



Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

18 April 2024*

(Reference for a preliminary ruling – Citizenship of the Union – National of the United Kingdom of Great Britain and Northern Ireland residing in a Member State – Articles 20 and 22 TFEU – Right to vote and to stand as a candidate in elections to the European Parliament in the Member State of residence – Article 50 TEU – Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community – Consequences of the withdrawal of a Member State of the European Union – Removal from the electoral roll in the Member State of residence – Article 39 of the Charter of Fundamental Rights of the European Union – Validity of Decision (EU) 2020/135)

In Case C-716/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the tribunal judiciaire d'Auch (Court of Auch, France), made by decision of 15 November 2022, received at the Court on 23 November 2022, in the proceedings

EP

v

Préfet du Gers,

Institut national de la statistique et des études économiques (INSEE),

intervening party:

Commune de Thoux, represented by the Mayor of Thoux

THE COURT (Eighth Chamber),

composed of N. Piçarra, President of the Chamber, N. Jääskinen (Rapporteur) and M. Gavalec, Judges,

Advocate General: A.M. Collins,

Registrar: N. Mundhenke, Administrator,

having regard to the written procedure and further to the hearing on 16 November 2023,

* Language of the case: French.

after considering the observations submitted on behalf of:

- EP, by J.-N. Caubet-Hilloutou and J. Fouchet, *avocats*,
- the French Government, by B. Fodda, J. Illouz, E. Leclerc and S. Royon, acting as Agents,
- the Romanian Government, by E. Gane, O.-C. Ichim and A. Wellman, acting as Agents,
- the Council of the European Union, by M. Bauer, J. Ciantar and R. Meyer, acting as Agents,
- the European Commission, by H. Krämer, E. Montaguti and A. Spina, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the validity of 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 (OJ 2020 L 29, p. 1), and the interpretation of that decision, 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 (OJ 2020 L 29, p. 7), which was adopted on 17 October 2019 and entered into force on 1 February 2020 ('the Withdrawal Agreement'), Article 6(3) TEU, Article 1 of the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976 (OJ 1976 L 278, p. 1), as amended by Council Decision 2002/772/EC, Euratom of 25 June 2002 and 23 September 2002 (OJ 2002 L 283, p. 1) ('the Electoral Act'), Articles 1, 7, 11, 21, 39, 41 and 52 of the Charter of Fundamental Rights of the European Union ('the Charter') and the judgments of 12 September 2006, *Spain v United Kingdom* (C-145/04, EU:C:2006:543), and of 9 June 2022, *Préfet du Gers and Institut national de la statistique et des études économiques* (C-673/20, 'the judgment in *Préfet du Gers I*', EU:C:2022:449).
- 2 The request has been made in proceedings between, on the one hand, EP, a United Kingdom national who has lived in France since 1984 and, on the other hand, the Préfet du Gers (Prefect of Gers, France) and the Institut national de la statistique et des études économiques (National Institute for Statistics and Economic Studies, France; 'INSEE'), concerning the removal of EP from the electoral roll in France and the refusal to re-register her on the relevant special electoral roll.

Legal context

European Union law

The EU and FEU Treaties

- 3 Article 6(3) TEU reads as follows:

‘Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms[, signed at Rome on 4 November 1950 (‘the ECHR’),] and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union’s law.’

- 4 Article 9 TEU provides:

‘... Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.’

- 5 Article 50 TEU provides:

‘1. Any Member State may decide to withdraw from the [European] Union in accordance with its own constitutional requirements.

2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) [TFEU]. It shall be concluded on behalf of the Union by the Council [of the European Union], acting by a qualified majority, after obtaining the consent of the European Parliament.

3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

...’

- 6 The first paragraph of Article 18 TFEU states:

‘Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.’

- 7 Article 20 TFEU provides:

‘1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.

2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have, inter alia:

...

(b) the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;

...'

8 Article 22 TFEU provides:

'1. Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State. ...

2. ... Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. ...'

The Charter

9 Article 39 of the Charter, entitled 'Right to vote and to stand as a candidate at elections to the European Parliament', provides in paragraph 1:

'Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.'

The Withdrawal Agreement

10 The Withdrawal Agreement was approved on behalf of the European Union and the European Atomic Energy Community (EAEC) by Decision 2020/135.

11 Part One of that agreement, entitled 'Common provisions', comprises Articles 1 to 8 thereof. According to Article 2(c) and (e) of that agreement:

'For the purposes of this Agreement, the following definitions shall apply:

...

(c) "Union citizen" means any person holding the nationality of a Member State;

...

(e) "transition period" means the period provided in Article 126'.

- 12 Part Two of the Withdrawal Agreement, entitled ‘Citizens’ rights’, comprises Articles 9 to 39 thereof. Article 9(c) and (d) of that agreement provides:

‘For the purposes of this Part, and without prejudice to Title III, the following definitions shall apply:

...

(c) “host State” means:

- (i) in respect of Union citizens and their family members, the United Kingdom, if they exercised their right of residence there in accordance with Union law before the end of the transition period and continue to reside there thereafter;
- (ii) in respect of United Kingdom nationals and their family members, the Member State in which they exercised their right of residence in accordance with Union law before the end of the transition period and in which they continue to reside thereafter;

(d) “State of work” means:

- (i) in respect of Union citizens, the United Kingdom, if they pursued an economic activity as frontier workers there before the end of the transition period and continue to do so thereafter;
- (ii) in respect of United Kingdom nationals, a Member State in which they pursued an economic activity as frontier workers before the end of the transition period and in which they continue to do so thereafter’.

- 13 Article 10 of that agreement, entitled ‘Personal scope’, provides:

‘1. Without prejudice to Title III, this Part shall apply to the following persons:

- (a) Union citizens who exercised their right to reside in the United Kingdom in accordance with Union law before the end of the transition period and continue to reside there thereafter;
- (b) United Kingdom nationals who exercised their right to reside in a Member State in accordance with Union law before the end of the transition period and continue to reside there thereafter;

...’

- 14 Article 12 of the Withdrawal Agreement, entitled ‘Non-discrimination’, states:

‘Within the scope of this Part, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality within the meaning of the first subparagraph of Article 18 TFEU shall be prohibited in the host State and the State of work in respect of the persons referred to in Article 10 of this Agreement.’

- 15 Articles 13 to 39 of that agreement contain provisions which specify the content of the rights enjoyed by persons covered by Part Two of that agreement.

- 16 Article 126 of that agreement, entitled ‘Transition period’, provides:

‘There shall be a transition or implementation period, which shall start on the date of entry into force of this Agreement and end on 31 December 2020.’

- 17 Article 127 of the Withdrawal Agreement, entitled ‘Scope of the transition’, provides:

‘1. Unless otherwise provided in this Agreement, Union law shall be applicable to and in the United Kingdom during the transition period.

However, the following provisions of the Treaties, and acts adopted by the institutions, bodies, offices or agencies of the Union, shall not be applicable to and in the United Kingdom during the transition period:

...

(b) Article 11(4) TEU, point (b) of Article 20(2), Article 22 and the first paragraph of Article 24 TFEU, Articles 39 and 40 of the [Charter], and the acts adopted on the basis of those provisions.

...

6. Unless otherwise provided in this Agreement, during the transition period, any reference to Member States in the Union law applicable pursuant to paragraph 1, including as implemented and applied by Member States, shall be understood as including the United Kingdom.’

- 18 Under Article 185, that agreement entered into force on 1 February 2020. It is apparent, moreover, from the fourth paragraph of that article that Part Two of that agreement is to apply as from the end of the transition period.

The Electoral Act

- 19 Article 1 of the Electoral Act provides:

‘1. In each Member State, members of the European Parliament shall be elected on the basis of proportional representation, using the list system or the single transferable vote.

2. Member States may authorise voting based on a preferential list system in accordance with the procedure they adopt.

3. Elections shall be by direct universal suffrage and shall be free and secret.’

- 20 In accordance with the first paragraph of Article 7 of that act, subject to its provisions, the electoral procedure is to be governed in each Member State by its national provisions.

French law

- 21 Article 2 of loi n° 77-729, du 7 juillet 1977, relative à l’élection des représentants au Parlement européen (Law No 77-729 of 7 July 1977 on the election of representatives to the European Parliament) (JORF of 8 July 1977, p. 3579), as amended by loi n° 2018-509, du 25 juin 2018 (Law No 2018-509 of 25 June 2018) (JORF of 26 June 2018, Text No 1) (‘Law No 77-729’), provides:

‘The election of representatives to the European Parliament provided for by [the Electoral Act], applicable pursuant to loi n° 77-680 du 30 juin 1977 [autorisant l’approbation des dispositions

annexées à la décision du Conseil des communautés européennes du 20 septembre 1976 et relatives à l'élection des représentants au Parlement européen (Law No 77-680 of 30 June 1977 authorising the approval of the provisions annexed to the decision of the Council of the European Communities of 20 September 1976, and concerning the election of representatives to the European Parliament) (JORF of 1 July 1977, p. 3479)], shall be governed by Title I of Book I of the code electoral [(Electoral Code)] and by the provisions of the following chapters. The time limit of two months provided for in the first paragraph of Article L. 118-2 of the same code is increased to four months.

However, French electors residing in another State of the European Union shall not participate in a French election, or one organised under the conditions laid down in Article 23 of this law, if they have been permitted to exercise their right to vote for the election of the representatives in the European Parliament in their State of residence.'

22 Article 2-1 of Law No 77-729 provides:

'Nationals of a Member State of the European Union other than France residing on French territory may participate in the election of the representatives of France in the European Parliament under the same conditions of French electors, subject to the special arrangements laid down, with regard to them, by the present law.

The persons referred to in the first paragraph shall be treated as residing in France if they have their actual place of residence there or if their residence is continuous.'

23 Article 2-2 of Law No 77-729 provides:

'In order to exercise their right to vote, persons referred to in Article 2-1 must be registered, at their request, on a special electoral roll. They may apply for their registration if they enjoy their electoral capacity in their State of origin and if they satisfy the legal conditions, other than nationality, to be electors and be registered on an electoral roll in France.'

24 Pursuant to Article L 16, paragraph III, 2°, of the Electoral Code, as amended by loi n° 2016-1048, du 1er août 2016, rénovant les modalités d'inscription sur les listes électorales (Law No 2016-1048 of 1 August 2016 renewing the arrangements for registration on the electoral roll) (JORF of 2 August 2016, Text No 3), the INSEE has the power to remove from the electoral roll only those electors who are deceased or electors who no longer have the right to vote.

The dispute in the main proceedings and the questions referred for a preliminary ruling

25 EP, a United Kingdom national, has resided in France since 1984 and is married to a French citizen. She has not applied for or obtained French nationality.

26 Following the entry into force of the Withdrawal Agreement on 1 February 2020, EP was removed from the electoral roll in France with effect from that date. She was thus not authorised to participate in the municipal elections which took place there on 15 March 2020.

27 On 6 October 2020, EP filed an application to be re-registered on the special electoral roll for non-French citizens of the European Union.

28 By decision of 7 October 2020, the Mayor of the Commune of Thoux (France) rejected that application.

- 29 On 9 November 2020, EP seised the tribunal judiciaire d'Auch (Court of Auch, France), which is the referring court, in order to challenge that decision. That court referred a request to the Court for a preliminary ruling concerning the right to vote and to stand as a candidate of United Kingdom nationals in municipal and European elections organised in France, to which the Court responded by judgment of 9 June 2022, *Préfet du Gers I* (C-673/20, EU:C:2022:449).
- 30 Following that judgment, EP asked the referring court to refer another request for a preliminary ruling to the Court in order for it to be able to rule on the question of the validity of the Withdrawal Agreement in the specific context of elections to the European Parliament.
- 31 EP acknowledges that it follows from the judgment of 9 June 2022, *Préfet du Gers I* (C-673/20, EU:C:2022:449), that nationals of the United Kingdom have lost their European Union citizenship and the right to vote and to stand as a candidate in municipal elections in their Member State of residence.
- 32 Before the referring court, EP submits that the Court has not yet ruled on the question of the right of United Kingdom nationals to vote and to stand in elections to the European Parliament in their Member State of residence and that it is necessary, in that context, to take into consideration the judgment of the European Court of Human Rights of 18 February 1999, *Matthews v. the United Kingdom*, (CE:ECHR:1999:0218JUD002483394), as well as the judgment of 12 September 2006, *Spain v United Kingdom* (C-145/04, EU:C:2006:543).
- 33 According to the referring court, it is clear from those judgments that a person who has a stable residence in the territory of the European Union could be regarded as belonging to a 'legislature', in this case the European legislature. In that context, the measures that States may adopt to curtail the right to vote must be proportionate to the objective pursued, without impairing the very essence of that right and depriving it of its effectiveness. The application of the provisions of the Withdrawal Agreement in this case could constitute a disproportionate breach of EP's fundamental right to vote.
- 34 In those circumstances, the tribunal judiciaire d'Auch (Court of Auch) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- '(1) Is Decision [2020/135] partially invalid in that [the Withdrawal Agreement] infringes Articles 1, 7, 11, 21, 39 and 41 of [the Charter], Article 6(3) TEU and the principle of proportionality in Article 52 of that Charter, in so far as it does not include a provision allowing the right to vote in European elections to be retained for British nationals who have exercised their freedom of movement and their freedom to settle freely in the territory of another Member State, whether or not dual nationality is permitted, in particular for those who have lived in the territory of another Member State for more than 15 years and who are subject to the United Kingdom's 15-year rule, thus aggravating the deprivation of any right to vote, for persons who have not had the right to vote against the loss of their Union citizenship and also for those who have sworn allegiance to the British Crown?
- (2) Must Decision [2020/135], [the Withdrawal Agreement], Article 1 of the [Electoral Act], the judgment [of 12 September 2006, *Spain v United Kingdom* (C-145/04, EU:C:2006:543)], Articles 1, 7, 11, 21, 39 and 41 of [the Charter], Article 6(3) TEU and the judgment of [9 June 2022, *Préfet du Gers I* (C-673/20, EU:C:2022:449)], be interpreted as depriving former Union citizens who have exercised their right to free movement and the freedom to settle freely in the territory of the European Union of the right to vote and to stand as a

candidate in European elections in a Member State, as well as, in particular, former Union citizens who no longer have any right to vote because they have exercised their private and family life in the territory of the European Union for more than 15 years and who were unable to vote against the withdrawal of their Member State from the European Union which entailed the loss of their Union citizenship?’

Consideration of the questions referred

The second question

- 35 By its second question, which it is appropriate to examine first, the referring court asks, in essence, whether the Withdrawal Agreement, read in the light of the Charter, must be interpreted as meaning that, since the withdrawal of the United Kingdom from the European Union on 1 February 2020, nationals of that State who exercised their right to reside in a Member State before the end of the transition period no longer benefit from a right to vote and to stand as a candidate in elections to the European Parliament in their Member State of residence.
- 36 At the outset, it must be stated that, in this case, EP does not hold the nationality of any Member State and that, therefore, she is not a citizen of the European Union, within the meaning either of Article 9 TEU or of Article 2(c) of the Withdrawal Agreement. However, she exercised her right to reside in a Member State before the end of the transition period, which, in accordance with Article 2(e) of that agreement, read in combination with Article 126 thereof, lasted from 1 February 2020 to 31 December 2020.
- 37 The Court has already held, in paragraph 83 of its judgment of 9 June 2022, *Préfet du Gers I*, (C-673/20, EU:C:2022:449), that Articles 9 and 50 TEU and Articles 20 to 22 TFEU, read in conjunction with the Withdrawal Agreement, must be interpreted as meaning that, as of the withdrawal of the United Kingdom from the European Union, on 1 February 2020, nationals of that State who exercised their right to reside in a Member State before the end of that transition period no longer enjoy the status of citizen of the Union, nor, more specifically, by virtue of Article 20(2)(b) TFEU and Article 22 TFEU, the right to vote and to stand as a candidate in municipal elections in their Member State of residence, including where they are also deprived, by virtue of the law of the State of which they are nationals, of the right to vote in elections held by that State.
- 38 It is therefore appropriate to determine whether that interpretation also applies as regards the right to vote and to stand as a candidate in elections to the European Parliament for United Kingdom nationals, such as EP, in their Member State of residence.
- 39 In that regard, in the first place, it must be observed that, in accordance with Article 9 TEU and Article 20 TFEU, citizenship of the Union requires possession of the nationality of a Member State (see, to that effect, judgment of 9 June 2022, *Préfet du Gers I*, C-673/20, EU:C:2022:449, paragraphs 46 to 48),
- 40 Article 20(2) and Articles 21 and 22 TFEU attach a series of rights to the status of citizen of the Union, which, according to settled case-law, is destined to be the fundamental status of nationals of the Member States (see, to that effect, judgment of 9 June 2022, *Préfet du Gers I*, C-673/20, EU:C:2022:449, paragraphs 49 to 50 and the case-law cited).

- 41 Union citizens residing in a Member State of which they are not nationals benefit, inter alia, under Article 20(2)(b) TFEU and Article 22(2) TFEU, from a right to vote and to stand as a candidate in elections to the European Parliament in their Member State of residence. Article 39 of the Charter also recognises that right. By contrast, none of those provisions enshrines that right in favour of nationals of third States.
- 42 As the Court has already held, the fact that an individual, where the State of which he or she is a national was a Member State, exercised his or her right to move and reside freely within the territory of another Member State is not such as to enable him or her to retain the status of citizen of the Union and all the rights attached thereto by the FEU Treaty if, following the withdrawal of his or her State of origin from the European Union, he or she no longer holds the nationality of a Member State (judgment of 9 June 2022, *Préfet du Gers I*, C-673/20, EU:C:2022:449, paragraph 52).
- 43 As the Treaties ceased, pursuant to Article 50(3) TEU, to apply to the United Kingdom on the date on which the Withdrawal Agreement entered into force on 1 February 2020, the nationals of that State lost, as from that date, the status of citizen of the Union. Consequently, they no longer enjoy, under Article 20(2)(b) and Article 22 TFEU, either the right to vote and to stand as a candidate in municipal elections in their Member State of residence (see, to that effect, judgment of 9 June 2022, *Préfet du Gers I*, C-673/20, EU:C:2022:449, paragraphs 55 and 58) or the right to vote and to stand in elections to the European Parliament in that Member State.
- 44 Taking into account the referring court's questions, it is necessary, first, to state that that conclusion is not called into question by the fact that a United Kingdom national, such as EP, is deprived of the right to vote in the United Kingdom pursuant to a rule of law of that State according to which a national of the latter who has resided abroad for more than 15 years is no longer entitled to participate in that State's elections.
- 45 That rule is a choice of electoral law made that by the former Member State, now a third State. In addition, the loss, by its nationals, of the status of Union citizen and, consequently, of the right to vote and to stand as a candidate in elections to the European Parliament in their Member State of residence is an automatic consequence of the United Kingdom's sovereign decision to withdraw from the European Union, in accordance with Article 50(1) TEU, and thereby to become a third State in relation to it. Therefore, neither the competent authorities of the Member States nor their courts may be required to carry out an individual examination of the consequences of the loss of the status of citizen of the Union for the person concerned, in the light of the principle of proportionality (see, to that effect, judgment of 9 June 2022, *Préfet du Gers I*, C-673/20, EU:C:2022:449, paragraphs 59 to 62).
- 46 Secondly, Article 1 of the Electoral Act, read in combination with Article 7 thereof, merely confirms, in paragraph 1, that Members of the European Parliament are elected in accordance with the arrangements laid down in Article 1. A United Kingdom national, such as EP, cannot therefore, after that Member State's withdrawal from the European Union, benefit from a right to vote in the elections to the European Parliament in his or her Member State of residence on the basis of that Article 1.
- 47 In the second place, it must be observed that, as with the right to vote and to stand in municipal elections at issue in the case that gave rise to the judgment of 9 June 2022, *Préfet du Gers I* (C-673/20, EU:C:2022:449), there is no provision in the Withdrawal Agreement conferring on

United Kingdom nationals who exercised their right to reside in a Member State in accordance with EU law before the end of the transition period the right to vote and to stand as a candidate in elections to the European Parliament in their Member State of residence.

- 48 Consequently, the Member States were no longer required, as from 1 February 2020, to treat United Kingdom nationals as nationals of a Member State for the purposes of the application of Article 20(2)(b) TFEU, Article 22 TFEU and Articles 39 and 40 of the Charter, nor, therefore, to grant United Kingdom nationals residing in their territory the right, recognised by those provisions for persons who, as nationals of a Member State, have the status of citizen of the Union, to vote and to stand as a candidate in elections to the European Parliament and in municipal elections (judgment of 9 June 2022, *Préfet du Gers I*, C-673/20, EU:C:2022:449, paragraph 71).
- 49 That interpretation of the Withdrawal Agreement cannot be called into question either by the various provisions of EU primary law or by the case-law referred to by the referring court.
- 50 In that regard, it should be noted first of all that, although, as Article 6(3) TEU confirms, the fundamental rights enshrined in the ECHR constitute general principles of EU law and although Article 52(3) of the Charter provides that the rights contained in the Charter which correspond to rights guaranteed by the ECHR are to have the same meaning and scope as those laid down by that convention, the latter does not constitute, as long as the European Union has not acceded to it, a legal instrument which has been formally incorporated into EU law (judgment of 16 July 2020, *Facebook Ireland and Schrems*, C-311/18, EU:C:2020:559, paragraph 98 and the case-law cited).
- 51 In those circumstances, the Court has held that the interpretation of EU law and examination of the legality of EU legislation must be undertaken in the light of the fundamental rights guaranteed by the Charter (judgment of 16 July 2020, *Facebook Ireland and Schrems*, C-311/18, EU:C:2020:559, paragraph 99 and the case-law cited).
- 52 However, as regards, first, Article 21 of the Charter enshrining the principle of non-discrimination, also provided for in the first paragraph of Article 18 TFEU, it must be recalled that the prohibition, laid down in Article 12 of the Withdrawal Agreement, of any discrimination on grounds of nationality, within the meaning of the first paragraph of Article 18 TFEU, in the host State, within the meaning of Article 9(c) of that agreement, and in the State of work, as defined in Article 9(d) thereof, in respect of the persons referred to in Article 10 of that agreement, concerns, according to the wording of Article 12 itself, Part Two of that agreement (judgment of 9 June 2022, *Préfet du Gers I*, C-673/20, EU:C:2022:449, paragraph 76).
- 53 It must be held that, as with the right to vote and to stand as a candidate in municipal elections in the Member State of residence of United Kingdom nationals, referred to in Article 10(b) of the Withdrawal Agreement, the right of those nationals to vote and to stand as a candidate in elections to the European Parliament does not fall within the scope of Part Two of that agreement.
- 54 Thus, a national of the United Kingdom, such as EP, who exercised his or her right to reside in a Member State in accordance with EU law before the end of the transition period and who subsequently continues to reside there, cannot validly rely either on the prohibition of discrimination, referred to in paragraph 52 of this judgment, or on Article 21 of the Charter in order to claim the right to vote and to stand as a candidate in elections to the European

Parliament in his or her Member State of residence, a right of which he or she is deprived following the United Kingdom's sovereign decision to withdraw from the European Union (see, to that effect, judgment of 9 June 2022, *Préfet du Gers I*, C-673/20, EU:C:2022:449, paragraph 77).

- 55 Furthermore, it must also be stated that the first paragraph of Article 18 TFEU is not intended to apply to cases of a possible difference in treatment between nationals of Member States and nationals of third States (see, to that effect, judgment of 9 June 2022, *Préfet du Gers I*, C-673/20, EU:C:2022:449, paragraphs 78 and the case-law cited).
- 56 Secondly, as regards Article 39 of the Charter, it must be observed that that article is one of the provisions of EU law that does not apply to United Kingdom nationals either during or after the transition period (see, to that effect, judgment of 9 June 2022, *Préfet du Gers I*, C-673/20, EU:C:2022:449, paragraphs 70 and 75). Therefore, those nationals cannot rely on a right to vote and to stand as a candidate in elections to the European Parliament in their Member State of residence on the basis of an interpretation of the Withdrawal Agreement in the light of Article 39 of the Charter.
- 57 Thirdly, as regards Articles 1, 7, 11 and 41 of the Charter referred to by the referring court, it suffices to find that, unless the very wording of Article 20(2)(b) and Article 22(2) TFEU, of Article 39 of the Charter and of the provisions of the Withdrawal Agreement is to be misinterpreted, a United Kingdom national, such as EP, can no longer, on the basis of an interpretation of that agreement in the light of Articles 1, 7, 11 and 41 of the Charter, claim the right to vote and to stand as a candidate in elections to the European Parliament organised in his or her Member State of residence.
- 58 Fourthly and lastly, as regards the judgment of 12 September 2006, *Spain v United Kingdom* (C-145/04, EU:C:2006:543), referred to by the referring court, it must be held that the findings resulting from that judgment cannot be applied to a situation such as that at issue in the main proceedings.
- 59 In the case that gave rise to that judgment, the Court was asked whether a Member State could, having regard to the state of Community law at the time of the facts, grant the right to vote in elections to the European Parliament to persons who were not citizens of the European Union, but who resided on their territory.
- 60 In that context, the Court held, in paragraph 78 of that judgment, that ‘in the current state of Community law, the definition of the persons entitled to vote and to stand as a candidate in elections to the European Parliament falls within the competence of each Member State in compliance with Community law, and that Articles 189 EC, 190 EC, 17 EC and 19 EC do not preclude the Member States from granting that right to vote and to stand as a candidate to certain persons who have close links to them, other than their own nationals or citizens of the Union resident in their territory’.
- 61 Unlike the case that gave rise to the judgment of 12 September 2006, *Spain v United Kingdom* (C-145/04, EU:C:2006:543), the present case does not concern the question whether Member States may grant the right to vote and to stand as a candidate in elections to the European Parliament to persons who are not Union citizens, rather it concerns the question of whether the Member States are required to grant that right to persons who are no longer Union citizens, namely United Kingdom nationals residing on their territory after the withdrawal of that State from the European Union on 1 February 2020.

- 62 Having regard to the foregoing considerations, the answer to the second question is that the Withdrawal Agreement, read in the light of the Charter, must be interpreted as meaning that, since the withdrawal of the United Kingdom from the European Union on 1 February 2020, nationals of that State who exercised their right to reside in a Member State before the end of the transition period no longer benefit from a right to vote and to stand as a candidate in elections to the European Parliament in their Member State of residence.

The first question

- 63 By its first question, the referring court asks, in essence, whether, in the light of Article 6(3) TEU and Articles 1, 7, 11, 21, 39 and 41 of the Charter and the principle of proportionality, Decision 2020/135 is invalid in so far as the Withdrawal Agreement does not confer on United Kingdom nationals who exercised their right to reside in a Member State before the end of their transition period the right to vote and to stand as a candidate in elections to the European Parliament in their Member State of residence.
- 64 In that respect, as regards, first, the examination of the validity of Decision 2020/135 in the light of Article 6(3) TEU and Articles 1, 7, 11, 21, 39 and 41 of the Charter, it has been held in paragraphs 50 to 57 of the present judgment, that a United Kingdom national, who exercised, before the end of the transition period, his or her right to reside in a Member State in accordance with EU law and who continues to reside there afterwards, cannot claim, pursuant to the Withdrawal Agreement and those articles of the Charter, the right to vote and to stand as a candidate in elections to the European Parliament in his or her Member State of residence.
- 65 In those circumstances, Decision 2020/135 cannot be regarded as being contrary to those articles of the Charter, in so far as the Withdrawal Agreement which it approved does not confer on nationals of that former Member State, now a third State, who exercised their right to reside in a Member State before the end of the transition period, the right to vote and to stand as a candidate in elections to the European Parliament in their Member State of residence.
- 66 As regards, secondly, the examination of the validity of Decision 2020/135 in the light of the principle of proportionality, it must be pointed out that there is nothing in the documents before the Court to suggest that the European Union, as a contracting party to the Withdrawal Agreement, exceeded the limits of its discretion in the conduct of external relations by not requiring that, in that agreement, a right to vote and to stand as a candidate in elections to the European Parliament in the Member State of residence be provided for the benefit of United Kingdom nationals who exercised their right to reside in a Member State before the end of the transition period.
- 67 In that regard, the EU institutions enjoy broad discretion in policy decisions in the conduct of external relations. In the exercise of their prerogatives in that area, those institutions may enter into international agreements based, *inter alia*, on the principle of reciprocity and mutual advantages (judgment of 9 June 2022, *Préfet du Gers I*, C-673/20, EU:C:2022:449, paragraph 99 and the case-law cited).
- 68 Thus, they are not required to grant, unilaterally, third-country nationals rights such as the right to vote and to stand as a candidate in elections to the European Parliament in the Member State of residence, which, moreover, is reserved solely to Union citizens, under Article 20(2)(b) TFEU, Article 22 TFEU and Article 39 of the Charter (see, by analogy, judgment of 9 June 2022, *Préfet du Gers I*, C-673/20, EU:C:2022:449, paragraph 99).

- 69 In those circumstances, the Council of the European Union cannot be criticised for having approved the Withdrawal Agreement by Decision 2020/135, notwithstanding that that agreement does not confer on United Kingdom nationals the right to vote and to stand as a candidate in elections to the European Parliament in their Member State of residence, either during the transition period or thereafter.
- 70 Thirdly, as regards the circumstance, referred to by the referring court, that certain United Kingdom nationals, such as EP, are deprived of their right to vote in the United Kingdom under a rule, referred to in paragraph 44 of the present judgment, according to which a national of that State who resides abroad for more than 15 years is no longer entitled to participate in elections in that State, it should be noted that that fact arises solely from a legislative provision of a third State, and not from EU law. It is not, therefore, relevant for the purposes of assessing the validity of Decision 2020/135 (judgment of 9 June 2022, *Préfet du Gers I*, C-673/20, EU:C:2022:449, paragraph 101).
- 71 It follows that examination of the first question has not revealed any factor capable of affecting the validity of Decision 2020/135.

Costs

- 72 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Eighth Chamber) hereby rules:

- 1. 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, which was adopted on 17 October 2019 and entered into force on 1 February 2020, read in the light of the Charter of Fundamental Rights of the European Union,**

must be interpreted as meaning that, since the withdrawal of the United Kingdom from the European Union on 1 February 2020, nationals of that State who exercised their right to reside in a Member State before the end of the transition period no longer benefit from a right to vote and to stand as a candidate in elections to the European Parliament in their Member State of residence.
- 2. The examination of the first question referred for a preliminary ruling has not revealed any factor capable of affecting the validity of 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.**

[Signatures]