



Reports of Cases

Case C-814/21

European Commission

v

Republic of Poland

Judgment of the Court (Grand Chamber) of 19 November 2024

(Failure of a Member State to fulfil obligations – Article 20 TFEU – Citizenship of the Union – Article 21 TFEU – Right to move and reside freely within the territory of the Member States – Article 22 TFEU – Right to vote and to stand as a candidate in municipal and European Parliament elections in the Member State of residence under the same conditions as nationals of that State – Citizens of the Union residing in a Member State of which they are not nationals – No right to be a member of a political party – Articles 2 and 10 TEU – Democratic principle – Article 4(2) TEU – Respect for the national identity of the Member States – Article 12 of the Charter of Fundamental Rights of the European Union – Role of political parties in expressing the will of citizens of the Union)

1. *Citizenship of the Union – Provisions of the Treaty – Citizens of the European Union residing in a Member State of which they are not nationals – Right to vote and to stand as a candidate in municipal and European Parliament elections in the Member State of residence under the same conditions as nationals of that Member State – Scope – Effective exercise of that right – Equal access to the means available under the domestic legal system to nationals of that Member State – Included*
(Art. 10 TEU; Arts 20, 21 and 22 TFEU; Charter of Fundamental Rights of the European Union, Art. 12; Council Directives 93/109 and 94/80)

(see paragraphs 91-96, 99-115, 118-125)

2. *Citizenship of the Union – Provisions of the Treaty – Citizens of the European Union residing in a Member State of which they are not nationals – Right to vote and to stand as a candidate in municipal and European Parliament elections in the Member State of residence under the same conditions as nationals of that Member State – National legislation denying such EU citizens the right to join a political party – Not permissible – Justification – Respect for national identity – None*
(Arts 2, 4(2) and 10 TEU; Art. 22 TFEU)

(see paragraphs 133-139, 150, 153-161)

Résumé

Hearing an action for failure to fulfil obligations, the Court of Justice, sitting as the Grand Chamber, finds that by denying EU citizens who are not Polish nationals but who reside in Poland the right to be a member of a political party, that Member State has failed to fulfil its obligations under Article 22 TFEU.

The Polish Law on political parties¹ provides that nationals of the Republic of Poland aged 18 or over may be members of a political party. Accordingly, EU citizens who do not have Polish nationality but who reside in Poland do not enjoy that right.

Taking the view that that legislation is contrary to Article 22 TFEU, the European Commission brought an action for failure to fulfil obligations before the Court. It submits *inter alia* that, by allowing only Polish nationals to be members of a political party, Poland prevents EU citizens who reside in that Member State but are not nationals thereof from exercising electoral rights in municipal and European Parliament elections under the same conditions as Polish nationals.

Findings of the Court

In the first place, the Court examines the scope of Article 22 TFEU, taking account of its wording, its context and the objectives it pursues.

Thus, first, according to the wording of that provision, EU citizens residing in a Member State of which they are not nationals are to have the right to vote and to stand as a candidate in municipal and European Parliament elections under the same conditions as nationals of that Member State, and those rights are to be exercised subject to detailed arrangements adopted by the Council of the European Union. That wording contains no reference to the conditions for acquiring membership of a political party. However, by referring to the conditions governing the right to vote and to stand for election applicable to nationals of the Member State of residence of such an EU citizen, Article 22 TFEU prohibits that Member State from making the exercise of that right by that EU citizen subject to conditions other than those applicable to its own nationals. That provision thus lays down a specific rule of non-discrimination on grounds of nationality and, consequently, applies to any national measure giving rise to a difference in treatment liable to undermine the effective exercise of the right to vote and to stand as a candidate in municipal and European Parliament elections.

Furthermore, the detailed arrangements for the exercise of the right to vote and to stand for election were adopted by the Council in Directives 93/109² and 94/80,³ which, even though they do not contain provisions relating to the conditions for the acquisition, by EU citizens residing in a Member State of which they are not nationals, of membership of a political party, cannot, even implicitly, limit the scope of the rights and obligations arising under Article 22 TFEU. In that regard, in the absence of specific provisions relating to those conditions, the determination of

¹ The *ustawa o partiach politycznych* (Law on political parties) of 27 April 1997 (Dz. U. of 1997, No 98, item 604). See Article 2(1) of that law.

² 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).

³ 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).

those conditions falls within the competence of the Member States. Nevertheless, when exercising that competence, the Member States are required to comply with their obligations under EU law, including Article 22 TFEU.

Secondly, as regards the context of Article 22 TFEU, the Court refers both to the other provisions of the FEU Treaty and to the provisions of the same rank contained *inter alia* in the EU Treaty and the Charter of Fundamental Rights of the European Union ('the Charter').

In that connection, first of all, Article 22 TFEU, read in conjunction with Article 20(2) TFEU, links the right to vote and to stand as a candidate in municipal and European Parliament elections to citizenship of the Union. Moreover, under Article 20(2) and Article 21 TFEU, citizenship of the Union confers on each EU citizen a primary and individual right to move and reside freely within the territory of the Member States. There is therefore a connection between, on the one hand, the right to freedom of movement and residence and, on the other, the right of EU citizens residing in a Member State of which they are not nationals to vote and to stand as a candidate in municipal and European Parliament elections.

Next, Article 10 TEU – which confers on EU citizens the right to be directly represented in the European Parliament and to participate in the democratic life of the European Union – underscores the connection between the principle of representative democracy within the European Union and the right to vote and to stand as a candidate in European Parliament elections attached to citizenship of the Union, guaranteed by Article 22(2) TFEU.

Lastly, Article 12(1) of the Charter enshrines the right of everyone to freedom of association at all levels, in particular in political, trade union and civic matters. That right corresponds to the right guaranteed in Article 11(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which is one of the essential foundations of a democratic and pluralist society, in that it allows citizens to act collectively in areas of common interest and, in so doing, to contribute to the proper functioning of public life. Article 10(4) TEU and Article 12(2) of the Charter recognise the fundamental role of political parties at European level in expressing the will of EU citizens. Political parties, one of whose functions is to field candidates in elections, thus fulfil an essential function in the system of representative democracy, on which the functioning of the European Union is founded, in accordance with Article 10(1) TEU. Therefore, membership of a political party contributes significantly to the effective exercise of the right to stand for election, as conferred by Article 22 TFEU.

Thirdly, with respect to the objective of Article 22 TFEU, that article seeks, first of all, to confer on EU citizens residing in a Member State of which they are not nationals the right to participate in the democratic electoral process of that Member State through the right to vote and to stand for election at European and local level. Next, that article aims to ensure equal treatment between EU citizens, which implies equal access to the means available under the domestic legal system to nationals of that Member State for the purpose of exercising that right in municipal and European Parliament elections. Lastly, it follows from the connection between, on the one hand, freedom of movement and residence and, on the other, the right to vote and to stand as a candidate in those elections that the latter is intended, amongst other things, to promote the gradual integration of the EU citizen concerned in the society of the host Member State. Article 22 TFEU is thus intended to ensure that EU citizens residing in a Member State of which they are not nationals are represented, as a corollary to their integration in the society of the host Member State.

In the second place, it is in the light of those clarifications on the scope of Article 22 TFEU, read in the light of Articles 20 and 21 TFEU, Article 10 TEU and Article 12 of the Charter, that the Court considers whether the result of the difference in treatment on grounds of nationality established by Polish law, as regards the possibility of becoming a member of a political party, is that EU citizens who reside in Poland but are not nationals thereof do not enjoy equal access to the means available to Polish nationals for the purposes of effectively exercising their right to stand for election, in breach of Article 22 TFEU.

In that regard, it is admittedly possible, in Poland, for an independent candidate who is not a member of a political party to be nominated by an electoral committee of a political party. However, first, since it will be for the members of the political party to choose the candidates to be nominated, the fact of not being a member of a political party in principle precludes an EU citizen who resides in Poland but is not a national thereof from participating in the decision to be taken by that party concerning his or her nomination by its electoral committee. That circumstance places such EU citizens in a less favourable position than Polish nationals, who are members of a political party, as regards the possibility of standing as a candidate in municipal and European Parliament elections on the list of a political party.

Secondly, the fact that Polish nationals may choose to stand as candidates either as members of a political party or as independents, whereas EU citizens who reside in Poland but are not nationals thereof are only afforded the latter possibility, demonstrates that those EU citizens are unable to exercise their right to stand as a candidate in those elections under the same conditions as Polish nationals.

In the third and last place, the Court examines whether that difference in treatment concerning access to the means enabling the right to vote and to stand as a candidate in municipal and European Parliament elections to be exercised effectively may be justified by reasons relating to respect for the national identity of a Member State, within the meaning of Article 4(2) TEU.

First of all, it is true that the organisation of national political life, to which political parties contribute, is part of national identity. However, since the right to vote and to stand for election conferred by Article 22 TFEU on EU citizens residing in a Member State of which they are not nationals concerns municipal and European Parliament elections in that Member State, that provision neither requires the Member State concerned to grant those citizens the right to vote and to stand as a candidate in national elections, nor prohibits it from adopting specific rules on decision-making within a political party regarding the nomination of candidates in national elections, rules which would preclude members of the party who are not nationals of that State from taking part in such decision-making.

Next, Article 4(2) TEU must be read in the light of provisions of the same rank, in particular Articles 2 and 10 TEU, and cannot exempt Member States from the obligation to comply with the requirements arising from those provisions. In that regard, the principle of democracy and the principle of equal treatment are values on which the European Union is founded, in accordance with Article 2 TEU. That provision is not merely a statement of policy guidelines or intentions, but contains values which are an integral part of the very identity of the European Union as a common legal order and are given concrete expression in principles containing legally binding obligations for the Member States. Furthermore, the principle of representative democracy, on which the functioning of the European Union is founded, in accordance with Article 10(1) TEU, gives concrete form to the value of democracy referred to in Article 2 TEU.

Lastly, by guaranteeing EU citizens residing in a Member State of which they are not nationals the right to vote and to stand as a candidate in municipal and European Parliament elections in that Member State, under the same conditions as nationals thereof, Article 22 TFEU gives concrete expression to the principles of democracy and of equal treatment of EU citizens, principles which are an integral part of the identity and common values of the European Union, to which the Member States adhere and whose observance they must ensure in their territories. Consequently, allowing such EU citizens to become members of a political party in their Member State of residence so as to implement in full the principles of democracy and equal treatment cannot be regarded as undermining the national identity of that Member State.