[1999–00 Gib LR 28]

MATTHEWS v. UNITED KINGDOM

EUROPEAN COURT OF HUMAN RIGHTS (Wildhaber, President; Judges Palm, Ferrari Bravo, Joründssen, Ress, Cabral Baretto, Costa, Fuhrmann, Jungwiert, Fischbach, Vajic, Hedigan, Thomassen, Tsatsa-Nikolovska, Pantîsu, Traja and Sir John Freeland (ad hoc judge)): February 18th, 1999

European Convention on Human Rights—choice of legislature—European Parliament—UK Government's failure to secure for Gibraltarians right to vote in European Parliamentary elections is breach of Protocol No. 1, art. 3—European Parliament part of Gibraltar "legislature" for purposes of art. 3

European Convention on Human Rights—responsibility for compliance—contracting parties' obligations—contracting party remains responsible for securing Convention rights even after transfer of competency to supranational organization, e.g. European Parliament—liable for breach of Convention resulting from international agreement freely entered into as EC Member State

European Convention on Human Rights—choice of legislature—European Parliament—contracting parties have wide margin of appreciation in means of securing right to vote, e.g. choice of electoral system—breach of Convention if voting right so curtailed that ineffective

European Convention on Human Rights—limitations on Convention rights—local requirements—for purposes of art. 56(3), Gibraltar's legal status not "local requirement" necessitating limitation on right to vote under Protocol No. 1, art. 3

The applicant applied for a declaration that the UK Government was in breach of the European Convention on Human Rights by denying her the right to vote in European Parliamentary elections.

In accordance with art. 138 of the EC Treaty, the EC Council laid down provisions for elections to the European Parliament by Council Decision 76/787 and the EC Act Concerning the Election of the Representatives of the European Parliament by Direct Universal Suffrage 1976. Annex II to the Act provided that the United Kingdom would apply the Act only in respect of the United Kingdom. The applicant alleged that in so limiting the franchise for European Parliamentary elections, the UK Government had breached its obligation under art. 3 of the First Protocol to the European Convention, to hold free elections under conditions which would ensure the free expression of her opinion in the choice of the legislature. It had also breached art. 14 of the Convention in failing to secure her rights under art. 3 without discrimination as to national origin.

She submitted that (a) the UK Government was responsible for the failure to extend the electoral provisions to Gibraltar, since (i) Council Decision 76/787 and the 1976 Act were international treaty agreements to which the UK Government had voluntarily acceded, and (ii) even if it had transferred certain powers to EC organs, the Government remained obliged to secure her rights under the Convention in the absence of any other source of protection; (b) art. 3 applied in respect of European elections, since (i) the word "legislature" included both the Gibraltar House of Assembly and the European Parliament, (ii) the case law of the Commission concerning the European Parliament assumed that the Convention applied to it, (iii) by virtue of the Maastricht Treaty, the European Parliament now performed the functions of a legislative rather than merely supervisory or advisory body, and (iv) it was irrelevant that the European Parliament had not existed when the First Protocol was drafted; (c) the scope of the Convention was not limited for the purposes of art. 56(3) of the Convention by reason of any "local requirements" applicable in Gibraltar; and (d) her rights did not depend on the ease or practicability of applying an alternative system which would secure them. She further submitted that the Government was in breach of art. 14 of the Convention in failing to secure the same rights for Gibraltarians as were enjoyed by UK residents.

The UK Government submitted in reply that (a) it was not responsible for the absence of European Parliamentary elections in Gibraltar, since the Council Decision and the 1976 Act were texts adopted into the legal framework of the European Community consequent to treaty requirements over which it had no control; (b) art. 3 did not apply to European elections, since (i) its obligations under the Convention were

necessarily limited to matters within its power as a sovereign state, (ii) the "legislature" did not include a supranational organization such as the European Parliament in respect of which the UK Government had limited its own sovereignty, (iii) even after the Maastricht Treaty, the European Parliament had no power to initiate or adopt legislation, and (iv) the contracting parties could not have contemplated the application of the Convention to a body which did not exist at the time of the First Protocol; (c) the paties of Gibraltar as a dependent territory was a "local requirement," to which the court must have regard in applying the Convention; and (d) the omission fell within its "margin of appreciation" in complying with the Convention, since it would distort the electoral process to constitute Gibraltar, with its small population, as a separate constituency and Gibraltar had no link with any existing British constituency.

Held, making the following ruling:

(1) The UK Government was responsible for securing in Gibraltar the rights guaranteed by art. 3 of the First Protocol, whether in relation to domestic or European elections. The European Community itself was not a contracting party to the Convention, and Member States retained responsibility for securing Convention rights for their citizens even after the transfer of competencies to it. Since both the 1976 Act and the Maastricht Treaty, extending the European Parliament's competencies, were international agreements freely entered into by the UK as a Member State after the application of Protocol No. 1 to Gibraltar, it was responsible under the Convention for the consequences. The purpose of the Convention was to secure practical rights, and since by virtue of s.227(4) of the EC Treaty large areas of European legislation applied to Gibraltar and affected its population in the same way as domestic legislation, the UK should secure Convention rights in respect of that legislation as it was obliged to do in respect of domestic legislation (paras. 33–37; Sir John Freeland and Judge Jungwiert dissenting, paras. 84–85).

(2) Elections to the European Parliament were not excluded from the ambit of art. 3 of the First Protocol by virtue of its being a supranational organ. The word "legislature" was to be interpreted in the context of the constitutional structure of the contracting party, and was not confined to the national parliament. In Gibraltar, as elsewhere in the Community, EC law co-existed and took precedence over domestic law, and unless art. 3 was broadly construed, there would be no means of maintaining an effective political democracy in Gibraltar in relation to representation in the European Parliament. Moreover, the mere fact that the European Parliament had not been in existence at the time of the First Protocol to the Convention and had therefore not been envisaged by its drafters did not exclude it from the scope of art. 3, since the Convention was to be interpreted in the light of present-day conditions (paras. 41–47; Sir John Freeland and Judge Jungwiert dissenting, paras. 77–80).

(3) Furthermore, the European Parliament's functions were such, having regard to its role in the overall legislative process of the European Community and its general democratic supervision of Community activities, that it could be regarded as part of the legislature of Gibraltar. The Community legislative process involved the participation of the Parliament, the Council and the Commission, and depending on the subject-matter and the format of the legislation, Parliament's role was sometimes limited. However, it also had supervisory power over the Commission, and whilst it could not formally initiate legislation, it could request that the Commission submit proposals for necessary legislation. The European Parliament represented the principal form of democratic political accountability in the Community and was significant to the object of ensuring effective political democracy in the territories of contracting parties (paras. 51–59; Sir John Freeland and Judge Jungwiert dissenting, paras. 81–84).

(4) Article 56(3) of the Convention did not apply so as to limit the application of art. 3 in the context of Gibraltar, since there was no evidence of a local requirement necessitating such a limitation. There was nothing about the legal status of Gibraltar which could constitute a local requirement for the purposes of the article (para. 62).

(5) Although the rights protected by art. 3 were not absolute, and contracting parties enjoyed a wide margin of appreciation in imposing conditions on the right to vote (*e.g.*, the choice of electoral system employed), the court had to be satisfied that any limitation imposed did not so curtail the right to vote that its essence and effect were impaired. Limitations on Convention rights had to have a legitimate aim and be proportionate to that aim. Since the applicant and other Gibraltarians had been completely denied an opportunity to vote in the European Parliamentary elections, the free expression of the people of Gibraltar in the choice of the legislature had been completely thwarted. Accordingly, art. 3 of the First Protocol had been breached. It was unnecessary, therefore, to consider whether art. 14 of the Convention had also been breached (paras. 65–69).

Cases cited:

(1) *Amministrazione delle Finanze dello Stato* v. *Simmenthal S.p.A. (Case 106/77)*, [1978] E.C.R. 629; [1978] 3 C.M.L.R. 263.

(2) *Costa* v. *Ente Nazionale per l'Energia Elettrica (Case 6/64)*, [1964] E.C.R. 585; [1964] C.M.L.R. 425.

(3) *Lindsay* v. *UK (Application No. 8364/78)* (1978), 15 D.R. 247.

(4) *Loizidou* v. *Turkey* (1995), Series A, No. 310; 20 E.H.R.R. 99.

(5) *Mathieu-Mohin* v. *Belgium* (1987), Series A, No. 113; 10 E.H.R.R. 1, considered.

(6) *Tête* v. *France (Application No. 11123/84)* (1987), 54 D.R. 52, considered.

(7) *Timke* v. *Germany (Application No. 27311/95)* (1995), 82–A D.R. 158.
(8) *Tyrer* v. *UK* (1978), Series A, No. 26; 1978–80 MLR 13; 2 E.H.R.R. 1, applied.
(9) *United Communist Party of Turkey* v. *Turkey* (1998), 26 E.H.R.R. 121, applied.
(10) *X* v. *Austria (Application No. 7008/75)* (1976), 6 D.R. 120.

Legislation construed:

European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, November 4th, 1950; UK Treaty Series 71 (1953), Cmnd. 8969), art. 1: The relevant terms of this article are set out at para. 30.
art. 14: The relevant terms of this article are set out at para. 68.
art. 41, as amended by Protocol No. 11 (Strasbourg, May 11th, 1994; UK Treaty Series 33 (1999), Cmnd. 4353), art. 1: The relevant terms of this article are set out at para. 70.
art. 56, as amended by Protocol No. 11, art. 2: The relevant terms of this article are set out at para. 60.
Protocol No. 1 (Paris, March 20th, 1952; UK Treaty Series 46 (1954), Cmnd. 9221), art. 3: The relevant terms of this article are set out at para. 25.

Treaty Establishing the European Community (Rome, March 25th, 1957; UK Treaty Series 29 (1996)), as amended by the Treaty on European Union (Maastricht, February 7th, 1992; UK Treaty Series 12 (1994)), art. 137: The relevant terms of this article are set out at para. 9.
art. 138(3): The relevant terms of this paragraph are set out at para. 19.
art. 138b: The relevant terms of this article are set out at para. 10.
art. 144: The relevant terms of this article are set out at para. 12.
art. 158: The relevant terms of this article are set out at para. 13.
art. 189: The relevant terms of this article are set out at para. 14.
art. 189b: The relevant terms of this article are set out at para. 15.
art. 189c: The relevant terms of this article are set out at para. 16.
art. 203(8): The relevant terms of this paragraph are set out at para. 17.
art. 206(2): The relevant terms of this paragraph are set out at para. 18.
(3): The relevant terms of this paragraph are set out at para. 18.
art. 227(4): The relevant terms of this paragraph are set out at para. 5.

Act Concerning the Election of the Representatives of the European Parliament by Direct Universal Suffrage 1976 (O.J. 1976 L/278/5), art. 15: The relevant terms of this article are set out at para. 20.
Annex II: The relevant terms of this annex are set out at para. 20.

M. Llamas, *L.E.C. Baglietto* and *F.R. Picardo* for the applicant;
D.W.K. Anderson for the UK Government;
J.-C. Soyer and *Ms. M.-T. Schoepfer* for the Commission.

WILDHABER, PRESIDENT, delivering the judgment of the court:

The facts

The circumstances of the case

1 On April 12th, 1994 the applicant applied to the Electoral Registration Officer for Gibraltar to be registered as a voter at the elections to the European Parliament. The Electoral Registration Officer replied on April 25th, 1994:

> "The provisions of Annex II of the EC Act on Direct Elections of 1976 limit the franchise for European parliamentary elections to the United Kingdom [see para. 20 below]. This Act was agreed by all Member States and has treaty status. This means that Gibraltar will not be included in the franchise for the European parliamentary elections."

Relevant law in Gibraltar

A. Gibraltar and the United Kingdom

2 Gibraltar is a dependent territory of the United Kingdom. It forms part of Her Majesty the Queen's Dominions, but not part of the United Kingdom. The United Kingdom parliament has the ultimate authority to legislate for Gibraltar but in practice exercises it rarely.

3 Executive authority in Gibraltar is vested in the Governor, who is the Queen's representative. Pursuant to a dispatch of May 23rd, 1969, certain "defined domestic matters" are allocated to the locally-elected Chief Minister and his Ministers. Other matters (external affairs, defence and internal security) are not "defined" and the Governor thus retains responsibility for them.

4 The Chief Minister and the Government of Gibraltar are responsible to the Gibraltar electorate via general elections to the House of Assembly. The House of Assembly is the domestic legislature in Gibraltar. It has the right to make laws for Gibraltar on "defined domestic matters," subject to, *inter alia*, a power in the Governor to refuse to assent to legislation.

B. Gibraltar and the European Community

5 The Treaty Establishing the European Community ("the EC Treaty") applies to Gibraltar by virtue of its art. 227(4), which provides that it applies to "the European territories for whose external relations a Member State is responsible." The United Kingdom acceded to the precursor to the EC Treaty, the Treaty Establishing the European Economic Community of March 25th, 1957 ("the EEC Treaty"), by a Treaty of Accession of January 22nd, 1972.

6 Gibraltar is excluded from certain parts of the EC Treaty by virtue of the Treaty of Accession. In particular, (i) Gibraltar does not form part

of the customs territory of the Community, with the result that the provisions on free movement of goods do not apply, (ii) it is treated as a third country for the purposes of the Common Commercial Policy, (iii) it is excluded from the common market in agriculture and trade in agricultural products and from the Community rules on value-added tax and other turnover taxes, and (iv) it makes no contribution to the Community budget. European Community ("EC") legislation concerning, *inter alia*, such matters as free movement of persons, services and capital, health, the environment and consumer protection applies in Gibraltar.

7 Relevant EC legislation becomes part of Gibraltar law in the same way as in other parts of the Union. Regulations are directly applicable, and directives and other legal acts of the EC which call for domestic legislation are transposed by domestic primary or secondary legislation.

8 Although Gibraltar is not part of the United Kingdom in domestic terms, by virtue of a declaration made by the UK Government at the time of the coming into force of the British Nationality Act 1981, the term "nationals" and its derivatives used in the EC Treaty are to be understood as referring, *inter alia*, to British citizens and to British Dependent Territories citizens who acquire their citizenship from a connection with Gibraltar.

C. The European Community and the European Parliament

9 The powers of the European Community are divided amongst the institutions set up by the EC Treaty, including the European Parliament, the Council, the Commission ("the European Commission") and the Court of Justice. Before November 1st, 1993, the date of the coming into force of the Maastricht Treaty on European Union of February 7th, 1992 ("the Maastricht Treaty"), art. 137 of the EEC Treaty referred to the "advisory and supervisory powers" of the European Parliament. Since November 1st, 1993, the words "advisory and supervisory powers" have been removed and the role of the European Parliament has been expressed by art. 137 to be to "exercise the powers conferred upon it by [the] Treaty." The principal powers of the European Parliament under the EC Treaty may now be summarized as follows.

10 Article 138b provides that—

> "the European Parliament shall participate in the process leading up to the adoption of Community acts by exercising its powers under the procedures laid down in Articles 189b and 189c and by giving its assent or delivering advisory opinions."

Further, the second paragraph of art. 138b empowers the European Parliament to "request the [European] Commission to submit any appropriate

proposal on matters on which it considers that a Community act is required for the purpose of implementing [the] Treaty."

11 The reference in the first paragraph of art. 138b to "assent" refers to a procedure whereby the EC Treaty (for example, in arts. 8a(2) and 130d) provides for adoption of provisions by the Council on a proposal from the European Commission and after obtaining the assent of the European Parliament. The procedure is called the "assent procedure."

12 Article 144 provides for a motion of censure by the European Parliament over the European Commission whereby "if [a] motion is carried by a two-thirds majority of the votes cast, representing a majority of the Members of the European Parliament, the Members of the [European] Commission shall resign as a body."

13 Article 158 provides that the European Parliament is to be consulted before the President of the European Commission is nominated, and the members of the European Commission, once nominated, are "subject as a body to a vote of approval by the European Parliament."

14 The first paragraph of art. 189 provides:

> "In order to carry out their task and in accordance with the provisions of this Treaty, the European Parliament acting jointly with the Council, the Council and the Commission shall make regulations and issue directives, take decisions, make recommendations or deliver opinions."

15 Article 189b provides:

> "1. Where reference is made in the Treaty to this Article for the adoption of an act, the following procedure shall apply.
>
> 2. The Commission shall submit a proposal to the European Parliament and the Council.
>
> The Council, acting by a qualified majority after obtaining the opinion of the European Parliament, shall adopt a common position. The common position shall be communicated to the European Parliament. The Council shall inform the European Parliament fully of the reasons which led it to adopt its common position. The Commission shall inform the European Parliament fully of its position.
>
> If, within three months of such communication, the European Parliament:
>
> (a) approves the common position, the Council shall definitively adopt the act in question in accordance with that common position;

(b) has not taken a decision, the Council shall adopt the act in question in accordance with its common position;

(c) indicates, by an absolute majority of its component Members, that it intends to reject the common position, it shall immediately inform the Council. The Council may convene a meeting of the Conciliation Committee referred to in paragraph 4 to explain further its position. The European Parliament shall thereafter either confirm, by an absolute majority of its component Members, its rejection of the common position, in which event the proposed act shall be deemed not to have been adopted, or propose amendments in accordance with subparagraph (d) of this paragraph;

(d) proposes amendments to the common position by an absolute majority of its component Members, the amended text shall be forwarded to the Council and to the Commission which shall deliver an opinion on those amendments.

3. If, within three months of the matter being referred to it, the Council, acting by a qualified majority, approves all the amendments of the European Parliament, it shall amend its common position accordingly and adopt the act in question; however, the Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion. If the Council does not approve the act in question, the President of the Council, in agreement with the President of the European Parliament, shall forthwith convene a meeting of the Conciliation Committee.

4. The Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of representatives of the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the representatives of the European Parliament. The Commission shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council.

5. If, within six weeks of its being convened, the Conciliation Committee approves a joint text, the European Parliament, acting by an absolute majority of the votes cast, and the Council, acting by a qualified majority, shall have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If one of the two institutions fails to approve the proposed act, it shall be deemed not to have been adopted.

6. Where the Conciliation Committee does not approve a joint text, the proposed act shall be deemed not to have been adopted unless the Council, acting by a qualified majority within six weeks of expiry of the period granted to the Conciliation Committee, confirms the common position to which it agreed before the conciliation procedure was initiated, possibly with amendments proposed by the European Parliament. In this case, the act in question shall be finally adopted unless the European Parliament, within six weeks of the date of confirmation by the Council, rejects the text by an absolute majority of its component Members, in which case the proposed act shall be deemed not to have been adopted.

7. The periods of three months and six weeks referred to in this Article may be extended by a maximum of one month and two weeks respectively by common accord of the European Parliament and the Council. The period of three months referred to in paragraph 2 shall be automatically extended by two months where paragraph 2(c) applies.

8. The scope of the procedure under this Article may be widened, in accordance with the procedure provided for in Article N(2) of the Treaty on European Union, on the basis of a report to be submitted to the Council by the Commission by 1996 at the latest."

16 Article 189c provides:

"Where reference is made in this Treaty to this Article for the adoption of an act, the following procedure shall apply:

(a) The Council, acting by a qualified majority on a proposal from the Commission and after obtaining the opinion of the European Parliament, shall adopt a common position.

(b) The Council's common position shall be communicated to the European Parliament. The Council and the Commission shall inform the European Parliament fully of the reasons which led the Council to adopt its common position and also of the Commission's position.

If, within three months of such communication, the European Parliament approves this common position or has not taken a decision within that period, the Council shall definitively adopt the act in question in accordance with the common position.

(c) The European Parliament may, within the period of three months referred to in point (b), by an absolute majority of its component Members, propose amendments to the Council's common position. The European Parliament may also, by the

same majority, reject the Council's common position. The result of the proceedings shall be transmitted to the Council and the Commission.

If the European Parliament has rejected the Council's common position, unanimity shall be required for the Council to act on a second reading.

(d) The Commission shall, within a period of one month, re-examine the proposal on the basis of which the Council adopted its common position, by taking into account the amendments proposed by the European Parliament.

The Commission shall forward to the Council, at the same time as its re-examined proposal, the amendments of the European Parliament which it has not accepted, and shall express its opinion on them. The Council may adopt these amendments unanimously.

(e) The Council, acting by a qualified majority, shall adopt the proposal as re-examined by the Commission.

Unanimity shall be required for the Council to amend the proposal as re-examined by the Commission.

(f) In the cases referred to in points (c), (d) and (e), the Council shall be required to act within a period of three months. If no decision is taken within this period, the Commission proposal shall be deemed not to have been adopted.

(g) The periods referred to in points (b) and (f) may be extended by a maximum of one month by common accord between the Council and the European Parliament."

17 Article 203 makes provision for the budget of the Community. In particular, after the procedure for making modifications and amendments to the draft budget, it is open to the European Parliament to "reject the draft budget and ask for a new draft to be submitted to it" (art. 203(8)).

18 Article 206 provides for parliamentary involvement in the process of discharging the European Commission in respect of the implementation of the budget. In particular "the European Parliament may ask to hear the European Commission give evidence with regard to the execution of expenditure," and the European Commission is required "to submit any necessary information to the European Parliament" if so requested (art. 206(2)). Further, the European Commission is required to "take all appropriate steps to act on the observations" of the European Parliament in this connection (art. 206(3)).

D. Elections and the European Parliament

19 Article 138(3) of the EEC Treaty provided, in 1976, that the Assembly [now the European Parliament] was to draw up proposals for elections. The Council was required to "lay down the appropriate provisions which it [was to] recommend to Member States for adoption in accordance with their respective constitutional requirements." Identical provision was made in the European Coal and Steel Community Treaty and the European Atomic Energy Community Treaty.

20 In accordance with art. 138(3), Council Decision 76/787, signed by the President of the Council of the European Communities and then the Member States' foreign ministers, laid down such provisions. The specific provisions were set out in an Act Concerning the Election of the Representatives of the European Parliament by Direct Universal Suffrage of September 20th, 1976, signed by the respective foreign ministers, which was attached to the Council Decision. Article 15 of the 1976 Act provides that "Annexes I to III shall form an integral part of this Act." Annex II to the 1976 Act states that "the United Kingdom will apply the provisions of this Act only in respect of the United Kingdom."

E. The application of the Convention to Gibraltar

21 By a declaration dated October 23rd, 1953, the United Kingdom, pursuant to former art. 63 of the Convention, extended the Convention to Gibraltar. Protocol No. 1 applies to Gibraltar by virtue of a declaration made under art. 4 of Protocol No. 1 on February 25th, 1988.

Proceedings before the Commission

22 Ms. Matthews applied to the Commission on April 18th, 1994. She alleged a violation of art. 3 of Protocol No. 1, taken alone or in conjunction with art. 14 of the Convention.

23 The Commission declared the application (No. 24833/94) admissible on April 16th, 1996. In its report of October 29th, 1997 (under former art. 31 of the Convention) it expressed the opinion that there had been no violation of art. 3 of Protocol No. 1 (11 votes to 6) and that there had been no violation of art. 14 of the Convention (12 votes to 5).

Final submissions to the Court

24 The Government asked the court to find that there had been no violation of the Convention. The applicant, for her part, asked the court to find a breach of her rights under art. 3 of Protocol No. 1, taken alone or in conjunction with art. 14 of the Convention. She also claimed an award of costs.

The law

1. ***Alleged violation of art. 3 of Protocol No. 1***

25 The applicant alleged a breach of art. 3 of Protocol No. 1, which 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."

26 The Government maintained that for three main reasons, art. 3 of Protocol No. 1 was not applicable to the facts of the present case or, in the alternative, that there had been no violation of that provision.

A. Whether the United Kingdom can be held responsible under the Convention for the lack of European Parliament elections in Gibraltar

27 According to the Government, the applicant's real objection was to Council Decision 76/787 and to the 1976 Act concerning elections to the European Parliament (see para. 20). That Act, which had the status of a treaty, was adopted in the Community framework and could not be revoked or varied unilaterally by the United Kingdom. The Government underlined that the European Commission of Human Rights had refused on a number of occasions to subject measures falling within the Community legal order to scrutiny under the Convention. Whilst it accepted that there might be circumstances in which a Contracting Party might infringe its obligations under the Convention by entering into treaty obligations which were incompatible with the Convention, it considered that in the present case, which concerned texts adopted in the framework of the European Community, the position was not the same. Thus, acts adopted by the Community or consequent to its requirements could not be imputed to the Member States, together or individually, particularly when those acts concerned elections to a constitutional organ of the Community itself. At the hearing, the Government suggested that to engage the responsibility of any state under the Convention, that state must have a power of effective control over the act complained of. In the case of the provisions relating to the elections to the European Parliament, the UK Government had no such control.

28 The applicant disagreed. For her, the Council Decision and 1976 Act constituted an international treaty, rather than an act of an institution whose decisions were not subject to Convention review. She thus considered that the Government remained responsible under the Convention for the effects of the Council Decision and 1976 Act. In the alternative—that is, if the Council Decision and 1976 Act were to be interpreted as involving a transfer of powers to the Community organs—the applicant argued, by reference to Commission case law, that in the absence of any

equivalent protection of her rights under art. 3 of Protocol No. 1, the Government in any event retained responsibility under the Convention.

29 The majority of the Commission took no stand on the point, although it was referred to in concurring and dissenting opinions.

30 Article 1 of the Convention requires the High Contracting Parties to "secure to everyone within their jurisdiction the rights and freedoms defined in . . . [the] Convention." Article 1 "makes no distinction as to the type of rule or measure concerned, and does not exclude any part of the Member States' jurisdiction from scrutiny under the Convention" (see *United Communist Party of Turkey* v. *Turkey* (9) (26 E.H.R.R., para. 29, at 144)).

31 The court notes that the parties do not dispute that art. 3 of Protocol No. 1 applies in Gibraltar. It recalls that the Convention was extended to the territory of Gibraltar by the UK's declaration of October 23rd, 1953 (see para. 21), and Protocol No. 1 has been applicable in Gibraltar since February 25th, 1988. There is therefore clearly territorial "jurisdiction" within the meaning of art. 1 of the Convention.

32 The court must nevertheless consider whether, notwithstanding the nature of the elections to the European Parliament as an organ of the EC, the United Kingdom can be held responsible under art. 1 of the Convention for the absence of elections to the European Parliament in Gibraltar, that is, whether the United Kingdom is required to "secure" elections to the European Parliament notwithstanding the Community character of those elections.

33 The court observes that acts of the EC as such cannot be challenged before the court because the EC is not a Contracting Party. The Convention does not exclude the transfer of competencies to international organizations provided that Convention rights continue to be "secured." Member States' responsibility therefore continues even after such a transfer.

34 In the present case, the alleged violation of the Convention flows from an annex to the 1976 Act, entered into by the United Kingdom, together with the extension to the European Parliament's competencies brought about by the Maastricht Treaty. The Council Decision, the 1976 Act (see para. 20) and the Maastricht Treaty, with its changes to the EC Treaty, all constituted international instruments which were freely entered into by the United Kingdom. Indeed, the 1976 Act cannot be challenged before the European Court of Justice for the very reason that it is not a "normal" act of the Community, but is a treaty within the Community legal order. The Maastricht Treaty, too, is not an act of the Community but a treaty by which a revision of the EEC Treaty was brought about. The United Kingdom, together with all the other parties to the Maastricht

Treaty, is responsible *ratione materiae* under art. 1 of the Convention, and in particular under art. 3 of Protocol No. 1, for the consequences of that treaty.

35 In determining to what extent the United Kingdom is responsible for "securing" the rights in art. 3 of Protocol No. 1 in respect of elections to the European Parliament in Gibraltar, the court recalls that the Convention is intended to guarantee rights that are not theoretical or illusory, but practical and effective (see, *e.g. United Communist Party of Turkey* v. *Turkey* (9) (*ibid*., para. 33, at 145)). It is uncontested that legislation emanating from the legislative process of the European Community affects the population of Gibraltar in the same way as legislation which enters the domestic legal order exclusively via the House of Assembly. To this extent, there is no difference between European and domestic legislation, and no reason why the United Kingdom should not be required to "secure" the rights in art. 3 of Protocol No. 1 in respect of European legislation in the same way as those rights are required to be "secured" in respect of purely domestic legislation.

36 In particular, the suggestion that the United Kingdom may not have effective control over the state of affairs complained of cannot affect the position, as the United Kingdom's responsibility derives from its having entered into treaty commitments subsequent to the application of art. 3 of Protocol No. 1 to Gibraltar, namely, the Maastricht Treaty taken together with its obligations under the Council Decision and the 1976 Act. Further, the court notes that on acceding to the EC Treaty, the United Kingdom chose, by virtue of art. 227(4) of the Treaty, to have substantial areas of EC legislation applied to Gibraltar (see paras. 5–8).

37 It follows that the United Kingdom is responsible under art. 1 of the Convention for securing the rights guaranteed by art. 3 of Protocol No. 1 in Gibraltar regardless of whether the elections were purely domestic or European.

B. Whether art. 3 of Protocol No. 1 is applicable to an organ such as the European Parliament

38 The Government claimed that the undertaking in art. 3 of Protocol No. 1 was necessarily limited to matters falling within the power of the parties to the Convention, that is, sovereign states. It submitted that the "legislature" in Gibraltar was the House of Assembly and that it was to that body that art. 3 of Protocol No. 1 applied in the context of Gibraltar. For the Government, it was contended that there was no basis upon which the Convention could place obligations on Contracting Parties in relation to elections for the parliament of a distinct, supranational organization, and it contended that this was particularly so when the Member States of

the European Community had limited their own sovereignty in respect of it and when both the European Parliament itself and its basic electoral procedures were provided for under its own legal system, rather than the legal systems of its Member States.

39 The applicant referred to previous decisions of the European Commission of Human Rights in which complaints concerning the European Parliament were dealt with on their merits, so that the Commission in effect assumed that art. 3 of Protocol No. 1 applied to elections to the European Parliament (see, *e.g. Lindsay* v. *UK (Application No. 8364/78)* (3) and *Tête* v. *France (Application No. 11123/84)* (6)). She agreed with the dissenting members of the Commission who did not accept that because the European Parliament did not exist when Protocol No. 1 was drafted, it necessarily fell outside the ambit of art. 3 of that Protocol.

40 The majority of the Commission based its reasoning on this jurisdictional point. It considered that—

> "to hold art. 3 of Protocol No. 1 to be applicable to supranational representative organs would be to extend the scope of art. 3 beyond what was intended by the drafters of the Convention and beyond the object and purpose of the provision. . . . [T]he role of art. 3 is to ensure that elections take place at regular intervals to the national or local legislative assembly; that is, in the case of Gibraltar, to the House of Assembly."

41 "That the Convention is a living instrument which must be interpreted in the light of present-day conditions is firmly rooted in the court's case law" (see, *e.g. Loizidou* v. *Turkey* (4) (20 E.H.R.R., para. 71, at 133). The mere fact that a body was not envisaged by the drafters of the Convention cannot prevent that body from falling within the scope of the Convention. To the extent that Contracting Parties organize common constitutional or parliamentary structures by international treaties, the court must take these mutually-agreed structural changes into account in interpreting the Convention and its Protocols.

42 The question remains whether an organ such as the European Parliament nevertheless falls outside the ambit of art. 3 of Protocol No. 1.

43 The court recalls that the word "legislature" in art. 3 of Protocol No. 1 does not necessarily mean the national parliament. The word has to be interpreted in the light of the constitutional structure of the state in question. In *Mathieu-Mohin* v. *Belgium* (5), the 1980 constitutional reform had vested in the Flemish Council sufficient competence and powers to make it, alongside the French Community Council and the Walloon Regional Council, a constituent part of the Belgian "legislature," in addition to the House of Representatives and the Senate (see also the

Commission's decisions on the application of art. 3 of Protocol No. 1 to regional parliaments in *X* v. *Austria (Application No. 7008/75)* (10) and *Timke* v. *Germany (Application No. 27311/95)* (7)).

44 According to the case law of the European Court of Justice, it is an inherent aspect of EC law that such law sits alongside, and indeed has precedence over, domestic law (see, *e.g. Costa* v. *Ente Nazionale per l'Energia Elettrica (Case 6/64)* (2), and *Amministrazione delle Finanze dello Stato* v. *Simmenthal S.p.A. (Case 106/77)* (1)). In this regard, Gibraltar is in the same position as other parts of the European Union.

45 The court reiterates that art. 3 of Protocol No. 1 enshrines a characteristic of an effective political democracy (see *Mathieu-Mohin* v. *Belgium* (5) (10 E.H.R.R., para. 47, at 15) and *United Communist Party of Turkey* v. *Turkey* (9) (26 E.H.R.R., para. 45, at 149)). In the present case, there has been no submission that there exist alternative means of providing for electoral representation of the population of Gibraltar in the European Parliament, and the court finds no indication of any.

46 The court thus considers that to accept the Government's contention that the sphere of activities of the European Parliament falls outside the scope of art. 3 of Protocol No. 1 would risk undermining one of the fundamental tools by which "effective political democracy" can be maintained.

47 It follows that no reason has been made out which could justify excluding the European Parliament from the ambit of the elections referred to in art. 3 of Protocol No. 1 on the ground that it is a supranational, rather than a purely domestic, representative organ.

C. Whether the European Parliament, at the relevant time, had the characteristics of a "legislature" in Gibraltar

48 The Government contended that the European Parliament continued to lack both of the most fundamental attributes of a legislature: the power to initiate legislation and the power to adopt it. It was of the opinion that the only change to the powers and functions of the European Parliament since the Commission last considered the issue in *Tête* (6)—the procedure under art. 189b of the EC Treaty—offered less than even a power of co-decision with the Council, and in any event applied only to a tiny proportion of the Community's legislative output.

49 The applicant took as her starting-point in this respect that the European Commission of Human Rights had found that the entry into force of the Single European Act in 1986 did not furnish the European Parliament with the necessary powers and functions for it to be considered as a "legislature" (see *Tête*). She contended that the Maastricht Treaty increased those powers to such an extent that the European

Parliament was now transformed from a mere advisory and supervisory organ to a body which assumed, or assumed at least in part, the powers and functions of legislative bodies within the meaning of art. 3 of Protocol No. 1. The High Contracting Parties had undertaken to hold free elections at reasonable intervals by secret ballot, under conditions which would ensure the free expression of the opinion of the people in the choice of the legislature. She described the powers of the European Parliament not solely in terms of the new matters added by the Maastricht Treaty, but also by reference to its pre-existing powers, in particular those which were added by the Single European Act in 1986.

50 The Commission did not examine this point, as it found art. 3 not to be applicable to supranational representative organs.

51 In determining whether the European Parliament falls to be considered as the "legislature" or part of it, in Gibraltar, for the purposes of art. 3 of Protocol No. 1, the court must bear in mind the *sui generis* nature of the European Community, which does not follow in every respect the pattern common in many states of a more or less strict division of powers between the executive and the legislature. Rather, the legislative process in the EC involves the participation of the European Parliament, the Council and the European Commission.

52 The court must ensure that "effective political democracy" is properly served in the territories to which the Convention applies, and in this context it must have regard not solely to the strictly legislative powers which a body has, but also to that body's role in the overall legislative process.

53 Since the Maastricht Treaty, the European Parliament's powers are no longer expressed to be "advisory and supervisory." The removal of these words must be taken as an indication that the European Parliament has moved away from being a purely consultative body, and has moved towards being a body with a decisive role to play in the legislative process of the European Community. The amendment to art. 137 of the EC Treaty cannot, however, be taken as any more than an indication as to the intentions of the drafters of the Maastricht Treaty. Only on examination of the European Parliament's actual powers in the context of the European Community legislative process as a whole can the court determine whether the European Parliament acts as the "legislature" or part of it, in Gibraltar.

54 The European Parliament's role in the Community legislative process depends on the issues concerned (see paras. 9–18). Where a regulation or directive is adopted by means of the consultation procedure (*e.g.* under arts. 99 or 100 of the EC Treaty) the European Parliament may, depending on the specific provision, have to be consulted. In such cases the European

Parliament's role is limited. Where the EC Treaty requires the procedure set out in art. 189c to be used, the European Parliament's position on a matter can be overruled by a unanimous Council. Where the EC Treaty requires the art. 189b procedure to be followed, however, it is not open to the Council to pass measures against the will of the European Parliament. Finally, where the so-called "assent procedure" is used (as referred to in the first paragraph of art. 138b of the EC Treaty), in relation to matters such as the accession of new Member States and the conclusion of certain types of international agreements, the consent of the European Parliament is needed before a measure can be passed.

55 In addition to this involvement in the passage of legislation, the European Parliament also has functions in relation to the appointment and removal of the European Commission. Thus, it has a power of censure over the European Commission, which can ultimately lead to the European Commission having to resign as a body (art. 144); its consent is necessary for the appointment of the European Commission (art. 158); its consent is necessary before the budget can be adopted (art. 203); and it gives a discharge to the European Commission in the implementation of the budget and here has supervisory powers over the European Commission (art. 206).

56 Further, whilst the European Parliament has no formal right to initiate legislation, it has the right to request the European Commission to submit proposals on matters on which it considers that a Community act is required (art. 138b).

57 As to the context in which the European Parliament operates, the court is of the view that the European Parliament represents the principal form of democratic, political accountability in the Community system. The court considers that whatever its limitations, the European Parliament, which derives democratic legitimization from the direct elections by universal suffrage, must be seen as that part of the European Community structure which best reflects concerns as to "effective political democracy."

58 Even when due allowance is made for the fact that Gibraltar is excluded from certain areas of Community activity (see para. 6 above), there remain significant areas where Community activity has a direct impact in Gibraltar. Further, as the applicant points out, measures taken under art. 189b of the EC Treaty and which affect Gibraltar relate to important matters such as road safety, unfair contract terms and air pollution by emissions from motor vehicles, and to all measures in relation to the completion of the internal market.

59 The court thus finds that the European Parliament is sufficiently involved in the specific legislative processes leading to the passage of

legislation under arts. 189b and 189c of the EC Treaty, and is sufficiently involved in the general democratic supervision of the activities of the European Community, to constitute part of the "legislature" of Gibraltar for the purposes of art. 3 of Protocol No. 1.

D. The application of art. 56 of the Convention to the case

60 Article 56(1) and (3) of the Convention provide as follows:

> "1. Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the . . . Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible.
>
> . . .
>
> 3. The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements."

61 The Government noted, without relying formally on the point, that two members of the Commission had emphasized the constitutional position of Gibraltar as a dependent territory in the context of art. 56 (formerly art. 63) of the Convention. The applicant was of the view that the "local requirements" referred to in art. 56(3) of the Convention could not be interpreted so as to restrict the application of art. 3 of Protocol No. 1 in the case. The Commission, which found art. 3 not to be applicable on other grounds, did not consider this point. Two members of the Commission, in separate concurring opinions, both found that art. 56 of the Convention had a role to play in the case.

62 The court recalls that in *Tyrer* v. *UK* (8) (2 E.H.R.R., para. 38, at 13) it found that before the former art. 63(3) could apply, there would have to be "positive and conclusive proof of a requirement." Local requirements, if they refer to the specific legal status of a territory, must be of a compelling nature if they are to justify the application of art. 56 of the Convention. In the present case, the Government does not contend that the status of Gibraltar is such as to give rise to "local requirements" which could limit the application of the Convention, and the court finds no indication that there are any such requirements.

E. Whether the absence of elections to the European Parliament in Gibraltar in 1994 was compatible with art. 3 of Protocol No. 1

63 The Government submitted that even if art. 3 of Protocol No. 1 could be said to apply to the European Parliament, the absence of elections in Gibraltar in 1994 did not give rise to a violation of that provision but instead fell within the state's margin of appreciation. It pointed out that in the 1994 elections the United Kingdom had used a

single-member constituency, "first-past-the-post" system. It would have distorted the electoral process to constitute Gibraltar as a separate constituency, since its population of approximately 30,000 was less than 5% of the average population per European Parliament seat in the United Kingdom. The alternative of re-drawing constituency boundaries so as to include Gibraltar within a new or existing constituency was no more feasible, as Gibraltar did not form part of the United Kingdom and had no strong historical or other link with any particular UK constituency.

64 The applicant submitted that she had been completely deprived of the right to vote in the 1994 elections. She stated that the protection of fundamental rights could not depend on whether or not there were attractive alternatives to the current system. The Commission, since it did not find art. 3 of Protocol No. 1 to be applicable, did not examine whether or not the absence of elections in Gibraltar was compatible with that provision.

65 The court recalls that the rights set out in art. 3 of Protocol No. 1 are not absolute, but may be subject to limitations. The Contracting Parties enjoy a wide margin of appreciation in imposing conditions on the right to vote, but as this court held in *Mathieu-Mohin* v. *Belgium* (5) (10 E.H.R.R., para. 52, at 16):

> ". . . [I]t is for the Court to determine in the last resort whether the requirements of Protocol No. 1 have been complied with; it has to satisfy itself that the conditions do not curtail the right [to vote] to such an extent as to impair [its] very essence and deprive [it] of effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate."

In particular, such conditions must not thwart "the free expression of the people in the choice of the legislature."

66 The court makes it clear at the outset that the choice of electoral system by which the free expression of the opinion of the people in the choice of the legislature is ensured—whether it be based on proportional representation, the "first-past-the-post" system, or some other arrangement—is a matter in which the state enjoys a wide margin of appreciation. However, in the present case the applicant, as a resident of Gibraltar, was completely denied any opportunity to express her opinion in the choice of the members of the European Parliament. The position is not analogous to that of persons who are unable to take part in elections because they live outside the jurisdiction, as such individuals have weakened the link between themselves and the jurisdiction. In the present case, as the court has found (see para. 35), the legislation which emanates from the European Community forms part of the legislation in Gibraltar, and the applicant is directly affected by it.

67 In the circumstances of the present case, the very essence of the applicant's right to vote, as guaranteed by art. 3 of Protocol No. 1, was denied. It follows that there has been a violation of that provision.

2. Alleged violation of art. 14 of the Convention taken in conjunction with art. 3 of Protocol No. 1

68 The applicant in addition alleged that, as a resident of Gibraltar, she had been the victim of discrimination contrary to art. 14 of the Convention, which provides:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Government did not address this complaint separately.

69 In view of its conclusion that there has been a violation of art. 3 of Protocol No. 1 taken alone, the court does not consider it necessary to consider the complaint under art. 14 of the Convention.

3. Application of art. 41 of the Convention

70 Under art. 41 of the Convention—

> "if the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Costs and expenses

71 The applicant did not claim any damages under art. 41 but she did claim costs and expenses before the court totalling Fr.760,000 and £10,955, comprising Fr.750,000 for her representative's fees and expenses (750 hours at Fr.1,000 per hour) and Fr.10,000 disbursements, and £10,955 for fees and expenses incurred in instructing solicitors in Gibraltar. She also claimed Fr.6,976 and £1,151.50 in respect of travel expenses.

72 The Government considered that the total number of hours claimed by the applicant's main representative should be reduced by about half, and that the Gibraltar advisers' claims should not have amounted to more than one-third of the sums actually claimed. They also challenged some of the travel expenses.

73 In the light of the criteria established in its case law, the court holds on an equitable basis that the applicant should be awarded the sum of

£45,000, from which should be deducted Fr.18,510 already paid by way of legal aid for fees and travel and subsistence expenses before the court.

B. Default interest

74 According to the information available to the court, the statutory rate of interest applicable in the United Kingdom at the date of adoption of the present judgment is 7.5% per annum.

75 **FOR THESE REASONS THE COURT:**

1. Holds by 15 votes to 2 that there has been a breach of art. 3 of Protocol No. 1.

2. Holds unanimously that it is not necessary to consider the complaint under art. 14 of the Convention taken together with art. 3 of Protocol No. 1.

3. Holds unanimously that—

(a) the respondent state is to pay the applicant, within three months, for costs and expenses, £45,000 (forty-five thousand pounds sterling) together with any V.A.T. that may be chargeable, less Fr.18,510 (eighteen thousand five hundred and ten French francs) to be converted into pounds sterling at the rate applicable on the date of delivery of the present judgment; and

(b) simple interest at an annual rate of 7.5% shall be payable from the expiry of the above-mentioned three months until settlement.

4. Dismisses unanimously the remainder of the claim for just satisfaction.

76 In accordance with art. 45(2) of the Convention and r.74(2) of the Rules of Court, the joint dissenting opinion of Sir John Freeland and Mr. Jungwiert is annexed to this judgment.

JUDGE SIR JOHN FREELAND and **JUDGE JUNGWIERT:**

77 We voted against the finding of a breach of art. 3 of Protocol No. 1, essentially for the following reasons.

78 In the first place, and as a general point, the view has throughout weighed heavily with us that particular restraint should be required of the court when it is invited, as it is here, to pronounce on acts of the European Community or consequent to its requirements, especially when those acts relate to a matter so intimately concerned with the operation of the Community as elections to one of its constitutional organs.

79 Secondly, as to the interpretation to be given to art. 3 of Protocol No. 1, we have considered that the view taken in the Commission, by the substantial majority of 11 votes to 6, that "the role of art. 3 is to ensure that elections take place at regular intervals to the national or local legislative assembly," has much to commend it. It is, as reference to the *travaux préparatoires* confirms, a view squarely within the intention of the draftsmen (who, it should be recalled, were working at a time when about half the countries of Europe—including some in Western Europe—were deprived of free elections). Further, by confining the ambit of the provision to bodies within the domestic area and excluding any supra-national representative organ, it avoids the uncertainty and invidiousness involved in analysis by an outside body of the characteristics of such an organ—which, as experience has shown, are likely to be neither straightforward nor static.

80 If, however, it is justifiable, on the familiar basis that "the Convention is a living instrument which must be interpreted in the light of present-day conditions," to include within the scope of art. 3 of Protocol No. 1 a body which was plainly not within the contemplation of the draftsmen—if only because no such body existed at the time—it becomes necessary to consider whether the body concerned is properly to be regarded as "the legislature" within the meaning of the provision. That question may require, in turn, two others to be answered. First: Is the body a legislature at all? And secondly: If it is, is it the legislature for the state or territory in question (in this case Gibraltar)?

81 As to the first of these questions, it is, in our view, intrinsic to the notion of a "legislature" that the body concerned should have the power to initiate legislation and to adopt it (subject, in the case of some national constitutions, to the requirement of the assent of the head of state). If this power is lacking, the fact that the body may have other powers often exercisable by national legislatures (for example, powers in relation to censure of the executive or to the budget) is not enough to remedy the deficiency. The existence of such other powers may enhance the body's entitlement to be styled as a parliament and its role in promoting an "effective political democracy," but the facts that it is so styled and has such a role are not to be regarded as requiring it to be treated as a "legislature" unless it has in itself the necessary legislative power.

82 With the vestigial, and, for present purposes, insignificant exception of its power under art. 95(3) of the European Coal and Steel Community Treaty, the European Parliament has no power to initiate and adopt legislation. Even in the case of the so-called co-decision procedure (art. 189b) introduced by the Maastricht Treaty—a procedure to which much significance was attached on behalf of the applicant—the European Parliament has potential influence on the content of legislation and a

power to block legislation to which it objects, but has neither the sole right to adopt legislation nor the power to force the Council to adopt legislation which the Council does not want. Nor does the procedure provide the Parliament with any opportunity to initiate legislation itself.

83 Thus, even if, as para. 53 of the court's judgment says, the Maastricht Treaty's removal of the words "advisory and supervisory" to describe the powers of the European Parliament "must be taken as an indication that the European Parliament has moved away from being a purely consultative body and has moved towards being a body with a decisive role to play in the legislative process of the European Community," as matters stand (and stood at the time of the 1994 elections) that Parliament has not, in our view, reached a stage where it can of itself properly be regarded as constituting a legislature. To borrow the words of Professor Dashwood in his inaugural address at the University of Cambridge in November 1995, "the Community has no legislature, but a legislative process in which the different political institutions have different parts to play." In fact, of the institutions of the Community, it is the Council of Ministers which performs the functions most closely related to those of a legislature at national level.

84 If it had become necessary to consider whether, on the hypothesis that it was in the true sense a legislature, the European Parliament qualified to be treated as "the legislature" for Gibraltar within the meaning of art. 3 of Protocol No. 1, so that Gibraltar elections were required to be held to it as well as to the local House of Assembly, we would have been influenced in the contrary direction by the exclusion of Gibraltar from substantial parts of the EC Treaty and the limited extent of the areas of Community competence in which the Parliament has, in any event, a significant role. It has no such role in the areas of foreign and security policy, justice and home affairs, the implementation of the common commercial policy or the negotiation of trade agreements with other states or international organizations, or in the field of economic and monetary union. We would have been similarly influenced by the small number of measures adopted under the art. 189b procedure and applicable to Gibraltar. But, given the negative view which we have reached on the qualifications of the European Parliament to be regarded as a legislature, there is no need for us to proceed to a conclusion on the further question.

85 We would add only that, to put it no higher, we see a certain incongruity in the branding of the United Kingdom as a violator of obligations under art. 3 of Protocol No. 1, when—

(i) the exclusion from the franchise effected multilaterally by the 1976 Council Decision and Annex II of the 1976 Act was at that time wholly consistent with those obligations (because on

no view could the Assembly, as it was then known, be regarded as a legislature),

(ii) at no subsequent time has it been possible for the United Kingdom unilaterally to secure the modification of that position so as to include Gibraltar within the franchise, and

(iii) such a modification would require the agreement of all the Member States (including a Member State in dispute with the United Kingdom about sovereignty over Gibraltar).

Ruling accordingly.
