	72.61%	44022	10	44012
	10	55362	34225	61.18%	34120	31	34089
G	11	267330	150651	56.35%	149998	625	149373
	12	62110	33652	54.18%	33552	15	33537
H	13	330225	235698	71.37%	235000	210	234790
	14	73652	45023	61.13%	44865	21	44844
I	15	35220	27304	77.52%	27270	22	27248
Ruritania	1-15	2402687	1658533	69.03%	1630181	1790	1628391

Dept*	Const. **	Valid ballots	Party 'a'	Party 'b'	Party 'c'	Party for the autonomy of the / Islands
A	1	115073	65021	3523	46529	0
	2	10307	4048	251	6008	0
B	3	29496	15541	1223	12732	0
	4	66063	45201	2623	18239	0
C	5	325031	140830	11234	172967	0
D	6	351408	149689	12024	189695	0
	7	99198	55356	4210	39632	0
E	8	63922	30278	3024	30620	0
F	9	44012	22658	5236	16118	0
	10	34089	18664	6325	9100	0
G	11	149373	77364	7654	61297	3058
	12	33537	13737	1852	17386	562
H	13	234790	107366	9368	118056	0
	14	44844	25887	8925	10032	0
I	15	27248	4953	789	9225	12281
Ruritania	1-15	1628391	776593	78261	757636	15901

The quorum is 7 % of valid ballot papers, ie 113 988. Party 'b' and the Party for the autonomy of the / Islands are eliminated.

The distribution is thus as follows, between lists 'a' and 'c' alone:

Dept*	Const. **	Parti 'a'	Party 'c'	Voters considered (V=a+c)	Seats (S)	Quota (V/S)	Seats	
							'a'	'c'
A	1	65021	46529	111550	7	15936	4	3
	2	4048	6008	10056	1	(10056)	0	1
B	3	15541	12732	28273	2	14137	1	1
	4	45201	18239	63440	5	12689	4	1
C	5	140830	172967	313797	21	14943	9	12
D	6	149689	189695	339384	22	15427	10	12
	7	55356	39632	94988	4	23747	2	2
E	8	30278	30620	60898	4	15225	2	2
F	9	22658	16118	38776	3	12926	2	1
	10	18664	9100	27764	2	13832	1	1
G	11	77364	61297	138661	7	19809	4	3
	12	13737	17386	31123	3	10375	1	2
H	13	107366	118056	225422	15	15029	7	8
	14	25887	10032	35919	3	11973	2	1
I	15	4953	9225	14178	1	(14178)	0	1
Ruri- tania	1-15	776593	757636	1534229	100	(15343)	49	51

Please indicate, for **each of the following questions**:

- *whether you feel there is a violation of the law*
- *if so, whether this violation (or several violations in combination) should lead to the annulment of the election results.*

As to the apportionment of seats among the constituencies and its consequences

A voter in the 2nd constituency considers that his electoral rights were violated because:

- a department can be divided into several constituencies, but not all are. In particular, he points out that department C, far more heavily populated than department A, forms a single constituency;
- there has been no redistribution of constituencies for 20 years.
- the number of seats per constituency is highly variable, with the effect that the results in some constituencies are markedly proportional whereas others have a result which is very far from proportional or even apply a plurality system (constituencies 2 and 15). The complainant considers it most disgraceful that such differences can appear within the same department. The authorities reply that, since only two parties have qualified for an allocation of seats, the disproportions are fairly insignificant.

A voter in the 10th constituency stresses how badly under-represented the population of his constituency is, recalling that the law provides for distribution of seats in proportion to the population. The authorities reply that the electors of the 10th constituency are hardly under-represented (see column E/S), above all having regard to the low turnout in this constituency.

Party 'a' contends that it is inadmissible for it to obtain fewer seats than party 'c' considering that it won more votes, and therefore asks that the election be annulled in its entirety. It

considers this result to be due to the under-representation of certain constituencies, together with the unequal number of seats per constituency.

As to the quorum

Party 'b', which gained 4.8 % of the votes and therefore did not qualify to be allocated seats, not having reached the quorum of 7%, considers this too high:

- because it disqualifies a party that won over 100 000 votes
- because it does not take account of the fact that the party polled over 10% of the votes in two constituencies, constituencies 9 and 10. The authorities reply that even were there no national quorum, party 'b' would not have obtained a seat in constituencies 9 and 10.

The Party for the Autonomy of the / Islands (15th constituency) considers that though represented in only one constituency, it should have obtained the seat to be filled since it won a relative majority of votes (over 45 %) in that constituency. Firstly, it challenges the existence of a quorum at national level and further considers that the quorum ought not to be applied to islands, especially as these were not attached to Ruritania until 1947 and moreover without the consent of the islanders or their representatives having been sought.

As to refund of campaign expenses

- Party 'b', which polled 4.8 % of the votes nationwide, contests the rule that campaign expenses are not refunded unless a party obtains at least 5% of the whole nation's votes and applies for reimbursement of its expenses.
- As a subsidiary plea, it asks to be refunded its expenses in the constituencies where it attained 5 % of the votes.

- The Party for the Autonomy of the / Islands asks that the rule be waived for parties which have obtained a seat or would have obtained one without the 5% quorum.

As to the electoral rolls

- 325 voters call for the annulment of the election in the 5th constituency on the ground that they were not registered on the electoral rolls because of the registration office's unexplained closure on 20 December 2007, it normally being open every weekday. They had made journeys in order to be registered that day, but were unwilling or unable to do so again thereafter.
- 240 voters in the 2nd constituency call for the annulment of the ballot in that constituency, on the ground that the regulations precluded correction of the electoral register after 31 December 2007, except in case of change of residence, conferment of nationality, or attainment of voting age. Only in January were they informed that the elections would be held in March.
- 1237 voters in the 7th constituency claim that owing to the isolation of their dwellings, the polling station could be reached only on foot in 30 minutes or more, unfairly disadvantaging the elderly or persons with health problems.
- 330 other voters in the same constituency also call for the annulment of the ballot on the ground that the law did not permit them to challenge the registration of other voters.

As to the electoral operations and the counting of votes

The NGO "Against the Mafia in Power", with a membership of retired politicians, was not allowed to observe the elections on the ground that over 10% of its members have a criminal record. It claims to be sidelined from observation rather because its members are well acquainted with the mechanisms of electoral fraud, whether they committed or incurred it.

In ten or so (out of 45) polling stations in the 3rd constituency, access was not possible for some accredited observers.

In the same constituency, the chairman of the 20th polling station went into a room alone with the ballot box and returned with the record of the results which he asked the other polling station officials to sign. Three refused to do so.

In the 25th polling station, 200 ballot papers (out of 807) were found the morning after the counting of votes had ended, and the record of results was amended accordingly.

In the 12th polling station, however, whereas 725 ballot papers were distributed, only 545 were recovered. Finally, in the 4th polling station, where 615 bulletins had been distributed, 616 were counted.

As to the media

Party 'a' complains of the fact that apart from the broadcasts specifically dealing with the campaign, it was subjected to discriminatory treatment by the public media, those reaching the largest audience. It considers that the tenure of power for ten years by party 'c' accounts for this. In particular:

- the chairman of party 'a' appeared on television for a fifth of the time allotted to the chairman of party 'c';
- the comments in the newscasts concerning party 'a' were generally negative, whereas those concerning party 'c' were positive;
- the day before the election, that is after the election campaign had ended, the President of the Republic made a quarter-hour speech at a peak audience time, soliciting votes for party 'c' and declaring that the victory of party 'a' would lead to the establishment of a totalitarian regime.