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Advocate General's Opinions in Cases C-808/21 | Commission v Czech Republic and C-814/21 | Commission v Poland (Standing as a candidate and becoming a member of a political party)

Advocate General Richard de la Tour: by refusing to grant the right to become members of a political party to Union citizens who are not nationals of Poland or of the Czech Republic but who reside there, those Member States infringed EU electoral law

The laws in force in Poland and the Czech Republic grant the right to become a member of a political party solely to nationals. Consequently, according to the European Commission, Union citizens who reside in those Member States but are not nationals ('mobile' Union citizens) cannot exercise their right to stand as a candidate in municipal and EU elections under the same conditions as Polish and Czech nationals. Claiming that that situation results in discrimination on grounds of nationality, which is incompatible with Article 22 TFEU, the Commission brought two actions for failure to fulfil obligations before the Court of Justice, against Poland and the Czech Republic respectively.

Advocate General Jean Richard de la Tour proposes that the Court rule that those actions are well founded.

According to him, while membership of a political party falls within the competence of the Member States, they must, when exercising that competence, comply with the obligations deriving from EU law. It follows from this that every 'mobile' Union citizen must be able to exercise his or her right to stand as a candidate in municipal and EU elections under the same conditions as nationals.

In that regard, in view of the central and fundamental role of political parties in Member States' electoral systems as well as for participating in democratic life, Advocate General Richard de la Tour considers that **a 'mobile' Union citizen who cannot stand as a member of a political party is placed a position which reduces his or her prospects of being elected in municipal or EU elections as compared to nationals.** In that context, the Advocate General points out that nationals have an option open to them when standing in those elections, that is to say, they can stand as members of a political party or as independents, whereas 'mobile' Union citizens have only the second pathway available to them.

As regards the possible justification of that discrimination, the Advocate General considers that **'mobile' Union citizens' membership of a political party, with a view to guaranteeing the effectiveness of their right to stand as candidates in municipal and EU elections, is not such as to undermine the national identity of Poland or of the Czech Republic.**

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: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

Unofficial document for media use, not binding on the Court of Justice.

The full text of the Opinions ([C-808/21](#) and [C-814/21](#)) is published on the CURIA website on the day of delivery.

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Pictures of the delivery of the Opinion are available from '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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