

Uitspraak Hof van Justitie van de Europese Gemeenschappen van 12 september 2006

Case C-300/04

M.G. Eman and O.B. Sevinger

v

College van burgemeester en wethouders van Den Haag

(Reference for a preliminary ruling from the Raad van State)

(European Parliament – Elections – Right to vote – Requirements of residence in the Netherlands for Netherlands citizens of Aruba – Citizenship of the Union)

Summary of the Judgment

1. *Citizens of the European Union – Provisions of the Treaty – Scope ratione personae*

(Arts 17 EC and 299(3) EC)

2. *Parliament – Elections – Right to vote and to stand for election – Persons entitled*

(Arts 19 EC, 189 EC, 190 EC; Act concerning the election of the representatives of the European Parliament by direct universal suffrage)

3. *Association of Overseas Countries and Territories – Failing express reference, the Treaty’s general provisions do not apply to them*

(Arts 19(2) EC, 182 EC, 189 EC and 190 EC)

4. *Parliament – Elections – Person excluded from participation because of a national provision that is contrary to Community law*

5. *Community law – Rights conferred on individuals – Breach by a Member State – Duty to make reparation for damage caused to individuals*

1. Persons who possess the nationality of a Member State and who reside or live in a territory which is one of the overseas countries and territories referred to in Article 299(3) EC may rely on the rights conferred on citizens of the Union in Part Two of the Treaty.

(see para. 29, operative part 1)

2. In the current state of Community law, the definition of the persons entitled to vote and to stand for election to the European Parliament falls within the competence of each Member State in compliance with Community law.

Neither Articles 189 EC and 190 EC nor the Act concerning the election of the representatives of the European Parliament by direct universal suffrage state expressly and precisely who are to be entitled to vote and to stand for election to the European Parliament. Thus, no clear conclusion can be drawn in that regard from Articles 189 EC and 190 EC relating to the European Parliament which state that it is to consist of representatives of the peoples of the Member States, since the term 'peoples', which is not defined, may have different meanings in the Member States and languages of the Union. In addition, the provisions of Part Two of the Treaty relating to citizenship of the Union do not confer on citizens of the Union an unconditional right to vote and to stand as a candidate in elections to the European Parliament. Article 19(2) EC is confined to applying the principle of non-discrimination on grounds of nationality to that right to vote and stand for election.

Consequently, in the current state of Community law, nothing precludes the Member States from defining, in compliance with Community law, the conditions of the right to vote and to stand as a candidate in elections to the European Parliament by reference to the criterion of residence in the territory in which the elections are held.

The principle of equal treatment prevents, however, the criteria chosen from resulting in the different treatment of nationals who are in comparable situations, unless that difference in treatment is objectively justified.

(see paras 44-45, 52-53, 61, operative part 2)

3. The Overseas Countries and Territories ('OCT') are subject to the special association arrangements set out in Part Four of the Treaty (Articles 182 EC to 188 EC) with the result that, failing express reference, the general provisions of the Treaty do not apply to them.

It follows that Articles 189 EC and 190 EC relating to the European Parliament do not apply to those countries and territories and that the Member States are not required to hold elections to the European Parliament there.

Furthermore, Article 19(2) EC, which applies the principle of non-discrimination on grounds of nationality to the right to vote and to stand as a candidate in elections to the European Parliament, does not apply to a citizen of the Union residing in an OCT who wishes to exercise his right to vote in the Member State of which he is a national.

(see paras 44, 46-47, 53)

4. In the absence of Community legislation in respect of disputes relating to the right to vote and to stand for election to the European Parliament, it is for the national law of each Member State to determine the rules allowing legal redress for a person who, because of a national provision that is contrary to Community law, was not entered on the electoral register for the election of the members of the European Parliament of 10 June 2004 and was therefore excluded from participation in those elections. Those remedies, which may include compensation for the loss caused by the infringement of Community law for which the State may be held responsible, must neither be less favourable than those governing rights which originate in domestic law (principle of equivalence) nor render impossible or excessively difficult in practice the exercise of rights conferred by the Community legal order (principle of effectiveness).

(see paras 67, 71, operative part 3)

5. The principle of liability on the part of a Member State for damage caused to individuals as a result of breaches of Community law for which it can be held responsible is inherent in the system of the Treaty and a Member State is thus required to make reparation for the damage caused where the rule of law infringed is intended to confer rights on individuals, the breach is sufficiently serious and there is a direct causal link between the breach of the obligation resting on the State and the damage sustained by the injured parties, although this does not mean that the State cannot incur liability under less strict conditions on the basis of national law.

Subject to the right of reparation which flows directly from Community law where the conditions referred to in the previous paragraph are satisfied, it is on the basis of rules of national law on liability that the State must make reparation for the consequences of the loss and damage caused, provided that the conditions for reparation of loss and damage laid down by national law are not less favourable than those relating to similar domestic claims and are not so framed as to make it, in practice, impossible or excessively difficult to obtain reparation.

(see paras 69-70)

JUDGMENT OF THE COURT (Grand Chamber)

12 September 2006 (*)

(European Parliament – Elections – Right to vote – Requirements of residence in the Netherlands for Netherlands citizens of Aruba – Citizenship of the Union)

In Case C-300/04,

REFERENCE for a preliminary ruling under Article 234 EC from the Raad van State (Netherlands), made by decision of 13 July 2004, received at the Court on 15 July 2004, in the proceedings

M.G. Eman,

O.B. Sevinger

v

College van burgemeester en wethouders van Den Haag,

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas (Rapporteur), K. Schiemann and J. Makarczyk, Presidents of Chambers, J.-P. Puissochet, P. Kuris, E. Juhász, E. Levits and A. Ó Caoimh, Judges,

Advocate General: A. Tizzano,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 5 July 2005,

after considering the observations submitted on behalf of:

- Mr Eman and Mr Sevinger, by A.G. Croes,
- the Netherlands Government, by H.G. Sevenster and C.M. Wissels, acting as Agents,
- the Spanish Government, by N. Díaz Abad and F. Díez Moreno, acting as Agents,
- the French Government, by R. Abraham, G. de Bergues, E. Puisais and C. Jurgensen, acting as Agents,
- the Government of the United Kingdom of Great Britain and Northern Ireland, by R. Caudwell, acting as Agent, and by D. Anderson QC, D. Wyatt QC, and M. Chamberlain, Barrister,
- the Commission of the European Communities, by C. Ladenburger and P. van Nuffel, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 April 2006,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 17 EC, 19(2) EC, 189 EC, 190 EC and 299(3) EC.

2 The reference was made in the course of proceedings between Mr Eman and Mr Sevinger ('the appellants in the main proceedings'), both of Netherlands nationality and resident in Oranjestad (Aruba), and the College van burgemeester en wethouders van Den Haag (Municipal Executive of The Hague, Netherlands) concerning the latter's rejection of their application for registration on the register of electors for the election of members of the European Parliament on 10 June 2004.

Legal context

International law

3 Article 3 of Protocol No 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter 'Protocol No 1 to the Convention'), provides:

'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.'

Community law

4 Under Article 17 EC:

'1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship.

2. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.'

5 Article 19(2) EC provides:

'Without prejudice to Article 190(4) and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. ...'

6 Pursuant to that provision, the Council of the European Union adopted Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of

the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals (OJ 1993 L 329, p. 34). The first paragraph of Article 3 of that directive provides:

‘Any person who, on the reference date:

(a) is a citizen of the Union within the meaning of the second subparagraph of Article 8(1) of the Treaty;

(b) is not a national of the Member State of residence, but satisfies the same conditions in respect of the right to vote and to stand as a candidate as that State imposes by law on its own nationals,

shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State of residence unless deprived of those rights pursuant to Articles 6 and 7.’

7 Article 5 of Directive 93/109 provides:

‘If, in order to vote or to stand as candidates, nationals of the Member State of residence must have spent a certain minimum period as a resident in the electoral territory of that State, Community voters and Community nationals entitled to stand as candidates shall be deemed to have fulfilled that condition where they have resided for an equivalent period in other Member States. This provision shall apply without prejudice to any specific conditions as to length of residence in a given constituency or locality.’

8 The first paragraph of Article 189 EC provides:

‘The European Parliament, which shall consist of representatives of the peoples of the States brought together in the Community, shall exercise the powers conferred upon it by this Treaty.’

9 Article 190 EC reads as follows:

‘1. The representatives in the European Parliament of the peoples of the States brought together in the Community shall be elected by direct universal suffrage.

...

4. The European Parliament shall draw up a proposal for elections by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States.

The Council shall, acting unanimously after obtaining the assent of the European Parliament, which shall act by a majority of its component members, lay down the appro-

appropriate provisions, which it shall recommend to Member States for adoption in accordance with their respective constitutional requirements.

...’

10 Article 8 of the Act concerning the election of the representatives of the European Parliament by direct universal suffrage annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976 (OJ 1976 L 278, p. 1), as amended by Council Decision 2002/772/EC, Euratom of 25 June 2002 and 23 September 2002 (OJ 2002 L 283, p. 1, ‘the 1976 Act’), provides:

‘Subject to the provisions of this Act, the electoral procedure shall be governed in each Member State by its national provisions.

These national provisions, which may if appropriate take account of the specific situation in the Member States, shall not affect the essentially proportional nature of the voting system.’

11 Article 12 of the 1976 Act is worded as follows:

‘The European Parliament shall verify the credentials of members of the European Parliament. For this purpose it shall take note of the results declared officially by the Member States and shall rule on any disputes which may arise out of the provisions of this Act other than those arising out of the national provisions to which the Act refers.’

12 Article 299 EC provides:

‘1. This Treaty shall apply to ... the Kingdom of the Netherlands,

2. The provisions of this Treaty shall apply to the French overseas departments, the Azores, Madeira and the Canary Islands.

...

3. The special arrangements for association set out in Part Four of this Treaty shall apply to the overseas countries and territories listed in Annex II to this Treaty.

...’

13 Aruba and the Netherlands Antilles are listed in Annex II to the EC Treaty headed ‘Overseas Countries and Territories to which the provisions of Part Four of the Treaty apply’.

National law

14 Article B1 of the Netherlands Electoral Law (Nederlandse Kieswet) provides in relation to the election of members of the Lower House of the Netherlands Parliament (Tweede Kamer der Staten-Generaal):

‘The members of the Tweede Kamer der Staten-Generaal shall be elected by persons who are Netherlands nationals on the date on which candidates are nominated and have attained the age of 18 on the date of the election, with the exception of those who, on the date on which candidates are nominated, are actually resident in the Netherlands Antilles or Aruba.

2. That exception shall not apply to:

(a) Netherlands nationals who have been resident for at least 10 years in the Netherlands;

(b) Netherlands nationals who work in the Netherlands public service in the Netherlands Antilles or Aruba, and their spouses, registered partners or cohabitants and children, provided that they live together with them.’

15 With regard to elections to the European Parliament, Article Y3 of that law provides:

‘The following shall be entitled to vote:

(a) those who are not Netherlands nationals and are who are entitled to vote in elections of members of the Tweede Kamer der Staten-Generaal;

(b) those who are not Netherlands nationals and are nationals of other Member States of the European Union, provided that they:

1° are actually resident in the Netherlands on the date on which candidates are nominated,

2° have attained the age of 18 on the date of the election, and

3° have not been deprived of their right to vote in the Netherlands or in the Member State of which they are nationals.’

The questions referred for a preliminary ruling

16 In the proceedings before the referring court, the appellants in the main proceedings challenge the refusal, on the ground that they are resident in Aruba, to enrol them on the register of electors for the election of members of the European Parliament. They submit that under Article 17(1) EC they are citizens of the European Union. They maintain that Article 19(2) EC, interpreted in the light of Article 3 of Protocol No 1 to the Convention, recognises their right to vote at elections to the European

Parliament even if they are resident in a territory whose name appears in the list of overseas countries and territories ('OCTs') in Annex II to the Treaty.

17 The referring court recognises that, since the election of the members of the European Parliament has already taken place, it is too late for a decision annulling the refusal to enrol the appellants in the main proceedings on the register of electors to enable them to take part in that election. It does not rule out the possibility, however, that compensation ('rechtsherstel') should be awarded them under Community law.

18 It was in those circumstances that the Raad van State (Council of State) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

1. Does Part Two of the Treaty apply to persons who possess the nationality of a Member State and who are resident or living in a territory belonging to the OCTs referred to in Article 299(3) EC and having special relations with that Member State?
2. If the answer is no: are the Member States free, in the light of the second sentence of Article 17(1) EC, to confer their nationality on persons who are resident or living in the OCTs referred to in Article 299(3) EC?
3. Must Article 19(2) EC, read in conjunction with Articles 189 EC and 190(1) EC, be construed as meaning that – apart from the not unusual exceptions in national legal systems relating to, inter alia, deprivation of voting rights in connection with criminal convictions and legal incapacity – even in the case where the persons concerned are resident or living in the OCTs, the status of citizen of the Union automatically confers the right to vote and to stand as a candidate in elections to the European Parliament?
4. Do Articles 17 EC and 19(2) EC, read together and considered in the light of Article 3 of [Protocol No 1 to the Convention], as interpreted by the European Court of Human Rights, preclude persons who are not citizens of the Union from having the right to vote and to stand as candidates in elections to the European Parliament?
5. Does Community law impose requirements as to the nature of the legal redress (rechtsherstel) to be provided in the case where the national courts – on the basis of, inter alia, the answers given by the Court of Justice of the European Communities to the above questions – conclude that persons resident or living in the Netherlands Antilles and Aruba and having Netherlands nationality were improperly refused registration for the elections of 10 June 2004?

Procedure before the Court

19 By separate letter of 13 July 2004 and by letter of 22 February 2005 the Raad van State requested the Court to apply an accelerated procedure to the reference for a preliminary ruling, under the first paragraph of Article 104a of the Rules of Procedure. By orders of the President of the Court of 23 August 2004 and 18 March 2005, those requests were rejected.

The questions referred for a preliminary ruling

The first question

20 By its first question, the Raad van State asks whether Part Two of the Treaty, relating to citizenship of the Union, applies to persons who possess the nationality of a Member State and who are resident or living in a territory which is one of the OCTs referred to in Article 299(3) EC.

Observations submitted to the Court

21 The parties to the main proceedings, like the Government of the United Kingdom and the Commission of the European Communities, submit that Part Two of the Treaty applies to persons who possess the nationality of a Member State and who are resident or living in a territory which is one of the OCTs. They point out that Article 17(2) EC imposes no condition, for being a citizen of the Union and entitled to the rights conferred by the Treaty, other than the possession of the nationality of a Member State. Therefore, it is of no importance that a national of a Member State resides in a non-member country or an OCT.

22 The Netherlands Government submits as a preliminary matter that, under the Statuut van het Koninkrijk der Nederlanden (Statute of the Kingdom of the Netherlands) of 1954 ('the Statuut'), the Kingdom of the Netherlands is composed of three countries, namely the Netherlands, the Netherlands Antilles and Aruba. Article 41 of the Statuut provides that those three countries 'shall manage their own matters independently'. Thus it is that the Netherlands has its own Constitution and the Netherlands Antilles and Aruba have their own Staatsregeling. Within the Kingdom, except so far as concerns 'Kingdom matters' as specified in the Statuut, each country has its own parliament and administration and enjoys its own legislative powers.

23 Nationality is a 'Kingdom matter' and its grant is governed by the Royal Law on Netherlands Nationality (Rijkswet op het Nederlandschap). It is an 'indivisible nationality', that is, with no distinction between inhabitants of Aruba and inhabitants of the Netherlands who are outside the Kingdom.

24 External relations are also a 'Kingdom matter'. The sole subject of international law is the Kingdom of the Netherlands. In international agreements, the Kingdom can nevertheless conclude treaties for each country separately. That is shown in practice by the mentions of 'the Kingdom of the Netherlands (for the Netherlands)', 'the Kingdom of the Netherlands (for the Netherlands Antilles)' or 'the Kingdom of the Netherlands (for Aruba)'. The result is, in law, that a treaty binds only the country in question. The Netherlands Government states in that regard that the original version of the EEC Treaty was ratified exclusively for the European territory of the Kingdom and for New Guinea, that is, with the statement 'for the Kingdom of the Netherlands (for the Netherlands and New Guinea)'. In addition it produces the Act of Ratification of the Treaty on European Union, approved by the Queen 'for the Kingdom of the Netherlands (for the Netherlands)'.

25 In the Netherlands Government's submission, the territorial scope of the EC Treaty, in particular Part Two, must be determined in accordance with Article 299 EC but also in the light of the instruments of ratification of the Treaty. Examination of those instruments shows that neither the original Treaty nor the Treaty on European Union was ratified for Aruba. The EC Treaty does not, therefore, apply to the territory of that country, with the exception of the special association arrangements defined in Part Four of the Treaty.

26 The fact that the Kingdom of the Netherlands has created an indivisible nationality is irrelevant in that regard. A Netherlands national from Aruba or the Netherlands Antilles admittedly possesses Netherlands nationality and is, as a result, a citizen of the Union, but that does not mean that he is also entitled at all times to all the rights linked to citizenship of the Union. So long as the person concerned is in the territory of Aruba or the Netherlands Antilles, the Treaty has no effect on his situation. However, if he were to leave the territory of Aruba or the Netherlands Antilles, he could claim the rights linked to citizenship of the Union.

The Court's reply

27 The second sentence of Article 17(1) EC provides that '[e]very person holding the nationality of a Member State shall be a citizen of the Union'. It is irrelevant, in that regard, that the national of a Member State resides or lives in a territory which is one of the OCTs referred to in Article 299(3) EC.

28 In addition, Article 17(2) EC provides that citizens of the Union are to enjoy the rights conferred by the Treaty and be subject to the duties imposed thereby.

29 It follows that the reply to the first question must be that persons who possess the nationality of a Member State and who reside or live in a territory which is one of the OCTs referred to in Article 299(3) EC may rely on the rights conferred on citizens of the Union in Part Two of the Treaty.

The second question

30 This question, which concerns the right of the Member States, from the point of view of the second sentence of Article 17(1) EC, to confer their nationality on persons who are resident or living in the OCTs referred to in Article 299(3) EC, was asked in case the Court concluded that Part Two of the Treaty does not apply to persons who possess the nationality of a Member State and reside or live in a territory which is one of the OCTs.

31 Given the reply to the first question, it is unnecessary to reply to the second question.

The third question

32 By its third question, the Raad van State asks whether Article 19(2) EC, read in the light of Articles 189 EC and 190(1) EC, must be interpreted as meaning that a citizen of the Union resident or living in an OCT has the right to vote and to stand as a candidate in elections to the European Parliament.

Observations submitted to the Court

33 The appellants in the main proceedings claim that, even if Aruba is an OCT within the meaning of the Treaty, it is subject to the legislation concerning Kingdom matters, such as defence and external relations, which is influenced by Community law. Internal legislation is also influenced by Community legislation, which justifies the Netherlands nationals from Aruba being able to vote for the election of members of the European Parliament, in accordance with Article 3 of Protocol No 1 to the Convention. They also point out the discrimination of which the Netherlands nationals from Aruba and the Netherlands Antilles are victims. They submit, by way of example, that whether or not an Antillean Netherlands national is entitled to the right to vote depends on whether that national resides in the French or the Netherlands part of the island of Saint-Martin/Sint-Maarten.

34 The Netherlands Government states that the franchise is not a Kingdom matter but comes within the powers of the country within the meaning of the Statuut. Article 46 of the Statuut provides in that regard that the representative bodies of the countries are elected by the Netherlands nationals residing in the country in question. Paragraph 2 of that article leaves to the countries the power to confer the franchise on Netherlands nationals who are not residents of the country concerned. The Netherlands Electoral Law has exercised that power in a limited way by conferring the right to vote on residents of Aruba and the Netherlands Antilles who have lived for more than 10 years in the Netherlands.

35 The Netherlands, French and United Kingdom Governments and the Commission submit that Community law does not require the right to vote to be conferred on nationals of the Member States who do not reside within the territory to which the Community legislation applies. A national residing in an OCT cannot derive such a right from Article 19(2) EC, which is intended only to guarantee that citizens of the Union resident in another Member State have the right to vote under the same conditions as that Member State's nationals.

36 The Netherlands and United Kingdom Governments and the Commission point out, in addition, that Articles 189 EC and 190(1) EC, like the general provisions of the Treaty, failing express reference, do not apply to the OCTs (Case C-260/90 *Leplat* [1992] ECR I-643, paragraph 10, and Case C-110/97 *Netherlands v Council* [2001] ECR I-8763, paragraph 49). They submit that, in view of the fact that the Treaty does not apply to Aruba and that the association with the OCTs attributes no role to the European Parliament, it cannot be described as a 'legislature', within the meaning of Article 3 of Protocol No 1 to the Convention, in the elections of which residents of the OCTs have the right to participate (see the judgment of the European Court of

Human Rights in *Matthews v. the United Kingdom* [GC], no. 24833/94, ECHR 1999-I).

37 In any event, the Community has exercised only partially the power conferred on it by Article 190(4) EC to adopt a uniform electoral procedure. The 1976 Act contains no provision specifying who are to be entitled to the right to vote, so that the national provisions alone apply. They can impose, in particular, requirements of residence.

38 The Netherlands, French and United Kingdom Governments and the Commission submit that Community law does not, however, preclude the Member States from granting the right to vote to citizens of the Union who reside in a non-member country or an OCT. The French Government states in that regard that the French legislation relating to the election of members of the European Parliament refers to the French Electoral Code, which makes no distinction between French citizens who reside in metropolitan France and those who do not. Thus, French citizens who reside in an overseas department or in an OCT participate in elections to the European Parliament under the same conditions as French citizens who reside in metropolitan France.

39 The Commission observes, however, that the Member States must take account of the general principles of Community Law. Under the general principle of equal treatment, a national legislature which decides to extend the franchise for elections to the European Parliament to its nationals who reside in a non-member country must, likewise, confer that right to vote on its nationals who reside in an OCT. That must be the case, a fortiori, because of the particular connection between the OCTs and the Community. In this case, since the Netherlands legislature gives to all Netherlands nationals who are not resident in Aruba or the Netherlands Antilles, wherever they live, the right to participate in those elections, that right must also be granted to Netherlands nationals from Aruba and the Netherlands Antilles. If not, the legislation would include an unjustified discrimination between a Netherlands national who, for example, resides in New York and one who resides in Aruba.

The Court's reply

40 It must be stated that the provisions of the Treaty contain no rule defining expressly and precisely who are to be entitled to the right to vote and to stand as a candidate for the European Parliament.

41 Article 190(4) EC refers to the procedure for those elections. According to that provision, the election of the members of the European Parliament is to take place by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States.

42 Article 1 of the 1976 Act provides that members of the European Parliament are to be elected on the basis of proportional representation and that elections are to be by direct universal suffrage and free and secret. Under Article 8 of the 1976 Act, subject to the provisions of that Act, the electoral procedure is to be governed in each Member

State by its national provisions but those provisions, which may if appropriate take account of the specific situation in the Member States, must not affect the essentially proportional nature of the voting system.

43 However, neither Article 190 EC 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.

44 No clear conclusion can be drawn in that regard from Articles 189 EC and 190 EC, relating to the European Parliament, which state that it is to consist of representatives of the peoples of the Member States, since the term 'peoples', which is not defined, may have different meanings in the Member States and languages of the Union.

45 It follows from those considerations that, in the current state of Community law, the definition of the persons entitled to vote and to stand for election falls within the competence of each Member State in compliance with Community law. It must, however, be ascertained whether that law precludes a situation such as that in the main proceedings, in which Netherlands nationals residing in Aruba do not have the right to vote and to stand as a candidate in elections to the European Parliament.

46 First, it should be noted that the OCTs are subject to the special association arrangements set out in Part Four of the Treaty (Articles 182 EC to 188 EC) with the result that, failing express reference, the general provisions of the Treaty do not apply to them (see *Leplat*, paragraph 10, and *Netherlands v Council*, paragraph 49).

47 It follows that Articles 189 EC and 190 EC do not apply to those countries and territories and that the Member States are not required to hold elections to the European Parliament there.

48 Article 3 of Protocol No 1 to the Convention does not preclude that interpretation. Since the provisions of the Treaty do not apply to the OCTs, the European Parliament cannot be regarded as their 'legislature' within the meaning of that provision. On the other hand, it is within the bodies created within the framework of the association between the Community and the OCTs that the population of those countries and territories can express itself, through the authorities which represent it.

49 It cannot be validly objected in that regard that Community law has an influence on the law applicable in Aruba. That influence may flow from the provisions of Community law which are rendered applicable to the OCTs within the framework of the association. As regards the other provisions of that law, as the Advocate General pointed out in paragraph 161 of his Opinion by reference to paragraph 34 of the judgment in *Matthews v. the United Kingdom*, the indirect impact of measures is not sufficient for them to be regarded as affecting the population in the same way as the measures emanating from a local legislative assembly.

50 Likewise, no argument can be based on the fact that other Member States hold elections to the European Parliament in the OCTs with which they maintain particular relations. In the absence of specific provisions in that regard in the Treaty, it is for the Member States to adopt the rules which are best adapted to their constitutional structure.

51 As regards, second, the right to vote and to stand as a candidate in elections to the European Parliament held in the Netherlands, that is determined by the Netherlands Electoral Law and contains the same requirements as for the election of Members of the Lower House of the Netherlands Parliament, namely that the right to vote and to stand for election is not conferred, in particular, on Netherlands nationals who are actually resident in the Netherlands Antilles or Aruba.

52 As has been pointed out in paragraphs 41 to 44 above, neither Articles 189 EC and 190 EC nor the 1976 Act state expressly and precisely who are to be entitled to vote and to stand as a candidate in elections to the European Parliament. In addition, the provisions of Part Two of the Treaty relating to citizenship of the Union do not confer on citizens of the Union an unconditional right to vote and to stand as a candidate in elections to the European Parliament.

53 Article 19(2) EC, to which reference is made in the question referred, is confined to applying the principle of non-discrimination on grounds of nationality to that right to vote and stand for election, by stipulating that every citizen of the Union residing in a Member State of which he is not a national is to have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. The first paragraph of Article 3 of Directive 93/109 provides under (b) that any citizen of the Union who is not a national of the Member State of residence, but satisfies the same conditions in respect of the right to vote and stand as a candidate as that State imposes by law on its own nationals, is to have the right to vote and stand as a candidate in the Member State of residence. Likewise, Article 5 of that directive is clearly based on the premise that a Member State may require a period of residence ‘in the electoral territory’ as a condition of the right to vote. It follows from that examination of Article 19(2) EC and of the provisions adopted for its implementation that that provision of the Treaty does not apply to a citizen of the Union residing in an OCT who wishes to exercise his right to vote in the Member State of which he is a national.

54 As the Advocate General pointed out in paragraphs 157 and 158 of his Opinion, Article 3 of Protocol No 1 to the Convention does not preclude the Contracting States from adopting the criterion of residence in order to identify who are to have the right to vote and stand for election. With reference to the right to vote, the European Court of Human Rights held in that regard that the obligation to reside within national territory to be able to vote is a requirement which is not, in itself, unreasonable or arbitrary and which is justified for several reasons (*Melnychenkov v. Ukraine*, no. 17707/02, § 56, ECHR 2004-X). It also recognised that stricter requirements can be imposed for eligibility for election than for the right to vote (*Melnychenko v. Ukraine*, § 57).

55 Having regard to those matters, the criterion linked to residence does not appear, in principle, to be inappropriate to determine who has the right to vote and to stand as a candidate in elections to the European Parliament.

56 The appellants in the main proceedings and the Commission claim, however, that the Netherlands Electoral Law infringes the principle of equal treatment in that it confers the right to vote and to stand as a candidate in elections to the European Parliament on all Netherlands nationals resident in a non-member country, whereas such a right is not conferred on Netherlands nationals resident in the Netherlands Antilles or Aruba.

57 In that regard, it must be observed that the principle of equal treatment or non-discrimination, which is one of the general principles of Community law, requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (Joined Cases C-453/03, C-11/04, C-12/04 and C-194/04 *ABNA and Others* [2005] ECR I-10423, paragraph 63, and Case C-344/04 *IATA and ELFAA* [2006] ECR I-403, paragraph 95).

58 Here, 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. Yet there is 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.

59 At the hearing, the Netherlands Government stated that the Netherlands Electoral Law's objective was to enable Netherlands nationals from the Netherlands residing abroad to vote, since those nationals are assumed still to have links with Netherlands society. However, it is also apparent from that Government's explanations at the hearing that a Netherlands national who transfers his residence from Aruba to a non-member country has the right to vote in the same way as a Netherlands national transferring his residence from the Netherlands to a non-member country, while a Netherlands national resident in Aruba does not have that right.

60 In that regard, 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 elections. 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.

61 Having regard to those matters, the answer to the third question must be that while, in the current state of Community law, there is nothing which precludes the

Member States from defining, in compliance with Community law, the conditions of the right to vote and to stand as a candidate in elections to the European Parliament by reference to the criterion of residence in the territory in which the elections are held, the principle of equal treatment prevents, however, the criteria chosen from resulting in different treatment of nationals who are in comparable situations, unless that difference in treatment is objectively justified.

The fourth question

62 By its fourth question, the Raad van State asks whether Articles 17 EC and 19(2) EC, considered in the light of Article 3 of Protocol No 1 to the Convention, preclude persons who are not citizens of the Union from having the right to vote and to stand as candidates in elections to the European Parliament.

63 As the Netherlands Government and the Commission point out, it must be held that this question has no connection with the dispute in the main proceedings, since the appellants in the main proceedings are citizens of the Union, and that there is therefore no need to reply to the question.

64 In any event, the Court has today delivered a judgment in Case C-145/04 *Spain v United Kingdom* [2006] ECR I-0000, which gives some details in that regard, if need be.

The fifth question

65 By its fifth question, the Raad van State asks whether Community law imposes requirements as to the nature of the legal redress (*rechtsherstel*) to be provided if the national court – on the basis of, *inter alia*, the answers given by the Court to the above questions – were to conclude 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.

66 In that regard, it is clear from Article 12 of the 1976 Act that the European Parliament rules only on disputes relating to elections which may arise out of the provisions of the 1976 Act other than those arising out of the national provisions to which it refers. Since the determination of who are entitled to the right to vote and to stand as a candidate in elections to the European Parliament comes within the powers of each Member State, it follows that disputes relating to the national provisions defining those entitled to that right are also a matter of national law.

67 Thus, in the absence of Community legislation in respect of disputes relating to the right to vote and stand for election to the European Parliament, it is for the domestic legal system of each Member State to designate the courts having jurisdiction and to determine the detailed procedural rules governing actions at law intended to safeguard the rights which individuals derive from Community law, provided, first, that those rules are not less favourable than those governing rights which originate in domestic law (principle of equivalence) and, second, that they do not render impossible

or excessively difficult in practice the exercise of rights conferred by the Community legal order (principle of effectiveness) (see, in particular, Case C-443/03 *Leffler* [2005] ECR I-9611, paragraphs 49 and 50).

68 As regards possible legal redress (*rechtsherstel*) for a person who, because of a national provision which is contrary to Community law, is refused registration on the register of electors for the election of Members of the European Parliament, it is likewise in accordance with the requirements and detailed rules of national law that such redress can take place, it being understood that those conditions and rules must comply with the principles of equivalence and effectiveness (see, to that effect, Case 199/82 *San Giorgio* [1983] ECR 3595). In order to determine the appropriate redress, the national court may usefully refer to the detailed rules for legal redress laid down in cases of infringement of the national rules in the context of elections to the institutions of the Member State.

69 In that context, it must also be recalled that the principle of liability on the part of a Member State for damage caused to individuals as a result of breaches of Community law for which it can be held responsible is inherent in the system of the Treaty, and that a Member State is thus required to make reparation for the damage caused where the rule of law infringed is intended to confer rights on individuals, the breach is sufficiently serious and there is a direct causal link between the breach of the obligation resting on the State and the damage sustained by the injured parties (Joined Cases C-46/93 and C-48/93 *Brasserie du Pêcheur and Factortame* [1996] ECR I-1029, paragraphs 31 and 51, and Case C-224/01 *Köbler* [2003] ECR I-10239, paragraphs 30 and 51), although this does not mean that the State cannot incur liability under less strict conditions on the basis of national law (*Brasserie du Pêcheur and Factortame*, paragraph 66).

70 Subject to the right of reparation which flows directly from Community law where the conditions referred to in the previous paragraph are satisfied, it is on the basis of rules of national law on liability that the State must make reparation for the consequences of the loss and damage caused, provided that the conditions for reparation of loss and damage laid down by national law are not less favourable than those relating to similar domestic claims and are not so framed as to make it, in practice, impossible or excessively difficult to obtain reparation (*Brasserie du Pêcheur and Factortame*, paragraph 67).

71 The reply to the fifth question must therefore be that it is for the national law of each Member State to determine the rules allowing legal redress for a person who, because of a national provision that is contrary to Community law, has not been entered on the electoral register for the election of the members of the European Parliament of 10 June 2004 and has therefore been excluded from participation in those elections. Those remedies, which may include compensation for the loss caused by the infringement of Community law for which the State may be held responsible, must comply with the principles of equivalence and effectiveness.

Costs

72 Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **Persons who possess the nationality of a Member State and who reside or live in a territory which is one of the overseas countries and territories referred to in Article 299(3) EC may rely on the rights conferred on citizens of the Union in Part Two of the EC Treaty.**
2. **While, in the current state of Community law, there is nothing which precludes the Member States from defining, in compliance with Community law, the conditions of the right to vote and to stand as a candidate in elections to the European Parliament by reference to the criterion of residence in the territory in which the elections are held, the principle of equal treatment prevents, however, the criteria chosen from resulting in the different treatment of nationals who are in comparable situations, unless that difference in treatment is objectively justified.**
3. **It is for the national law of each Member State to determine the rules allowing legal redress (rechtsherstel) for a person who, because of a national provision that is contrary to Community law, has not been entered on the electoral register for the election of the members of the European Parliament of 10 June 2004 and has therefore been excluded from participation in those elections. Those remedies, which may include compensation for the loss caused by the infringement of Community law for which the State may be held responsible, must comply with the principles of equivalence and effectiveness.**

[Signatures]

* Language of the case: Dutch