

C-192/05 K. Tas-Hagen and R.A. Tas v Raadskamer WUBO van de Pensioen-en Uitkeringsraad, judgment of 26 October 2006

Facts: The applicants were Dutch nationals residing in Spain. They sought to be recognised in the Netherlands as civilian war victims. While that status was bestowed upon them, they were not able to obtain a periodic benefit as they were not resident in the Netherlands when they submitted their applications and so did not meet the territorial requirement laid down in national law.

The applicants contended that Art. 20 TFEU applied here, and they could rely on the fact that every citizen of the Union has the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaty and the measures adopted to give it effect. On this basis, national law would have to be set aside, and they should receive the periodic benefit.

Held: Firstly, the question of whether a person could obtain compensation by virtue of being a civilian war victim was left to the Member States. However, in exercising that discretion, those Member States would have to must exercise that competence in accordance with Community law, in particular with the Treaty provisions giving every citizen of the Union the right to move and reside freely within the territory of the Member States. As the applicants had moved to a different Member State, they had exercised their right to free movement and so were protected by EU law.

As such, any national law which places at a disadvantage certain of the nationals of the Member State concerned simply because they had exercised their freedom to move and to reside in another Member State would be a restriction to that freedom on every citizen of the EU, as this law would dissuade Dutch nationals from exercising their right to move and to reside outside the Netherlands.

The law would then have to be analysed in terms of proportionality, and it was concluded that the setting of a residence criterion based solely on the date of application for the benefit would not be a satisfactory indicator of the degree of attachment of the applicant to the society which is demonstrating its solidarity with him and that the condition of residence therefore would fail to comply with the principle of proportionality.