

Proposed New Law WPP in respect of the undermining of the Democracy

Proposal for the inclusion of an article to forbid the exclusion of a political party by any other party prior to the election

Background

In Dutch law very little is said about the freedom of choice of the voter and how this is an important value in any democracy. The present law deals with the organization of elections and the rights of prisoners but fails to define the basic principle of a free vote. In Anglo-Saxon law a free vote is defined as a vote made without duress or interference. The omission in Dutch law can and should be dealt with as a part of the WPP.

Using this principle any new law making it possible to punish or even exclude a political party because of undemocratic actions should deal with a problem which has been evident for many years. Political parties who openly rule out cooperation and negotiation with any other party prior to the election are acting undemocratically and should be forbidden to do so by law. The intention of a political party in excluding other parties is to use a tactic of manipulation and intimidation towards the voter. The party in question is questioning the freedom of the democratic choices which are made and telling the voter that the vote will be wasted.

Of course after the election each party is free to choose or not to choose cooperation with any other party. This is the normal democratic process and need not be changed

Legal Basis for the Proposal

In Article 3 of Protocol 1 of the European Convention on Human Rights it is stated that free elections will be held “ to ensure the free expression of the opinion of the people” Political Parties who use a tactic of manipulation and intimidation are in breach of this article. When a voter is told that his/her vote will be wasted it is taking away the right to free expression and should be held as illegal. The parties responsible for this tactic will argue that the voter always retains the free choice of which party to vote for but the threat that it will be a wasted vote is strong and cannot be underestimated. In the WPP parties should be legally restrained from using the tactic and concentrate on their own arguments and their own manifesto.

Formulation of the Article

In the proposed drafting of the WPP it should be relatively simple to deal with both the actions of parties who threaten the democracy and parties who use the tactic of exclusion. In both cases the basis of democracy is threatened and the drafting can further define the requirements of parties to maintain the rule of law and to protect democratic values. If only one side of the community is protected by the bill it will be argued that it is prejudicing the voters who have differing priorities. No government will wish to introduce a bill which is not offering protection to the whole community.

As the proposal is for the actions of a political party prior to an election it will need to include a time element. As mentioned before, after votes have been counted all parties are free in their choice of coalition partners. The suggestion is that the rule forbidding exclusion should be applicable for a period of 12 months prior to the General Election and 6 months prior to Provincial and Council Elections.

In the formulation of the proposal the manner in which exclusion is communicated will also need definition. In all probability the WPP will include this as a matter of course but all types of communication both verbal and non-verbal will need to be included.

Penalties

In the preparation of the WPP some parties have even suggested that the banning of a political party should be an option to be included. This is a drastic measure unknown in Dutch history and should not be included in the WPP. If banning a party is an option then the CPN when active would have been automatically excluded as being a danger to democracy. In the same vein the statutes of GroenLinks which party is derived from the CPN would need to be closely examined.

The normal penalty for parties who endanger the democratic values of the country would be a fine. To ensure that a firm signal is given to parties that an attack on democratic values will not be tolerated this should be at least Eur. 50.000 with a multiplier for second offences and more. A fine which is subject to a multiplier will have sufficient effect on the parties election funds to prevent repeat offences.

Summing Up

The drafting of the WPP gives an opportunity to emphasize the importance of a free vote and to ensure that all sections of the community are protected. This protection can include present threats which are perceived to be a danger to democracy but also threats which have been apparent for many years which also undermine the quality of the democratic process in the Netherlands