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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH
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İRÓPAI KÖZÖSSÉGEK BÍRÓSÁGA
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Judgments of the Court in Cases C-145/04 and C-300/04

*Kingdom of Spain v United Kingdom of Great Britain and Northern Ireland
M.G. Eman and O.B. Sevinger v College van burgemeester en wethouders van Den Haag*

**IT IS FOR THE MEMBER STATES TO DEFINE THE PERSONS WHO ARE TO BE
ENTITLED TO VOTE AND TO STAND AS A CANDIDATE IN ELECTIONS TO THE
EUROPEAN PARLIAMENT**

*In that context, they must however comply with Community law and, in particular, the principle
of equal treatment.*

Case C-145/04 *Kingdom of Spain v United Kingdom* particularly concerns the determination of whether a Member State is entitled to extend the right to vote in elections to the European Parliament to nationals of non-member countries resident in Europe, in this case in Gibraltar.

To enable the inhabitants of Gibraltar to participate in elections to the European Parliament, the United Kingdom established, in 2003, a new electoral region which combines Gibraltar with an existing electoral region in England and created a special electoral register. Thus, the right to vote at those elections was conferred on citizens of the Union and citizens of the Commonwealth satisfying certain criteria (qualifying Commonwealth citizens, ‘QCCs’) resident in Gibraltar.

According to the Kingdom of Spain, only citizens of the Union can be recognised as having the right to vote in elections to the European Parliament. In addition, Spain claims that by providing for the combination of the territory of Gibraltar with an existing electoral region in England, the United Kingdom was in breach of Annex I to the 1976 Act and of its Declaration of 18 February 2002.¹ It brought an action before the Court of Justice of the European Communities against the United Kingdom for failure to fulfil Treaty obligations.

¹ Act concerning the election of the representatives of the European Parliament by direct universal suffrage, as most recently amended by Council Decision 2002/772/EC, Euratom.

The Court recalls, at the outset, that it was to comply with a judgment of the European Court of Human Rights that the United Kingdom adopted the legislation challenged by the Kingdom of Spain.² For reasons connected to its constitutional traditions, the United Kingdom chose to grant the right to vote and stand for election to QCCs satisfying conditions expressing a specific link with the area in respect of which the elections are held.

The Court holds that neither the EC Treaty nor the 1976 Act defines expressly and precisely who are to be entitled to the right to vote and to stand as a candidate in elections to the European Parliament. **Therefore, in the current state of Community law, the definition of the persons entitled to vote and stand as a candidate in elections to the European Parliament falls within the competence of each Member State in compliance with Community law. The relevant articles of the EC Treaty do not preclude the Member States from granting that right to vote and to stand as a candidate to certain persons who have close links to them, other than their own nationals or citizens of the Union resident in their territory.**

In addition, so far as concerns the combination of the territory of Gibraltar with an existing electoral region in England, the Court notes that a Gibraltar elector is thus in a similar situation to that of a United Kingdom elector and need not be faced with difficulties connected to Gibraltar's status which make it impossible for him to exercise that right to vote or dissuade him from doing so. It therefore rejects the Kingdom of Spain's argument in that regard.

In the reference for a preliminary ruling in **Case C-300/04 *M.G. Eman and O.B. Sevinger v College van burgemeester en wethouders van Den Haag***, the Netherlands Raad van State (Council of State) asked the Court, conversely, whether a Member State may exclude from the right to vote in European elections certain categories of its own nationals resident in an overseas territory associated to the Community (OCT), in this case Aruba.

The Kingdom of the Netherlands is composed of the Netherlands as well as the Islands of Aruba and the Netherlands Antilles. For all the inhabitants of the Kingdom there is a single nationality, Netherlands nationality. Mr Eman and Mr Sevinger, both of Netherlands nationality and residing in Oranjestad (Aruba), applied for enrolment on the register of electors for elections to the European Parliament. Their application was rejected on the ground that they are resident in Aruba.

The Netherlands Raad van State asks whether the provisions of the EC Treaty relating to citizenship of the Union apply to persons who possess the nationality of a Member State and who are resident or living in an OCT.

Declaration of 2002: in that declaration, the United Kingdom undertook to 'ensure that the necessary changes are made to enable the Gibraltar electorate to vote in elections to the European Parliament as part of and on the same terms as the electorate of an existing U.K. constituency'.

² Judgment of 18 February 1999 in *Matthews v. the United Kingdom* (ECHR 1999-I). In that judgment, the Court, upholding the action of a United Kingdom national resident in Gibraltar, held that the United Kingdom was in breach of the European Convention on Human Rights by failing to hold elections to the European Parliament in Gibraltar.

The Court declares that persons who possess the nationality of a Member State and who live or reside in a territory which is one of the OCTs may rely on the rights conferred on citizens of the Union.

So far as concerns the question whether a citizen of the Union residing or living in an OCT is entitled to the right to vote and to stand as a candidate in elections to the European Parliament, the Court confirms that the definition of the persons entitled to vote and stand as a candidate falls within the competence of each Member State in compliance with Community law. Having regard, in particular, to the case-law of the European Court of Human Rights, the criterion linked to residence does not appear to be inappropriate to determine who are entitled to the right to vote and to stand as a candidate in elections to the European Parliament.

However, so far as concerns the principle of equal treatment, the relevant comparison is between a Netherlands national resident in the Netherlands Antilles or Aruba and one residing in a non-member country. They have in common that they are Netherlands nationals who do not reside in the Netherlands. The Court holds that there is nonetheless a difference in treatment between the two, the latter having the right to vote and to stand as a candidate in elections to the European Parliament held in the Netherlands whereas the former has no such right. Such a difference in treatment must be objectively justified.

In that regard, the Court holds that the objective pursued by the Netherlands legislature, consisting in the conferment of the right to vote and stand for election on Netherlands nationals who have or have had links with the Netherlands, falls within that legislature's discretion as regards the holding of the election. However, **the Netherlands Government has not sufficiently demonstrated that the difference in treatment observed between Netherlands nationals resident in a non-member country and those resident in the Netherlands Antilles or Aruba is objectively justified and does not therefore constitute an infringement of the principle of equal treatment.**

Were the national court to conclude – on the basis, inter alia, of the Court's replies – that persons resident or living in the Netherlands Antilles and Aruba and having Netherlands nationality were wrongly refused registration for the election of the members of the European Parliament of 10 June 2004, it is for the national law to determine what legal redress is to be available. Those remedies, which may include compensation for the loss caused by the infringement of Community law for which the State is liable, must comply with the principles of equivalence and effectiveness.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: CS, DE, EN, ES, HU, IT, FR, NL, PL, PT, SK, SL

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-145/04>

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-300/04>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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*Pictures of the delivery of the judgment are available on EbS "Europe by Satellite",
a service provided by the European Commission, Directorate-General Press and
Communications,*

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