

Subject-matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence <input checked="" type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	17.11.2010
Deciding body (in original language)	Audiencia Provincial de Barcelona. Sección tercera
Deciding body (in English)	Provincial Court Headquarter Court: Barcelona
Case number (also European Case Law Identifier (ECLI) where applicable)	Appeal No. 76/2010 Decision No. 866/2010 No. Cendoj: 08019370032010100639 Reporting Judge: José Grau Gassó
Parties	Barcelona Provincial Court, Section 3 v <i>Casimiro</i> (Alias)
Web link to the decision (if available)	https://www.iberley.es/jurisprudencia/sentencia-penal-n-866-2010-ap-barcelona-sec-3-rec-76-2010-17-11-2010-11449211
Legal basis in national law of the rights under dispute	Articles 137 and 143 of the Organic law 5/1985 of the General Electoral System (<i>Ley Orgánica 5/1985 del Régimen Electoral General</i>) Article 40 Organic Law 10/1995 Criminal Code (<i>Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal</i>).
Key facts of the case (max. 500 chars)	<p><i>Casimiro</i>, an Italian citizen of legal age with no criminal record, was appointed to the post of President of the polling station in District 01 Section 28 of Barcelona for the European Parliament elections (June 7, 2009) and did not attend the act of constitution of the polling place (<i>mesa electoral</i>).</p> <p>Failure to do so and not attending of constitution of the polling place (<i>mesa electoral</i>) is considered an electoral offence according to both the Electoral Code and the Criminal Code, as the passive voting right carries with it the duty to be part of the polling stations if a citizen is designated for this purpose. The prosecutor requested a daily fine and alternatively one day of deprivation of liberty for every two unpaid daily quotas and payment of the procedural costs.</p>

Main reasoning / argumentation (max. 500 chars)	The electoral crime defined in Article 143 of Organic Law 5/1985 of the General Electoral Regime (LOREG), constitutes a crime directly and personally committed by the offender, inasmuch as the active subject must meet the status of president or member of the electoral board.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>In this case it must be examined not only whether the defendant - a citizen of the European Union - was appointed for those positions of the electoral board –as in the case of the president of the polling place-s, but also if that designation was in accordance with the electoral legislation and, more specifically, with those articles that regulate the participation of European citizens in the municipal elections.</p> <p>The designation of the defendant as president of the polling station is proven as it has been admitted by him and because of the documents in the proceedings.</p> <p>Regarding the defendant's duty to participate in the electoral administration as a member of the bureau, article 210 of the LOREG provides that if a non-Spanish citizen of the European Union wants to exercise active voting rights in Spain, he must have previously opted to do so. One voting right is the duty to participate in the electoral administration as a member of the bureau. In this respect the defendant is not subject to article 143 LOREG as it has not been proven that he had chosen to vote in Spain.</p>
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	Not having been proven that the defendant had chosen to cast his vote in Spain, it is appropriate to acquit him of the electoral crime of non-compliance with its electoral obligation for which he has been charged, declaring ex officio the procedural costs.
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p>“En el acusado <i>Casimiro</i> no se dan las condiciones que el precepto del Artículo 143 LOREG exige en el sujeto activo del delito, puesto que si formalmente fue designado miembro de la mesa electoral no existía el deber de formar parte de ella por no constar que hubiera optado votar en España, de modo que su conducta no fue ni antijurídica ni típica cuando, como se ha dicho, el delito electoral citado es un delito "de propia mano" o especial propio.”</p> <p>The accused Casimiro does not meet the conditions that the provision of Article 143 LOREG requires to be a perpetrator of the crime. He had no obligation to be a member of the polling station, even though he was formally designated, because it was not stated that he had chosen to vote in Spain. So, his behaviour was neither unlawful nor typical although it was said electoral offense was a crime directly and personally committed by the offender.</p>
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	No, the deciding body does not refer to the Charter of Fundamental Rights.