

Second civil chamber : Brexit and the loss of the right to vote at municipal elections by British nationals

01/10/2020



Consequences of the United Kingdom's withdrawal from the EU: the loss of the right to vote and to stand as a candidate at municipal elections by British nationals is not a discrimination on grounds of nationality (Article 18 (1) TFEU).

Ruling n° 1153 of 1 October 2020 (20-16.901) – Cour de cassation (Court of Cassation) - Second Civil Chamber
ECLI:FR:CCAS:2020:C201153

Dismissal

Only the french version is authentic

Summary n° 1

It results from the combined provisions of Article 20 and Article 22 of the Treaty on the Functioning of the European Union (TFEU) establishing, for the benefit of nationals of a Member State, a citizenship of the Union entailing the right to vote and to stand as a candidate in municipal elections in the Member State in which those nationals reside, also enshrined in Article 40 of the Charter of Fundamental Rights of the European Union (the Charter), Article 50 of the Treaty on European Union (TEU), on the withdrawal of a Member State from the Union, and 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 (the UK Withdrawal Agreement), published in the Official Journal of the European Union of 31 January 2020, in particular those of its Article 2 defining “citizen of the European Union” as “any person having the nationality of a Member State” as opposed to “British national”, that as of 1 February 2020, the date of entry into force of this Agreement, the United Kingdom ceased to be a Member State of the European Union and that, as a result, its nationals no longer enjoy European citizenship, which is required to have the right to vote and to stand for election in municipal elections in France under the terms of Article 88-3 of the Constitution of 4 October 1958 and Institutional Act 227-1 of the Electoral Code.

Summary n° 2

Article 127, paragraph 1, point b) of the agreement on the withdrawal of the United Kingdom expressly states that, by way of derogation from the principle that European Union law shall continue to apply to the United Kingdom and its territory during the transitional period whose end is set by Article 126 on 31 December 2020, Articles 20, paragraph 2, point b) and Article 22 of the TFEU and Articles 39 and 40 of the Charter concerning the right to vote and to stand as a candidate in elections to the European Parliament and in municipal elections in the Member State of residence shall not apply to that State and on its territory during the same period.

This exclusion from the right to vote and to stand for election of the provisions of European Union law made applicable to the United Kingdom during the transitional period, on the one hand, necessarily concerns British nationals who have exercised their right to reside in a Member State of the European Union before the end of this period, on the other hand, does not fall within the prohibition, laid down in Article 12 of the Agreement, of any discrimination on grounds of nationality within the meaning of Article 18, Section 1 of the TFEU against such nationals in the host Member State or in the Member State of employment.

Indeed, this prohibition is enacted, under the very terms of Article 12 and in accordance with point 6 of the Preamble to the Agreement, only within the scope of the second part of this text, which is intended to guarantee reciprocal protection with regard to residence rights, rights of employed and self-employed workers, professional qualifications and coordination of social security systems, both to citizens of the European Union and to nationals of the United Kingdom, who have exercised their respective rights of free movement before the end of the transitional period.

Appellant(s) : Mr A... X...

Respondent(s) : Municipality of Le Dorat (Haute-Vienne), and others

Facts and Procedure

1. According to the judgement under appeal (tribunal judiciaire of Limoges – Limoges Tribunal of First Instance – 18 June 2020), handed down in the final instance, Mr X..., a British national residing in the commune of Le Dorat (Haute-Vienne), was struck off the electoral register of that commune following the entry into force, on 1 February 2020, 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 (the “UK Withdrawal Agreement”).

2. On 30 April 2020, Mr X... applied for reinstatement on the supplementary electoral roll in order to participate in the second round of the municipal election, which was postponed to 28 June 2020, but by a decision of the following 7 May, against which he filed a prior administrative appeal before the control commission on the same day, the mayor rejected his application.

3. On 6 June 2020, Mr X... applied to a tribunal judiciaire (Tribunal of First Instance) for a preliminary ruling by the Court of Justice of the European Union on the interpretation and assessment of the validity of the agreement on the withdrawal of the United Kingdom, and for the annulment of what he considered to be an implied decision rejecting his administrative appeal.

4. After being notified, on 11 June 2020, of an express decision of the control commission, dated 4 June, refusing to re-register him on the electoral registers, Mr X... requested the annulment of this decision.

Reviewing plea

On the first part of the plea

Statement of plea

5. Mr X... objects to the judgement dismissing, on the one hand, his request for a stay of proceedings with a reference for a preliminary ruling to the Court of Justice of the European Union on the validity and interpretation of the citizenship of British nationals who, before the end of the transitional period, have exercised their right to free movement and establishment in the territory of a Member State of the European Union, on the other hand, his request for annulment of the refusal of the control commission to register him on the electoral register of the municipality of Le Dorat for the second round of the municipal election of 28 June 2020, whereas “the entry into force of the agreement on the withdrawal of the United Kingdom from the European Union on 31 January 2020 did not cause British nationals who exercised their right to free movement and installation before the end of the transition period provided for by this text to lose their European citizenship. These nationals therefore retain their right to vote and to stand as candidates in municipal elections in the Member State in which they reside ; that in order to deny Mr X..., a British national, the right to vote in the municipal elections of the municipality of Le Dorat in which he resides, the tribunal held that he was not a European citizen and that, as a result of the entry into force of the Brexit Agreement, he no longer had such citizenship. In so ruling, the tribunal violated Articles 9 and 50 of the Treaty on European Union, Article 18, Article 20.1.b), Article 21 and Article 22 of the Treaty on the Functioning of the European Union, the Preamble and Article 10, Article 12 and Article 127.1.b) of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union dated 31 January 2020, Articles 39 and 40 of the Charter of Fundamental Rights of the European Union, and Article 88-3 of the Constitution of 4 October 1958.”

Court’s response

6. It follows from the combined provisions of Article 20 and Article 22 of the Treaty on the Functioning of the European Union (TFEU) establishing, for the benefit of nationals of a Member State, a citizenship of the European Union entailing the right to vote and to stand as a candidate in municipal elections in the Member State in which those nationals reside,

also enshrined in Article 40 of the Charter of Fundamental Rights of the European Union (the Charter), Article 50 of the Treaty on European Union (TEU), relating to the withdrawal of a Member State from the European Union, and the agreement on the withdrawal of the United Kingdom, published in the Official Journal of the European Union on 31 January 2020, in particular Article 2 thereof defining “citizen of the European Union” as “any person having the nationality of a Member State”, as opposed to “British national”, that as of 1 February 2020, the date of entry into force of this agreement, the United Kingdom ceased to be a Member State of the Union and that, as a result, its nationals no longer enjoy European citizenship, which is required to have the right to vote and to stand for election in municipal elections in France under the terms of Article 88-3 of the Constitution of 4 October 1958 and Organic Law 227-1 of the Electoral Code.

7. The plea, which states the opposite, is therefore unfounded.

On the second and third parts of the plea

Statement of plea

8. Mr X... objects to the same judgement, whereas :

“2°/ Supposing that the entry into force of the agreement on the withdrawal of the United Kingdom from the European Union has caused nationals of this country settled in another Member State to lose European citizenship, the principle of non-discrimination enshrined in this agreement with regard to these nationals leads to maintaining their right to participate in municipal elections in this country. By refusing Mr X..., a British national but resident in France and registered on the French electoral rolls since 2009, the tribunal violated Article 9 and Article 50 of the Treaty on European Union, Article 18, Article 20.1.b), Article 21 and Article 22 of the Treaty on the Functioning of the European Union, the Preamble and Article 10, Article 12 and Article 127.1.b) of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union, Articles 39 and 40 of the Charter of Fundamental Rights of the European Union and Article 88-3 of the Constitution of 4 October 1958 ;

3°/ Alternatively, the conditions for the acquisition and withdrawal of European citizenship must be exercised in accordance with the law of the European Union. A person who has been deprived of European citizenship may therefore contest the validity of the act by which that citizenship was withdrawn. The withdrawal agreement of 31 January 2020 disregards the principles forming the identity of the European Union and, in particular, Article 18, Article 20 and Article 21 of the Treaty on the Functioning of the European Union and Articles 39 and 40 of the Charter of Fundamental Rights of the European Union, in that it contains no stipulation allowing British nationals settled in a Member State of the Union to retain the rights relating to their European citizenship. By maintaining the contrary, an irrelevant ground taken that the principle of non-discrimination could no longer be opposed by Mr X..., since he no longer had the nationality of a Member State of the Union, the tribunal violated these provisions.”

Court’s response

9. Article 127, paragraph 1, point b) of the Agreement on the withdrawal of the United Kingdom expressly states that, by way of derogation from the principle that European Union law shall continue to apply to the United Kingdom and its territory during the transitional period, the end of which is set by Article 126 on 31 December 2020, Article 20, paragraph 2), point b) and Article 22 of the TFEU and Articles 39 and 40 of the Charter concerning the right to vote and to stand as a candidate in elections to the European Parliament and in municipal elections in the Member State of residence shall not apply to that State and on its territory during the same period.

10. Contrary to what Mr X... claims, the exclusion of the right to vote and to stand for election from the provisions of European Union law made applicable to the United Kingdom during the transitional period, on the one hand, can only

apply to British nationals who have exercised their right to reside in a Member State of the European Union before the end of that period. On the other hand, the exclusion does not fall within the prohibition, laid down in Article 12 of the Agreement, of any discrimination on grounds of nationality, within the meaning of Article 18, Section 1 of the TFEU, against such nationals in the host Member State or in the Member State of employment, since that prohibition is enacted, under the terms of the said Article 12 itself and in accordance with point 6 of the Preamble to the Agreement, only within the scope of the second part of that text. The purpose of this text is to guarantee reciprocal protection as regards residence rights, rights of employed and self-employed persons, professional qualifications and coordination of social security systems, both to citizens of the European Union and to nationals of the United Kingdom who have exercised their respective rights of free movement before the end of the transitional period.

11. The result is that the plea, which is lacking in its second part, is irrelevant for the remaining parts.

On the fourth part of the plea

Statement of plea

12. Mr X... made the same objection to the judgement, whereas “alternatively, the withdrawal agreement of 31 January 2020, which prohibits British nationals settled in another member state from participating in municipal elections in that State, contributes to a deterioration of their administrative, personal and family situation. By maintaining the contrary, on the sole finding that this agreement would preserve certain rights of these nationals with regard to the right to stay, to work and to social security, the tribunal violated the principle of proportionality.”

Courts’s response

13. Contrary to the premise on which the objection is based, in order to dismiss the plea by which Mr X... argued that the loss of his right to vote in municipal elections in France led to a deterioration of his administrative, personal and family situation in breach of the principle of proportionality, the judgement not only notes that the agreement on the withdrawal of the United Kingdom grants British nationals who have exercised their right to reside in a Member State of the Union specific protection in terms of the right to stay, to work and to social security, but also holds that Mr X... has not lost his right to vote and to stand for election in the United Kingdom, so that he cannot pertinently argue that he would be deprived of any electoral rights and that such deprivation would constitute a disproportionate infringement of his political rights as a citizen.

14. For these latter reasons alone, which are not criticized by the plea, the tribunal justified its decision.

15. The objection is therefore irrelevant.

16. Since the issues raised by Mr X...’s appeal are not relevant, and since the correct application of European Union law in the present case is so self-evident as to leave no room for reasonable doubt, there is no need to refer the matter to the Court of Justice of the European Union for a preliminary ruling on the interpretation or assessment of the validity of the agreement on the withdrawal of the United Kingdom.

ON THESE GROUNDS, the Court :

DISMISSES the appeal ;

Pursuant to Article 700 of the Civil Procedure Code, dismisses the application ;



President : Mr Pireyre

Reporting judge : Mr Talabardon, Judge Referee

Advocate-General : Ms Nicolétis

Lawyer(s) : SCP Waquet, Farge et Hazan



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International

Translated rulings