



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-673/20
Préfet du Gers and Institut National de la Statistique et des Études
Économiques

Advocate General Collins: British nationals who enjoyed the benefits of Union citizenship do not retain those advantages following the UK's withdrawal from the EU

The loss of those rights is one of the consequences of the sovereign decision of the UK to withdraw from the European Union.

EP has resided in France since 1984 and is married to a French citizen. She has not acquired French nationality by marriage because, as a former official in the then Foreign and Commonwealth Office of the United Kingdom, she took an oath of allegiance to the Queen of England. Upon the entry into force of the Withdrawal Agreement, the INSEE¹ removed EP from the electoral list of the Commune of Thoux (France). She was thus unable to participate in the municipal elections held on 15 March and 28 June 2020.

On 6 October 2020, EP filed an application for re-registration on the electoral roll for non-French citizens of the European Union. On the following day, the Mayor of the Commune of Thoux rejected that application. EP then referred the matter to the Electoral Commission of the Commune of Thoux. Since that body responded by stating that it was not due to convene until March 2021, EP treated that reply as an implicit confirmation of the Mayor's decision of 7 October 2020. Accordingly, on 9 November 2020, EP brought an action to contest that decision before the Tribunal judiciaire d'Auch (Court of Auch - the referring court).

The referring court put forward four questions in the context of a dispute as to whether EP, a British national, continues to enjoy the rights to vote and to stand as a candidate in municipal elections in France. The first and second questions inquired as to whether British nationals, or a subset thereof, continue to be Union citizens and enjoy the benefits of that status. If that were not the case, the third and fourth questions request the Court to assess the validity of the Withdrawal Agreement², notably in the light of the principle of proportionality.

In today's Opinion Advocate General Collins considers firstly that **Union citizenship is additional to, and does not replace, nationality conferred by the Member States**. The case-law of the Court of Justice, notably the judgments in *Rottmann*,³ in *Tjebbes*⁴ and, most recently, in *Wiener Landesregierung*,⁵ explicitly recognises that Member States retain the power to determine who is a national and, in consequence, who is a Union citizen.

Advocate General Collins next considers the consequences of the UK withdrawal from the European Union. He finds that as of the entry into force of the Withdrawal Agreement, a British national no longer enjoyed a right, as a Union citizen, to vote and to stand as a candidate in

¹ The National Institute of Statistics and Economic Studies (*Institut national de la statistique et des études économiques (INSEE)*) is responsible for striking the names of deceased electors and electors who are no longer entitled to vote from the electoral register. (13)

² Council Decision (EU) 2020/135 of 30 January 2020 on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.

³ Judgment of 2 March 2010, *Rottmann*, [C-135/08](#), see also [PR no 15/10](#).

⁴ Judgment of 12 March 2019, *Tjebbes and Others*, [C-221/17](#), see also [PR no 26/19](#).

⁵ Judgment of 18 January 2022, *Wiener Landesregierung and Others (Revocation of assurances to naturalise)*, [C-118/20](#), see also [PR no 5/22](#).

municipal elections in the Member State of his or her residence. It follows that, **upon the departure of the UK from the European Union, British nationals ceased to be Union citizens.** Whilst the terms of the Withdrawal Agreement afforded them certain rights during the transition period, the right to vote and to stand as a candidate in municipal elections in their Member State of residence were not amongst them.

Advocate General Collins further finds that, as a result of the loss of Union citizenship following the Withdrawal Agreement, any legal consequences arising from EP's residence outside of the United Kingdom for the exercise of voting rights in that State's elections are a matter between her and the United Kingdom, a third State, and thus fall outside of the Court of Justice's jurisdiction. (55) Moreover, he confirms that the provisions of the Withdrawal Agreement and the TFEU do not allow British nationals to retain, without exception, the rights to Union citizenship that they enjoyed prior to the withdrawal of the UK from the European Union.

Finally, Advocate General Collins looks into the issue of whether Decision 2020/135 on the conclusion of the Withdrawal Agreement is invalid in so far as, having regard to the content of the Withdrawal Agreement, it does not confer the right to vote and to stand as a candidate in municipal elections to British nationals who reside in a Member State and who do not have the nationality of any Member State. In this respect Advocate General Collins observes that, taking into account the status of the UK as a third country since its withdrawal from the European Union, **Decision 2020/135 cannot be criticised for not affording British nationals the right to vote and to stand as a candidate in municipal elections in the Member State of their residence either during the transition period or thereafter. The loss of those rights is one of the consequences of the sovereign decision of the UK to withdraw from the European Union.** That conclusion is unaffected by the fact that Decision 2020/135, in combination with the Withdrawal Agreement, provided that, by way of exception, certain parts of the *acquis* applied during the transition period in order to ensure the orderly withdrawal of the United Kingdom from the European Union which, according to its preamble, is the objective of the Withdrawal Agreement.

Advocate General Collins adds that there is thus no legal nor factual basis upon which to hold that the European Union exceeded the boundaries of its discretion in the conduct of external relations by not continuing to permit British nationals residing within the EU to exercise the right to vote and to stand as a candidate in Member State municipal elections after the withdrawal of the UK, either by way of a unilateral decision or the outcome of negotiations with the United Kingdom. **Since the UK's sovereign choice to leave the EU amounts to a rejection of the principles underlying the EU, and the Withdrawal Agreement is an agreement between the EU and the UK to facilitate the latter's orderly withdrawal from the former, the European Union was in no position to insist that the United Kingdom fully adhere to any of the EU's founding principles.** Nor could the EU secure rights that, in any event, it was not bound to assert on behalf of persons who are nationals of a State that has left the EU and who are therefore no longer Union citizens.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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