

POLITICAL RIGHTS, CITIZENSHIP AND EU VALUES: NEW PERSPECTIVES FOR A EUROPEAN POLITICAL CONSCIOUSNESS

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Abstract:

This article¹ examines the compatibility of national laws in the Czech Republic and Poland – which restrict membership in political parties to nationals – with Article 22 TFEU, in light of two recent CJEU judgments. It explores the implications of these rulings for the political rights of mobile EU citizens, their participation in the democratic life of their host Member States, and the broader interconnection between citizenship, democracy, and EU values. By analysing the Court's reasoning and the underlying legal framework, the article highlights how the rulings affirm a substantive vision of Union citizenship grounded in equality and representative democracy. The conclusion offers critical reflections on the current state of political consciousness in the EU and the challenges facing the integration of mobile citizens into national political life.

Keywords: EU Values, Democracy, European identity, Political consciousness.

Introduction

The judgments in *Commission v Czech Republic*² and *Commission v Poland*³, both delivered on 19 November 2024, offer a valuable opportunity to reflect on the effective exercise of political rights in the European Union as a concrete manifestation of the principle of democracy. These cases, decided on the same day and addressing the same legal issue, concern infringement actions brought by the European Commission against the Czech Republic and Poland for

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² CJEU 19 November 2024 case C-808/21. European Commission v Czech Republic.

³ CJEU 19 November 2024 cases C-814/21 European Commission v Republic of Poland.

maintaining national legislation that restricts membership in political parties to nationals only⁴.

The Commission argued that denying EU citizens who have exercised their free movement rights (the so-called „mobile citizens“⁵) the ability to join political parties in their host Member State limits their chances to stand in municipal and European Parliament elections, thus violating Article 22 TFEU and the principle of equal treatment. The Court of Justice (CJEU), aligning with Advocate General de la Tour⁶, found that the Czech and Polish laws infringed EU law. Importantly, the Court held that the right to stand as a candidate cannot be effectively exercised unless EU mobile citizens are also permitted to become members of political parties in their Member State of residence.

While the outcome of the cases may appear predictable given the clear breach of the principles of non-discrimination and equal treatment between national and mobile EU citizens, the rulings are particularly noteworthy for the Court’s reasoning. The judgments extend beyond the narrow scope of EU citizenship and are significant for multiple reasons – not only for their interpretation of the political and electoral rights of mobile Union citizens, but also for the Court’s innovative reliance on Article 10 TEU as a vehicle for giving concrete effect to the value of democracy enshrined in Article 2 TEU.

In this respect, commentators⁷ have observed that the rulings pave the way for the enforcement of democratic values under Article 10 TEU. This is because Article 10, when read in conjunction with Article 2 TEU, may apply even to „purely internal“ situations, thereby extending its normative reach beyond Article 22 TFEU. Notably, although the rights of mobile citizens to vote and stand in municipal and European elections are directly enshrined in Article 22, the Court simultaneously grounded its reasoning in Article 10 TEU, thus reinforcing the broader, participatory dimension of Union citizenship and the fundamental value of democracy.

The Legal Framework: Political and Electoral Rights in EU Law

The cases revolve around a complex web of EU legal provisions involving citizenship, democratic values, and political rights. These are found in the

⁴ For some comments see Eroico, F. (2024). Peers, S.(2024), Schuler, M. (2024), Vissers, N. (2024), Mauri,F. (2025), Schuler, M., & Verellen, T. (2025).

⁵ In the context of the European Union, the concept of ‘mobile’ citizens has long been used to identify the intra-EU mobility of Union citizens, regardless of the membership of their States of origin or residence in the Schengen Area, together with the set of rights guaranteed to them, as opposed to the rights of individuals who are not citizens of the Member States, but who are instead nationals of third States.

⁶ Opinion of Advocate General de la Tour delivered on 11 January 2024.

⁷ Schuler, M. (2024) argued that in those judgments transpose the landmark case Portuguese Judges on effective judicial protection - judgment of the Court (Grand Chamber) 27 February 2018, Case C64/16 - to the value of democracy.

Treaty on European Union (TEU), the Treaty on the Functioning of the European Union (TFEU), the Charter of Fundamental Rights of the EU (CFREU), and secondary legislation such as Directives 93/109/EC⁸ and 94/80/EC⁹, which regulate the participation of EU citizens in European Parliament and municipal elections, respectively¹⁰.

Within the TEU, citizenship-related provisions are closely tied to democratic principles and the institutional structure of the Union. As such, all references to citizenship in this Treaty carry a distinctly political dimension. Article 9, in Title II, establishes that Union citizenship is acquired through nationality of a Member State and is additional to, not a replacement for, national citizenship. Article 10 TEU affirms that the functioning of the Union is based on representative democracy. Citizens are represented at Union level in the European Parliament and are entitled to participate in the democratic life of the Union (Articles 10(2) and 10(3) TEU)¹¹. Article 10(3) further specifies that „[e]very citizen shall have the right to participate in the democratic life of the Union.“ Additionally, Article 10(4) provides that political parties operating at the European level must contribute to the formation of European political awareness and to expressing the will of Union citizens.

Article 11 TEU, meanwhile, enshrines the principle of participatory democracy, complementing the traditional principles of representative democracy with new forms of citizen involvement, such as the European Citizens' Initiative (ECI)¹². This provision ensures that citizens can contribute effectively to the public good beyond traditional electoral mechanisms.

The TFEU, particularly Part Two, lists several rights linked to citizenship. Articles 20 (2)(b) and 22 TFEU are particularly relevant, affirming the right

⁸ Council 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), as amended by Council Directive 2013/1/EU of 20 December 2012 (OJ 2013 L 26, p. 27) ('Directive 93/109').

⁹ Council Directive 94/80/EC of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals (OJ 1994 L 368, p. 38).

¹⁰ These directives have recently been the subject of attention by the European Commission, which, with the so-called 'Democracy and Transparency' legislative package presented on 25 November 2021, has proposed an update, drafting amendments to clarify and strengthen the existing rules in order to address the difficulties faced by EU citizens in exercising their voting and electoral rights. In this regard, see the proposals (COM (2021) 732 final and COM (2021) 733 final)

¹¹ The provision also states that Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens. In summary, the aforementioned provision establishes the dual mechanisms of indirect and direct democratic legitimacy on which the Union is founded.

¹² As stated by one of the main theorists of this concept, Carole Pateman (1970), through participatory democracy one wants to make democracy 'really matter in people's daily lives by extending the sphere of control'.

of EU citizens to vote and to stand in municipal and European Parliament elections in their Member State of residence under the same conditions as nationals. These rights are conditioned upon residence in a Member State other than one's own and emphasize equal treatment.

The rationale behind this is to facilitate deeper integration of mobile citizens into the local political communities where they live, thereby complementing the exercise of their right to free movement¹³.

The CFREU also enshrines these rights, with Articles 39 and 40 separately addressing voting rights in European and municipal elections. Additionally, Article 12(2) CFREU affirms the right to freedom of association in political parties as essential to a pluralistic, democratic society.

The Court's Reasoning

In its November 2024 rulings, the CJEU established a substantive link between the rights enshrined in Articles 22 TFEU and 39-40 CFREU and the value of democracy under Article 2 TEU, operationalized through Article 10 TEU. The Court emphasized the essential role played by political parties in the functioning of representative democracy, thus anchoring its interpretation in both institutional logic and constitutional values.

Three key lines of reasoning emerge from the Court's judgments. First, the Court held that Article 22 TFEU must be interpreted not merely on its wording but considering its objectives and context. While the article does not explicitly mention political party membership, it prohibits any conditions for exercising electoral rights that would not apply to nationals. Therefore, excluding mobile EU citizens from joining political parties violates this non-discrimination principle¹⁴. According to the Luxemburg Court, from the wording of Article 22 TFEU those political rights, are to be exercised subject to detailed arrangements adopted by the Council, respectively, Directives 93/109 and 94/80: although those directives do not carry out an exhaustive harmonization of Member States' electoral systems and do not contain provisions relating to the conditions for the acquisition of membership of a political party by the non-nationals¹⁵, however, their scope cannot, even implicitly, limit the scope of the rights and obligations arising under Article 22 TFEU¹⁶, otherwise the effectiveness of the rule of non-discrimination on grounds of nationality enshrined in Art.22 TFEU would be undermined¹⁷.

¹³ García García, M.J. (2023).

¹⁴ See, to that effect, judgments of 12 September 2006, *Spain v United Kingdom*, C-145/04, EU:C:2006:543, paragraph 66; of 12 September 2006, *Eman and Sevinger*, C-300/04, EU:C:2006:545, paragraph 53; and of 6 October 2015, *Delvigne*, C-650/13, EU:C:2015:648, paragraph 42).

¹⁵ As stated in the fifth recital of Directive 93/109 and the fourth recital of Directive 94/80.

¹⁶ See para 101-105 case C-808/21 and para 100-104 case C-814/21. Specifically, para 104 case C-808/21 and para 103 case C-814/21.

¹⁷ See by analogy, as regards Article 21(1) TFEU, judgments of 12 March 2014, *O. and B.*, C 456/12, EU:C:2014:135, para. 54, and of 27 June 2018, *Altiner and Ravn*, C 230/17, EU:C:2018:497, para. 26.

Second, the Court situated Article 22 TFEU within the broader framework of EU citizenship (Articles 20 and 21 TFEU), representative democracy (Article 10 TEU), and non-discrimination (Article 21 CFREU). It emphasized that these provisions realise a phenomenon of direct refraction of Union citizenship on the internal political organisation of the Member States through the integration of the mobile Union citizen into their host societies and to ensure their political representation¹⁸. The judges rejected the argument that Article 22 TFEU is an exception to a general rule limiting political participation to nationals, and, instead, affirmed that EU citizenship is the fundamental status of nationals of the Member States¹⁹ and must be given full effect.

Furthermore, the Court linked the rights under Article 22 TFEU to the right to freedom of association in Article 12(1) CFREU, which protects political participation through collective action. Political parties, as specific forms of association, play a vital role in fielding candidates and shaping electoral competition. Thus, the Court found that restricting party membership to nationals impairs not only freedom of association but also the effective exercise of electoral rights.

Third, the Court addressed the appeal to national identity under Article 4(2) TEU. While acknowledging that political parties are part of a state's national political life, the Court ruled that national identity cannot override the binding obligations arising from Articles 2 and 10 TEU. The values enshrined in these articles (democracy and equality) are part of the EU's constitutional identity and impose legal limits on Member States' discretion. Specifically, the Court emphasized that these are not merely aspirational ideals but legally binding standards that create enforceable obligations for Member States. Allowing EU citizens residing in a Member State to become members of political parties in that State, for purposes of participating in municipal or European elections, does not undermine national identity; on the contrary, it ensures the full realization of democratic participation and equal treatment within the framework of Union law.

All in all, these interlinked provisions-spanning the Treaties and the Charter-enable the Court to give substance to the otherwise abstract notion of democracy as a value of the Union²⁰.

Critical remarks and open issues

The judgments have generated both criticism and important legal questions: the Court appears to go beyond the explicit wording of the article 22 TFEU by deriving implicit rights, notably the right of EU citizens residing in another

¹⁸ Triggiani, E. (2008).

¹⁹ CJEU 20 September 2001, case C-184/99, Grzelczyk, para 31 and 17 September 2002, case C-413/99, Baumbast, para 82. See Morviducci, C. (2023).

²⁰ Vissers N. (2024).

Member State to join political parties. The rules on membership of political parties, in fact, fall under the competence of national law, which are free to determine the substantive content of electoral rights within the limits set by the directives 94/80/EC and 93/109²¹. By adopting a contrary standpoint, the Court asserts that engagement with a political party constitutes an issue that falls within the scope of EU law, unless the directive explicitly excludes it²². This interpretation opens the door to a broader reading of the provision, including the possibility of its direct horizontal effect - meaning it could be invoked not only against public authorities but also private actors such as political parties. As a result, Member States may have a positive obligation to adopt legislation ensuring non-discriminatory access to party membership for mobile EU citizens²³.

Moreover, the debate over electoral rights brings to light broader issues concerning the definition of the positive obligations that Article 10 TEU might impose on Member States in order to give concrete expression to the value of democracy enshrined in Article 2 TEU: What democratic standards must Member States uphold under Articles 2 and 10 TEU? Which national institutions are responsible for their concrete implementation?²⁴

Finally, the discussion on EU citizens' rights has reignited the long-standing issue of political inclusion for third-country nationals (TCNs) who are long-term residents. Although the EU has committed to progressive equality between EU and non-EU residents - most notably through Directive 2003/109/EC²⁵ and various European Parliament resolutions²⁶ - these commitments have not been fully translated into national practices²⁷.

Final Remarks

The 2024 judgments in *Commission v Czech Republic* and *Commission v Poland* represent a significant doctrinal development in the Court of Justice's interpretation of Union citizenship and the value of democracy in EU law. While the infringement proceedings formally concerned restrictions on the right

²¹ However, as is clear from the case law of the Court of Justice, they must, in exercising their competence, respect the obligations and principles arising from Union law and, in particular, the principle of non-discrimination.

²² See case C-808/21, para 104 and case C-814/21, para 10.

²³ The European Parliament has echoed this concern in its legislative resolution of 14 February 2023 on electoral rights, encouraging national parties not to restrict membership based on nationality. See the proposal for a Council directive (recast) (COM(2021)0732 - C9-0021/2022 - 2021/0372(CNS))

²⁴ Schuler, M. (2024).

²⁵ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term resident.

²⁶ See para 33 of European Parliament resolution the Communication from the Commission on immigration, integration and employment (COM(2003) 336 - 2003/2147(INI)).

²⁷ Triggiani, E. (2024).

of EU citizens to join national political parties, the Court seized the opportunity to articulate a broader and more ambitious vision of democratic participation as a core component of EU citizenship. In fact, by anchoring its reasoning in Articles 22 and 20 TFEU, complemented by Article 10 TEU and the CFREU, the Court affirmed that the effective exercise of electoral rights cannot be separated from meaningful political inclusion. In this regard, political party membership is not merely a procedural formality but an essential precondition for the realization of the rights to vote and stand as a candidate in European and local elections.

The judgments go beyond the immediate context of political party membership to articulate a constitutional logic in which democratic values -long enshrined in the Treaties - gain operational legal force.

These rulings may thus be seen as a further step toward consolidating a supranational concept of democracy within the EU legal order - one that is not merely reliant on state-based traditions but grounded in Union citizenship and the rights that flow from it. They underscore the Court's role not only as an arbiter of legal consistency but also as a constitutional actor affirming and enforcing the normative values of the Union.

Looking ahead, these judgments may stimulate both jurisprudential and legislative developments aimed at strengthening the democratic participation of mobile EU citizens and clarifying the scope of political rights within the framework of EU law. They reaffirm that democracy, as a value and as a legal principle, is not merely aspirational, but enforceable - and that EU citizenship must be understood and implemented in light of this imperative.

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