Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

9 June 2022 *

(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 – Article 9 TEU – Articles 20 and 22 TFEU – Right to vote and to stand as a candidate in municipal elections 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 from the Union – Removal from the electoral roll in the Member State of residence – Articles 39 and 40 of the Charter of Fundamental Rights of the European Union – Validity of Decision (EU) 2020/135)

In Case C-673/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the tribunal judiciaire d'Auch (Court of Auch, France), made by decision of 17 November 2020, received at the Court on 9 December 2020, in the proceedings

EP

v

Préfet du Gers,

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

interested party:

Maire de Thoux,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, K. Jürimäe, C. Lycourgos, E. Regan, S. Rodin, N. Jääskinen (Rapporteur), I. Ziemele and J. Passer, Presidents of Chambers, F. Biltgen, P.G. Xuereb, N. Piçarra, L.S. Rossi, N. Wahl and D. Gratsias, Judges,

Advocate General: A.M. Collins,

Registrar: A. Calot Escobar,

* Language of the case: French.

having regard to the written procedure,

after considering the observations submitted on behalf of:

– EP, by J. Fouchet and J.-N. Caubet-Hilloutou, avocats,

– the French Government, by A.-L. Desjonquères, D. Dubois and T. Stéhelin, acting as Agents,

– the Romanian Government, by E. Gane and A. Wellman, acting as Agents,

– the Council of the European Union, by J. Ciantar, R. Meyer and M. Bauer, acting as Agents,

– the European Commission, by E. Montaguti, H. Krämer, C. Giolito and A. Spina, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 24 February 2022,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 50 TEU, Articles 18, 20 and 21 TFEU, Articles 39 and 40 of the Charter of Fundamental Rights of the European Union ('the Charter'), Articles 2, 3, 10, 12 and 127 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. 7), which was adopted on 17 October 2019 and entered into force on 1 February 2020 ('the Withdrawal Agreement'), and the validity of that agreement.

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 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.'

4 Article 50 TEU provides:

‘1. Any Member State may decide to withdraw from the 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.

…’

5 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.’

6 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.

…’

7 Article 21(1) TFEU provides:

‘Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.’

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.’

10 Under Article 40 of the Charter, entitled ‘Right to vote and to stand as a candidate at municipal elections’:

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

The Withdrawal Agreement

11 The Withdrawal Agreement was approved on behalf of the European Union and the European Atomic Energy Community (EAEC) by Council Decision (EU) 2020/135 of 30 January 2020 (OJ 2020 L 29, p. 1).

12 The fourth, sixth and eighth paragraphs in the preamble to that agreement state:

‘Recalling that, pursuant to Article 50 TEU, in conjunction with Article 106a of the Euratom Treaty, and subject to the arrangements laid down in this Agreement, the law of the Union and of Euratom in its entirety ceases to apply to the United Kingdom from the date of entry into force of this Agreement,

…

Recognising that it is necessary to provide reciprocal protection for Union citizens and for United Kingdom nationals, as well as their respective family members, where they have exercised free movement rights before a date set in this Agreement, and to ensure that their rights under this Agreement are enforceable and based on the principle of non-discrimination; recognising also that rights deriving from periods of social security insurance should be protected,

…

Considering that it is in the interest of both the Union and the United Kingdom to determine a transition or implementation period during which – notwithstanding all consequences of the United Kingdom's withdrawal from the Union as regards the United Kingdom's participation in the institutions, bodies, offices and agencies of the Union, in particular the end, on the date of entry into force of this Agreement, of the mandates of all members of institutions, bodies and agencies of the Union nominated, appointed or elected in relation to the United Kingdom's membership of the Union – Union law, including international agreements, should be applicable to and in the United Kingdom, and, as a general rule, with the same effect as regards the Member States, in order to avoid disruption in the period during which the agreement(s) on the future relationship will be negotiated'.

13 Part One of that agreement, entitled 'Common provisions', includes Articles 1 to 8. Article 2(c) to (e) of that agreement provides:

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

…

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

(d) "United Kingdom national" means a national of the United Kingdom, as defined in the New Declaration by the Government of the United Kingdom of Great Britain and Northern Ireland of 31 December 1982 on the definition of the term "nationals" together with Declaration No 63 annexed to the Final Act of the intergovernmental conference which adopted the Treaty of Lisbon;

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

14 Part Two of the Withdrawal Agreement, entitled 'Citizens' rights', contains Articles 9 to 39. 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'.

15 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;

…'

16 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.'

17 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.

18 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.'

19 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.

…'

20 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.

French law

21 Article 88-3 of the Constitution du 4 octobre 1958, dans sa rédaction issue de la loi constitutionnelle n° 93-952 du 27 juillet 1993 (JORF of 28 July 1993, p. 10600; Constitution of 4 October 1958, in the version resulting from Constitutional law n° 93-952 of 27 July 1993), states:

'Subject to reciprocity and in accordance with the arrangements laid down in the [EU Treaty], the right to vote and to stand as a candidate in municipal elections may be granted only to Union citizens residing in France. …'

22 Article LO 227-1 of the code électoral, issu de la loi organique No 98-404 du 25 mai 1998 déterminant les conditions d'application de l'article 88-3 de la Constitution relatif à l'exercice par les citoyens de l'Union européenne résidant en France, autres que les ressortissants français, du droit de vote et d'éligibilité aux élections municipales, et portant transposition de la directive 94/80/CE du 19 décembre 1994 (JORF of 26 May 1998, p. 7975; Electoral Code resulting from Organic Law No 98-404 of 25 May 1998 laying down the conditions for the application of Article 88-3 of the Constitution concerning the exercise by citizens of the European Union residing in France, other than French nationals, of the right to vote and to stand as a candidate in municipal elections and transposing Directive 94/80/EC of 19 December 1994; 'the Electoral Code'), provides:

'Citizens of the European Union residing in France, other than French citizens, may participate in the election of municipal councils on the same conditions as French electors, subject to the provisions of this Section.

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 LO 227-2 of the Electoral Code provides:

'In order to exercise their right to vote, persons referred to in Article LO 227-1 shall 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 French nationality, to be electors and be registered on an electoral roll in France.'

24 By virtue of Article L 16(3), second subparagraph, of the Electoral Code, INSEE is responsible for striking the names of deceased electors and electors who are no longer entitled to vote from the single electoral register.

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 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 brought an action before the referring court to contest that decision.

30 Before that court, EP asserts that she no longer has the right to vote and to stand as a candidate in the United Kingdom because of the rule under United Kingdom law by virtue of which a national of that State who has resided abroad for more than 15 years is no longer entitled to take part in elections in that State ('the 15-year rule').

31 Thus, EP is in a different situation from that with regard to which the Cour de cassation (Court of Cassation, France) held that the loss of citizenship of the Union does not disproportionately affect the civil and political rights of the person concerned, since that person was entitled to vote in the referendum on the withdrawal of the United Kingdom from the European Union and in the general election held in 2019 in that State. However, that is not the case for EP.

32 According to EP, the loss of the status of citizen of the Union, enshrined in Article 20 TFEU, cannot be an automatic consequence of the United Kingdom's withdrawal from the European Union. She adds that that loss infringes the principles of legal certainty and proportionality and also constitutes discrimination between Union citizens and an infringement of her freedom of movement.

33 The Mayor of the Commune of Thoux points out that applicable national provisions do not enable him to register EP on the electoral roll.

34 The Prefect of Gers contends that the action should be dismissed. He considers, in particular, that the withdrawal of the United Kingdom from the European Union on 1 February 2020 resulted in the loss of the right to vote and to stand as a candidate in municipal and European elections held in France and, therefore, the automatic removal, by INSEE, of United Kingdom nationals, such as EP, who do not also have French nationality, from the special electoral rolls.

35 The referring court points out that EP is entirely deprived of the right to vote in elections in the United Kingdom because of the 15-year rule and that, pursuant to the provisions of Article 127 of the Withdrawal Agreement, she also lost the right to vote in elections to the European Parliament, and in the municipal elections in France.

36 That court considers that the application of the provisions of that agreement to EP constitutes a disproportionate infringement of EP's fundamental right to vote.

37 In those circumstances, the tribunal judiciaire d'Auch (Court of Auch, France) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Must Article 50 [TEU] and the [Withdrawal Agreement] be interpreted as revoking the [Union] citizenship of [United Kingdom] nationals who, before the end of the transition period, have exercised their right to freedom of movement and freedom to settle freely in the territory of another Member State, in particular for those who have lived in the territory of another Member State for more than 15 years and are subject to the [United Kingdom] 15-year rule, thus depriving them of any right to vote?

(2) If so, is the combination of Articles 2, 3, 10, 12 and 127 of the Withdrawal Agreement, recital 6 of its preamble, and Articles 18, 20 and 21 [TFEU] to be regarded as having allowed those [United Kingdom] nationals to retain, without exception, the rights to EU citizenship which they enjoyed before the withdrawal of their country from the European Union?

(3) If the answer to Question 2 is in the negative, is the Withdrawal Agreement not invalid in part in so far as it infringes the principles underlying EU identity, and, in particular, Articles 18, 20 and 21 [TFEU], and also Articles 39 and [40] of [the Charter], and does it not infringe the principle of proportionality, in that it contains no provision permitting them to retain those rights without exception?

(4) In any event, is Article 127(1)(b) of the Withdrawal Agreement not invalid in part in so far as it infringes Articles 18, 20 and 21 [TFEU], and also Articles 39 and 40 of [the Charter], in that it deprives Union citizens who have exercised their right to freedom of movement and freedom to settle freely in the United Kingdom of the right to vote and to stand as candidates in municipal elections in that country and, if the General Court and the Court of Justice interpret them in the same way as the Conseil d'État (Council of State, France), does that infringement not extend to [United Kingdom] nationals who have exercised their freedom of movement and their freedom to settle freely in the territory of another Member State for more than 15 years and are subject to the [United Kingdom] 15-year rule, thus depriving them of any right to vote?'

The request to have the oral part of the procedure reopened

38 By document lodged at the Court Registry on 15 April 2022, EP requested the Court to order the oral part of the procedure to be reopened, pursuant to Article 83 of the Rules of Procedure of the Court.

39 In support of her request, EP relied on the fact that the Conseil d'État (Council of State, France) had delivered, on 22 March 2022, a judgment in which, in a case comparable to that in the main proceedings, that court ruled, without awaiting the Court's judgment in that case, on the

consequences of the withdrawal of the United Kingdom from the European Union on the status of United Kingdom nationals residing in France in the light of the EU rules on citizenship. She also stated that she disagreed with the Opinion of the Advocate General delivered on 24 February 2022, which, moreover, failed to address several of her arguments.

40 In that regard, it must be noted, first, that the Statute of the Court of Justice of the European Union and the Rules of Procedure make no provision for the interested parties referred to in Article 23 of the Statute to submit observations in response to the Advocate General's Opinion (judgment of 16 November 2021, *Prokuratura Rejonowa w Mińsku Mazowieckim and Others*, C-748/19 to C-754/19, EU:C:2021:931, paragraph 30 and the case-law cited).

41 Secondly, under the second paragraph of Article 252 TFEU, the Advocate General, acting with complete impartiality and independence, is to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require his or her involvement. It is not therefore an opinion addressed to the judges or to the parties which stems from an authority outside the Court, but rather, it is the individual reasoned opinion, expressed in open court, of a Member of the Court of Justice itself. Under these circumstances, the Advocate General's Opinion cannot be debated by the parties (see, to that effect, judgment of 6 October 2021, *Sumal*, C-882/19, EU:C:2021:800, paragraph 21). Moreover, the Court is not bound either by the Advocate General's submissions or by the reasoning which led to those submissions. Consequently, a party's disagreement with the Opinion of the Advocate General, irrespective of the questions that he or she examines in the Opinion, cannot in itself constitute grounds justifying the reopening of the oral procedure (judgment of 16 November 2021, *Prokuratura Rejonowa w Mińsku Mazowieckim and Others*, C-748/19 to C-754/19, EU:C:2021:931, paragraph 31 and the case-law cited).

42 Nevertheless, in accordance with Article 83 of the Rules of Procedure, the Court may at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information, or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court, or where the case must be decided on the basis of an argument which has not been debated between the interested persons.

43 In the present case, the Court considers, however, after hearing the Advocate General, that it has all the information necessary to rule on the present request for a preliminary ruling. Furthermore, it notes that the evidence put forward by EP in support of her request that the oral part of the procedure be reopened, including the national decision relied on, does not constitute new facts of such a nature as to be a decisive factor for the decision of the Court which it is thus called upon to give.

44 In those circumstances, there is no need to order the reopening of the oral part of the procedure.

Consideration of the questions referred

The first and second questions

45 By its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, whether 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 the 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.

46 In that regard, in the first place, it must be pointed out that citizenship of the Union requires possession of the nationality of a Member State.

47 Article 9 TEU and Article 20(1) TFEU provide that citizens of the Union must be nationals of a Member State. Furthermore, it follows from those provisions that Union citizenship is additional to national citizenship but does not replace it.

48 By Article 9 TEU and Article 20 TFEU, the authors of the Treaties thus established an inseparable and exclusive link between possession of the nationality of a Member State and not only the acquisition, but also the retention, of the status of citizen of the Union.

49 It is from that perspective that the Court has held that Article 20 TFEU confers on every person holding the nationality of a Member State Union citizenship, which, according to settled case-law, is destined to be the fundamental status of nationals of the Member States (judgment of 18 January 2022, *Wiener Landesregierung (Revocation of an assurance of naturalisation)*, C-118/20, EU:C:2022:34, paragraph 38 and the case-law cited).

50 Article 20(2) TFEU and Articles 21 and 22 TFEU attach a series of rights to the status of citizen of the Union. Citizenship of the Union confers, in particular, on each Union citizen a primary and individual right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the FEU Treaty and the measures adopted for their implementation (see, to that effect, judgment of 8 May 2018, *K.A. and Others (Family reunification in Belgium)*, C-82/16, EU:C:2018:308, paragraph 48 and the case-law cited).

51 In particular, as regards Union citizens residing in a Member State of which they are not nationals, those rights include, under Article 20(2)(b) TFEU and Article 22 TFEU, the right to vote and to stand as a candidate in municipal elections in the Member State of residence, under the same conditions as nationals of the latter Member State. Article 40 of the Charter also recognises that right. By contrast, none of those provisions enshrines that right in favour of nationals of a third State.

52 As the Commission observes, 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, consequently, 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.

53 In the second place, as regards the consequences of the United Kingdom's withdrawal from the European Union for nationals of that State, it must be noted that Article 50(1) TEU states that any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements. It follows that the Member State is not required to take its decision in concert with the other Member States or with the EU institutions. The decision to withdraw is

for that Member State alone to take, in accordance with its constitutional requirements, and therefore depends solely on its sovereign choice (judgment of 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, paragraph 50).

54 As the Court has noted, Article 50(2) and (3) TEU sets out the procedure to be followed if a Member State decides to withdraw, consisting of, first, notification to the European Council of the intention to withdraw, secondly, negotiation and conclusion of an agreement setting out the arrangements for withdrawal, taking into account the future relationship between the State concerned and the European Union and, thirdly, the actual withdrawal from the Union on the date of entry into force of that agreement or, failing that, two years after the notification given to the European Council, unless the latter, in agreement with the Member State concerned, unanimously decides to extend that period (judgment of 16 November 2021, *Governer of Cloverhill Prison and Others*, C-479/21 PPU, EU:C:2021:929, paragraph 48 and the case-law cited).

55 Consequently, under Article 50(3) TEU, the Treaties ceased to apply to the United Kingdom on the date on which the Withdrawal Agreement entered into force on 1 February 2020, so that that State is no longer, as from that date, a Member State (see, to that effect, order of 16 June 2021, *Sharpston* v *Council and Representatives of the Governments of the Member States*, C-685/20 P, EU:C:2021:485, paragraph 53).

56 Accordingly, as from 1 February 2020, United Kingdom nationals no longer hold the nationality of a Member State, but that of a third State.

57 As is apparent from paragraphs 46 to 51 of the present judgment, possession of the nationality of a Member State is an essential condition for a person to be able to acquire and retain the status of citizen of the Union and to benefit fully from the rights attaching to that status. The loss of nationality of a Member State therefore entails, for the person concerned, the automatic loss of his or her status as a citizen of the Union.

58 In those circumstances, since United Kingdom nationals have been nationals of a third State as from 1 February 2020, they lost the status of a citizen of the Union as from that date. Consequently, they no longer enjoy, under Article 20(2)(b) and Article 22 TFEU, the right to vote and to stand as a candidate in municipal elections in their Member State of residence. It is irrelevant, in that regard, that United Kingdom nationals have previously exercised their right to reside in a Member State.

59 As regards the concerns of the referring court concerning the – in its view – disproportionate consequences of the loss of the status of citizen of the Union for a United Kingdom national, such as EP, who is moreover deprived of the right to vote in the United Kingdom under the 15-year rule, it must be stated, on the one hand, that the loss of that status, and consequently the loss of the right to vote and to stand as a candidate in the municipal elections in the Member State of residence of that national, is, as a general rule, as the Advocate General observed in point 42 of his Opinion, an automatic consequence of the sole sovereign decision taken by the United Kingdom to withdraw from the European Union, by virtue of Article 50(1) TEU.

60 In so far as concerns, on the other hand, the 15-year rule, it is a choice of electoral law made by that former Member State, now a third State.

61 In those circumstances, 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.

62 In that regard, it must be stressed that the loss of that status and of the right to vote and to stand as a candidate in elections held in the Member State of residence of the person concerned is the automatic result of a sovereign decision made by a former Member State, under Article 50(1) TEU, to withdraw from the European Union and thus to become a third State with respect to the European Union. The cases in which the Court set out the obligation to carry out an individual examination of the proportionality of the consequences of the loss of Union citizenship concerned specific situations falling within the scope of EU law, where a Member State had withdrawn its nationality from individual persons, pursuant to a legislative measure of that Member State (see, to that effect, judgment of 12 March 2019, *Tjebbes and Others*, C-221/17, EU:C:2019:189, paragraph 48) or an individual decision taken by the competent authorities of that Member State (see, to that effect, judgments of 2 March 2010, *Rottmann*, C-135/08, EU:C:2010:104, paragraph 42, and of 18 January 2022, *Wiener Landesregierung (Revocation of a naturalisation assurance)*, C-118/20, EU:C:2022:34, paragraph 74). The case-law arising from those various judgments cannot therefore be applied to a situation such as that in the main proceedings.

63 As regards, in the third place, whether the Withdrawal Agreement maintains, beyond the withdrawal of the United Kingdom from the European Union, and therefore beyond the entry into force of that agreement on 1 February 2020, in favour of 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 municipal elections in their Member State of residence, it must be pointed out that there is nothing in that agreement to suggest that it confers such a right on those nationals.

64 In particular, it must be observed that, according to the fourth recital of the Withdrawal Agreement, subject only to the arrangements laid down therein, EU law in its entirety ceases to apply to the United Kingdom, from the date of entry into force of that agreement.

65 As regards those arrangements, which were intended to allow the withdrawal of the United Kingdom from the European Union in an orderly manner (see, to that effect, judgment of 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, paragraph 56), the Withdrawal Agreement draws a distinction between two periods.

66 First, in accordance with Article 2(e) of the Withdrawal Agreement, read in conjunction with Article 126 thereof, that agreement provides for a transition period, from 1 February to 31 December 2020.

67 In that regard, Article 127(1) of that agreement sets out the principle, also referred to in the eighth paragraph of the preamble thereto, that EU law remained applicable to and in the United Kingdom during the transition period. However, by derogation from that principle, Article 127(1)(b) of that agreement expressly excludes the application to and in the United Kingdom of Article 20(2)(b) TFEU, Article 22 TFEU, and Articles 39 and 40 of the Charter, namely the provisions of primary EU law relating to the right of Union citizens to vote and to stand as a candidate in elections to the European Parliament and in municipal elections in their Member State of residence.

68 It is true, as EP argues, under Article 127(1)(b) of the Withdrawal Agreement, that that exclusion concerns the United Kingdom and the territory of that State, as defined in Article 3(1) thereof, relating to the territorial scope of that agreement, without expressly referring to its nationals. However, it must be held that that exclusion also applies to 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.

69 Article 127(1) of the Withdrawal Agreement must be read in conjunction with Article 127(6) thereof.

70 It is apparent from the latter provision that, in the context of their implementation and of their application by the Member States, provisions of EU law which are not applicable under Article 127(1)(b) of that agreement are to be understood as not including the United Kingdom within their scope. Those provisions include Article 20(2)(b) TFEU, Article 22 TFEU, and Articles 39 and 40 of the Charter, which concern the right to vote and to stand as a candidate in elections to the European Parliament and also in municipal elections. That right is reserved to every citizen of the Union residing in a Member State of which he or she is not a national, while Article 20(1) TFEU states that 'every person holding the nationality of a Member State' is a citizen of the Union.

71 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.

72 In any event, an interpretation to the contrary of Article 127(1)(b) of the Withdrawal Agreement, consisting of limiting the application of that agreement solely to the territory of the United Kingdom and therefore solely to EU citizens who resided in that State during the transition period, would create an asymmetry between the rights conferred by that agreement on United Kingdom nationals and Union citizens. Such asymmetry would be contrary to the purpose of that agreement, set out in the sixth paragraph of the preamble thereto, which is to ensure mutual protection for citizens of the Union and for United Kingdom nationals who exercised their respective rights of free movement before the end of the transition period.

73 Secondly, as regards the period, which began at the end of the transition period on 1 January 2021, the Withdrawal Agreement lays down, in Part Two thereof, rules designed to protect, on a reciprocal and equal basis, the situation of citizens of the Union and that of United Kingdom nationals, referred to in Article 10(a) and (b) respectively of that agreement, who exercised their rights to freedom of movement before the end of the transition period.

74 The purpose of those rules, which apply, under the fourth paragraph of Article 185 of that agreement, as from the end of the transition period, is, as noted in paragraph 72 above, to ensure reciprocal protection for Union citizens and United Kingdom nationals, referred to in the preceding paragraph. According to the provisions laid down in Articles 13 to 39 of the Withdrawal Agreement, those rules concern the rights connected with residence, the rights of employed and self-employed persons, professional qualifications and the coordination of social security systems.

75 However, as stated in Article 127(1)(b) of that agreement as regards the transition period, the right to vote and to stand as a candidate in municipal elections in the Member State of residence of United Kingdom nationals who exercised their right to reside in a Member State of the European Union before the end of the transition period and who continue to reside there is not one of the rights specifically provided for in Part Two of that agreement.

76 In that context, it must be stated, moreover, 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.

77 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, does not fall within the scope of Part Two of that agreement. 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 on that prohibition of discrimination in order to claim the right to vote and to stand as a candidate in municipal elections in 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.

78 Following on from the foregoing considerations, it must also be borne in mind, as regards the first paragraph of Article 18 TFEU, that that provision is not intended to apply in the case of a possible difference in treatment between nationals of Member States and nationals of third States (see, to that effect, judgment of 2 April 2020, *Ruska Federacija*, C-897/19 PPU, EU:C:2020:262, paragraph 40 and the case-law cited).

79 Similarly, as regards Article 21 TFEU, it should be recalled that in paragraph 1 thereof, that article provides for the right of every Union citizen to move and reside freely in the territory of the Member States, and applies, as Article 20(1) TFEU states, to every person holding the nationality of a Member State, with the result that it does not apply to nationals of a third State (judgment of 2 April 2020, *Ruska Federacija*, C-897/19 PPU, EU:C:2020:262, paragraph 41).

80 In so far as the first paragraph of Article 18 TFEU and the first paragraph of Article 21 TFEU were made applicable by the Withdrawal Agreement during the transition period and thereafter, those provisions cannot, without disregarding the wording of Article 20(2)(b) TFEU, Article 22 TFEU, Article 40 of the Charter and the provisions of the Withdrawal Agreement, be interpreted as also conferring on United Kingdom nationals who are no longer nationals of a Member State the right to vote and to stand as a candidate in municipal elections held in their Member State of residence.

81 Accordingly, the first paragraph of Article 18 TFEU and the first paragraph of Article 21 TFEU cannot be interpreted as requiring Member States to continue to grant, after 1 February 2020, United Kingdom nationals who reside in their territory the right to vote and to stand as a candidate in municipal elections held in that territory which they grant to citizens of the Union.

82 That interpretation is without prejudice to the right of Member States to grant, under conditions which they lay down in their national law, a right to vote and to stand as a candidate to nationals of a third State residing in their territory.

83 In the light of the foregoing considerations, the answer to the first and second questions is 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 the 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.

The third and fourth questions

84 Since the third and fourth questions concern the validity of the Withdrawal Agreement, it must be recalled that the Court has jurisdiction, both in the context of an action for annulment and in that of a request for a preliminary ruling, to assess whether an international agreement concluded by the European Union is compatible with the Treaties and with the rules of international law which, in accordance with the Treaties, are binding on the Union (see, to that effect, judgment of 27 February 2018, *Western Sahara Campaign UK*, C-266/16, EU:C:2018:118, paragraph 48 and the case-law cited).

85 Where, as in this case, the Court has received a request for a preliminary ruling concerning the validity of an international agreement concluded by the European Union, that request is to be understood as relating to the EU act approving the conclusion of that international agreement. That review of validity that the Court is required to carry out in that context is nonetheless capable of encompassing the legality of that act in the light of the actual content of the international agreement at issue (see, to that effect, judgment of 27 February 2018, *Western Sahara Campaign UK*, C-266/16, EU:C:2018:118, paragraphs 50 and 51).

86 The conclusion of the Withdrawal Agreement was approved by Decision 2020/135.

87 It should also be borne in mind that where questions referred for a preliminary ruling by a national court, under its own responsibility, concern the validity of a rule of EU law, the Court is in principle bound to give a ruling, unless, in particular, the requirements concerning the content of the request for a preliminary ruling in Article 94 of the Rules of Procedure are not satisfied or it is quite obvious that the interpretation of a provision of EU law, or the assessment of its validity, which is sought by the national court, bears no relation to the actual facts of the main action or to its purpose, or where the problem is hypothetical (see, to that effect, judgment of 6 June 2019, *P. M. and Others*, C-264/18, EU:C:2019:472, paragraphs 14 and 15).

88 That is the case here, to the extent that the referring court asks the Court about the validity of Decision 2020/135 in so far as the Withdrawal Agreement does not confer on EU citizens who exercised their right to reside in the United Kingdom before the end of the transition period the right to vote and to stand as a candidate in municipal elections in that State, since that situation is unrelated to that at issue in the main proceedings. Likewise, since Article 39 of the Charter concerns the right to vote and to stand as a candidate in elections to the European Parliament, it is irrelevant for the purposes of answering the third and fourth questions since they concern the right to vote and to stand as a candidate in municipal elections.

89 Accordingly, it is necessary to answer those two questions only to the extent that they concern the validity of Decision 2020/135 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 the transition period the right to vote and to stand as a candidate in municipal elections in their Member State of residence.

90 In those circumstances, it must be held that, by its third and fourth questions, which it is necessary to examine together, the referring court asks, in essence, whether, in the light of Article 9 TEU, Articles 18, 20 and 21 TFEU, Article 40 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 municipal elections in their State of residence.

91 In that regard, as regards, first, the examination of the validity of Decision 2020/135 in the light of Article 9 TEU, Articles 18 and 20 to 22 TFEU and Article 40 of the Charter, it has been noted in paragraphs 55 to 58 of the present judgment that, following the United Kingdom's sovereign decision to withdraw from the European Union on the basis of Article 50(1) TEU, the Treaties have, under Article 50(3) TEU, ceased to apply to the United Kingdom from the date of entry into force of that agreement, on 1 February 2020, with the result that nationals of that State no longer hold, as from that date, the nationality of a Member State but that of a third State. It follows that, as from that date, they are no longer citizens of the Union.

92 As is apparent from paragraphs 46 to 51 of this judgment, only citizens of the Union may rely, under Article 20(2)(b) TFEU, Article 22 TFEU and Article 40 of the Charter, on the right to vote in municipal elections in their Member State of residence.

93 In those circumstances, Decision 2020/135 cannot be regarded as contrary to Article 9 TEU, Articles 20 and 22 TFEU and Article 40 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 municipal elections in their Member State of residence.

94 The same applies to Articles 18 and 21 TFEU.

95 As regards Article 18 TFEU, it follows from the considerations set out in paragraphs 78 to 81 of this judgment that the difference in treatment resulting from the Withdrawal Agreement approved by that decision between United Kingdom nationals residing in a Member State who, as from 1 February 2020, no longer have the right to vote and to stand as a candidate in municipal elections in their Member State of residence, and Union citizens, who have such a right, does not constitute discrimination on grounds of nationality within the meaning of the first paragraph of Article 18 TFEU.

96 As regards Article 21 TFEU, it follows from the considerations set out in paragraphs 79 to 82 of this judgment that the choice, which derives from the Withdrawal Agreement approved by that decision, not to retain, after 1 February 2020, for United Kingdom nationals residing in a Member State, the right to vote and to stand as a candidate in municipal elections in that Member State does not constitute an infringement of paragraph 1 of that article.

97 It follows that Decision 2020/135 cannot be regarded as contrary to Articles 18 and 21 TFEU on the ground that the Withdrawal Agreement which it approved did not provide for the right to vote and to stand as a candidate in municipal elections held in the territory of the Member States for United Kingdom nationals who continue to reside in that territory after 1 February 2020.

98 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 in general or in Article 127 thereof in particular, a right to vote and to stand as a candidate in municipal elections in the Member State of residence be provided for United Kingdom nationals who exercised their right to reside in a Member State before the end of the transition period.

99 In that regard, the EU institutions enjoy broad discretion in policy decisions in the conduct of external relations (see, to that effect, judgment of 21 December 2016, *Swiss International Air Lines*, C-272/15, EU:C:2016:993, paragraph 24). 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. 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 municipal elections 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 40 of the Charter.

100 In those circumstances, the Council cannot be criticised for having approved the Withdrawal Agreement by Decision 2020/135, when that agreement does not confer on United Kingdom nationals the right to vote and to stand as a candidate in municipal elections in their Member State of residence, either during the transition period or subsequently.

101 Thirdly, as regards the circumstance, referred to by the referring court, that certain United Kingdom nationals, such as EP, who exercised their right to reside in a Member State in accordance with EU law before the end of the transition period, are deprived of their right to vote in the United Kingdom under the 15-year rule, it should be noted that that fact arises solely from a legislative provision of a third State, and not from EU law. Therefore, that circumstance is not relevant for the purposes of assessing the validity of Decision 2020/135.

102 It follows that examination of the third and fourth questions has not revealed any factor capable of affecting the validity of Decision 2020/135.

Costs

103 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 (Grand Chamber) hereby rules:

1. **Articles 9 and 50 TEU and Articles 20 to 22 TFEU, read in conjunction with 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, must be interpreted as meaning that, as of the withdrawal of the United Kingdom of Great Britain and Northern Ireland 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 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.**

2. **The examination of the third and fourth questions 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]