Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

6 October 2015*

(Reference for a preliminary ruling — Charter of Fundamental Rights of the European Union — Articles 39 and 49 — European Parliament — Elections — Right to vote — Citizenship of the European Union — Retroactive effect of the more lenient criminal law — National legislation providing for the deprivation of the right to vote in the case of a criminal conviction by a final judgment delivered before 1 March 1994)

In Case C-650/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the tribunal d'instance de Bordeaux (France), made by decision of 7 November 2013, received at the Court on 9 December 2013, in the proceedings

Thierry Delvigne

v

Commune de Lesparre-Médoc,

Préfet de la Gironde,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano, R. Silva de Lapuerta, M. Ilešič, C. Vajda, S. Rodin and K. Jürimäe (Rapporteur), Presidents of Chambers, A. Rosas, E. Juhász, A. Borg Barthet, J. Malenovský and F. Biltgen, Judges,

Advocate General: P. Cruz Villalón,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 20 January 2015,

after considering the observations submitted on behalf of:

— Mr Delvigne, by J. Fouchet, avocat,

— the Commune de Lesparre-Médoc, by M.-C. Baltazar and A. Pagnoux, avocats,

— the French Government, by G. de Bergues, D. Colas and F.-X. Bréchot, acting as Agents,

— the German Government, by T. Henze and J. Kemper, acting as Agents,

* Language of the case: French.

— the Spanish Government, by L. Banciella Rodríguez-Miñón, acting as Agent,

— the United Kingdom Government, by M. Holt, acting as Agent, and by J. Coppel QC,

— the European Parliament, by D. Moore and P. Schonard, acting as Agents,

— the European Commission, by P. Van Nuffel and H. Krämer, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 June 2015,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 39 and 49 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between Mr Delvigne and (1) the Commune de Lesparre-Médoc (municipality of Lesparre-Médoc) (France) and (2) the Préfet de la Gironde (Prefect of Gironde) concerning the removal of Mr Delvigne from the electoral roll of that municipality.

Legal context

EU law

3 Article 1 of the Act concerning the election of the members 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 1976 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.

…

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

4 Article 8 of the 1976 Act states:

'Subject to the provisions of this Act, the electoral procedure shall be governed in each Member State by its national provisions.

These national provisions, which may if appropriate take account of the specific situation in the Member States, shall not affect the essentially proportional nature of the voting system.'

French law

5 Article 28 of the Criminal Code (code pénal), laid down by the Law of 12 February 1810, in the version applicable at the time material to the main proceedings ('the old Criminal Code'), provided, in the first paragraph:

'A sentence for a serious criminal offence will entail the loss of civic rights.'

6 Under Article 34 of the old Criminal Code:

'The loss of civic rights shall consist:

…

2° in the loss of the right to vote, of the right to stand for election and, in general, of all civic and political rights …

…'

7 The old Criminal Code was repealed with effect from 1 March 1994 by Law No 92-1336 of 16 December 1992 concerning the entry into force of the new Criminal Code and the amendment of certain provisions of criminal law and criminal procedure made necessary by that entry into force (*JORF*, 23 December 1992, p. 17568). Article 131-26 of the new Criminal Code provides that a court may rule that a person is to be deprived of all or part of his civic rights for a period which may not exceed ten years in the case of a conviction for a serious offence (*crime*) and five years in the case of a conviction for a less serious offence (*délit*).

8 Law No 92-1336 of 16 December 1992, as amended by Law No 94-89 of 1 February 1994 introducing a mandatory sentence and relating to the new Criminal Code and to certain provisions of criminal procedure (*JORF*, 2 February 1994, p. 1803), provides, in Article 370:

'Without prejudice to the provisions of Article 702-1 of the Code of Criminal Procedure [(code de procédure pénale)], the penalties of deprivation of civic, civil and family rights and of exclusion from jury service, resulting, by operation of law, from a criminal conviction by a final judgment delivered before the entry into force of this Law, shall be maintained.'

9 Article 702-1 of the Code of Criminal Procedure, as amended by Law No 2009-1436 of 24 November 2009 on imprisonment (*JORF*, 25 November 2000, p. 20192), states, in the first paragraph:

'Anyone subject to deprivation, ban or legal incapacity or any published notice whatsoever resulting by operation of law from a criminal conviction or imposed on conviction as an additional penalty may apply to the court which passed sentence or, in the event of more than one conviction, to the last court to have ruled, for that deprivation, ban or legal incapacity to be lifted in whole or in part, including with regard to its duration. If the sentence was passed by an assize court, the court with jurisdiction to decide on the application shall be the investigating chamber within whose judicial district the assize court has its seat.'

10 Law No 77-729 of 7 July 1977 on the election of representatives to the European Parliament (*JORF*, 8 July 1977, p. 3579), as amended, governs the electoral procedure applicable to elections to the European Parliament. The first paragraph of Article 2 of that Law provides:

'The election of representatives to the European Parliament provided for by the Act annexed to the Decision of the Council of the European Communities of 20 September 1976, applicable pursuant to Law No 77-680 of 30 June 1977, shall be governed by Title I of Book I of the Electoral Code [code électoral] and by the provisions of the following chapters. …'

11 Book I, Title I, Chapter I of the Electoral Code brings together the provisions setting out the conditions for eligibility to vote in elections. That chapter contains Article L 2 which provides that 'French citizens having reached the age of 18 who enjoy civil and political rights and are not subject to any legal incapacity laid down by law shall be eligible to vote'.

12 Article L 5 of the Electoral Code, in its original form, provided:

'The following shall not be registered on the electoral roll:

1° Individuals who have been convicted of a serious offence;

…'

13 Under Article L 6 of the Electoral Code, in the version applicable to the main proceedings:

'Persons who have been deprived by law by the courts of the right to vote and to stand for election may not be registered on the electoral roll for the period fixed in the judgment.'

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

14 Mr Delvigne was convicted of a serious crime and given a custodial sentence of 12 years by a final judgment delivered on 30 March 1988.

15 It is apparent from the observations submitted to the Court that, under Articles 28 and 34 of the old Criminal Code, that sentence entailed the loss of Mr Delvigne's civic rights by operation of law, that loss consisting, inter alia, in his being deprived of his right to vote and of his right to stand for election.

16 The Law of 16 December 1992 abolished, in the new Criminal Code, which entered into force on 1 March 1994, the ancillary penalty of the loss of civic rights resulting by operation of law from a conviction for a serious criminal offence. The new Criminal Code now provides that the total or partial deprivation of civic rights must be the subject of a court ruling and may not exceed 10 years in the case of a conviction for a serious offence.

17 However, in accordance with Article 370 of the Law of 16 December 1992, as amended, Mr Delvigne continued to be deprived of his civic rights after 1 March 1994, as that deprivation resulted from a criminal conviction that had become final before the new Criminal Code entered into force.

18 In 2012, a decision in respect of Mr Delvigne was made by the competent administrative commission on the basis of Article L 6 of the Electoral Code, ordering his removal from the electoral roll of the municipality of Lesparre-Médoc in which he resides. Mr Delvigne lodged an application with the referring court to challenge that removal.

19 Mr Delvigne asked the referring court to make a reference to the Court of Justice for a preliminary ruling on the interpretation of EU law, alleging unequal treatment as a result of the application of the Law of 16 December 1992, as amended. In particular, he maintains that Article 370 of that law raises an 'issue of incompatibility', in that it infringes, inter alia, a number of provisions of the Charter.

20 In those circumstances, the tribunal d'instance de Bordeaux (Bordeaux District Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 49 of the Charter … to be interpreted as preventing a provision of national law from maintaining a ban, which, moreover, is indefinite and disproportionate, on allowing persons convicted before the entry into force of a more lenient criminal law, namely, Law No 94-89 of 1 February 1994, to receive a lighter penalty?

(2) Is Article 39 of the Charter …, applicable to elections to the European Parliament, to be interpreted as precluding the Member States of the European Union from making provision for a general, indefinite and automatic ban on exercising civil and political rights, in order to avoid creating any inequality of treatment between nationals of the Member States?'

Consideration of the questions referred

Preliminary observations

21 The dispute in the main proceedings concerns the lawfulness of Mr Delvigne's removal from the electoral roll, which was decided upon pursuant to Article L 6 of the Electoral Code following the loss of the right to vote attached by operation of law to the sentence for a serious criminal offence imposed on him in 1988.

22 It must be noted in that regard that, as the French Government stated in its written and oral observations to the Court, the criminal regime of the ancillary penalty was abolished with the reform of the Criminal Code in 1994. However, that amendment of the criminal law did not affect Mr Delvigne's situation as regards his right to vote, since he remains subject to a ban on voting under the combined provisions of Articles L 2 and L 6 of the Electoral Code and Article 370 of the Law of 16 December 1992, as amended.

23 Against that background, by its questions, which it is appropriate to consider together, the referring court seeks an interpretation of Article 39 and the last sentence of Article 49(1) of the Charter in order to assess whether the deprivation of the right to vote to which Mr Delvigne is subject under the combined provisions of Articles L 2 and L 6 of the Electoral Code and Article 370 of the Law of 16 December 1992, as amended, and which entailed his removal from the electoral roll, is compatible with those provisions of the Charter.

The jurisdiction of the Court

24 The French, Spanish and United Kingdom Governments claim that the Court does not have jurisdiction to reply to the request for a preliminary ruling, since, according to those governments, the national legislation at issue in the main proceedings falls outside the scope of EU law. They submit, in particular, that the national court has not invoked any provision of EU law that would establish a connection between the national legislation and EU law, and that therefore the national legislation does not constitute an implementation of EU law for the purposes of Article 51(1) of the Charter.

25 It should be recalled that the Charter's field of application so far as concerns action of the Member States is defined in Article 51(1) thereof, according to which the provisions of the Charter are addressed to the Member States only when they are implementing EU law (judgment in *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraph 17).

26 Article 51(1) of the Charter confirms the Court's settled case-law, which states that the fundamental rights guaranteed in the legal order of the European Union are applicable in all situations governed by EU law, but not outside such situations (see judgments in *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraph 19, and *Torralbo Marcos*, C-265/13, EU:C:2014:187, paragraph 29).

27 Thus, where a legal situation does not come within the scope of EU law, the Court does not have jurisdiction to rule on it and any provisions of the Charter relied upon cannot, of themselves, form the basis for such jurisdiction (see judgments in *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraph 22, and *Torralbo Marcos*, C-265/13, EU:C:2014:187, paragraph 30 and the case-law cited).

28 It is necessary therefore to determine whether the situation of a Union citizen who, like Mr Delvigne, is faced with a decision to remove him from the electoral roll made by the authorities of a Member State and entailing the loss of his right to vote in elections to the European Parliament falls within the scope of EU law.

29 Article 8 of the 1976 Act provides that, subject to the provisions of that act, the electoral procedure is to be governed in each Member State by its national provisions.

30 In the present case, Mr Delvigne was removed from the electoral roll because, as a result of his conviction in 1988 of a serious criminal offence, he is among those who, under the combined provisions of the Electoral Code and Article 370 of the Law of 16 December 1992, as amended, do not fulfil the conditions for eligibility to vote in national elections. As the Parliament stated in its observations, Article 2 of the Law of 7 July 1977 on the election of representatives to the European Parliament provided for by the 1976 Act expressly refers to those conditions so far as concerns, specifically, the right to vote in European Parliament elections.

31 Admittedly, as regards the beneficiaries of the right to vote in elections to the European Parliament, the Court has held in its judgments in *Spain* v *United Kingdom* (C-145/04, EU:C:2006:543, paragraphs 70 and 78) and *Eman and Sevinger* (C-300/04, EU:C:2006:545, paragraphs 43 and 45) that Articles 1(3) and 8 of the 1976 Act do not define expressly and precisely who are to be entitled to that right, and that therefore, as EU law currently stands, the definition of the persons entitled to exercise that right falls within the competence of each Member State in compliance with EU law.

32 However, as the German Government, the Parliament and the European Commission submitted in their observations, the Member States are bound, when exercising that competence, by the obligation set out in Article 1(3) of the 1976 Act, read in conjunction with Article 14(3) TEU, to ensure that the election of Members of the European Parliament is by direct universal suffrage and free and secret.

33 Consequently, a Member State which, in implementing its obligation under Article 14(3) TEU and Article 1(3) of the 1976 Act, makes provision in its national legislation for those entitled to vote in elections to the European Parliament to exclude Union citizens who, like Mr Delvigne, were convicted of a criminal offence and whose conviction became final before 1 March 1994, must be considered to be implementing EU law within the meaning of Article 51(1) of the Charter.

34 Accordingly, the Court has jurisdiction to reply to the request for a preliminary ruling.

Admissibility

35 The French Government argues that the questions referred are inadmissible, first, on the ground that the Court's answers are not necessary for the referring court's resolution of the dispute in the main proceedings and, secondly, on the ground that that court has not sufficiently defined the factual and legislative context of the questions referred.

36 It must be borne in mind in this regard that, in accordance with the settled case-law of the Court, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle bound to give a ruling (see, in particular, judgments in *Kamberaj*, C-571/10, EU:C:2012:233, paragraph 40 and the case-law cited, and *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 24).

37 Thus, a reference from a national court may be refused only if it is quite obvious that the interpretation of EU law sought bears no relation to the actual facts of the main action or to its purpose, or where the problem is hypothetical or the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see judgments in *Kamberaj*, C-571/10, EU:C:2012:233, paragraph 42 and the case-law cited, and *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 25).

38 In the present case, it can be clearly inferred from the factual and legal material available to the Court and which is set out in paragraphs 22 to 24 of the present judgment that the referring court is asking the Court of Justice about the interpretation of Articles 39 and 49 of the Charter in order to assess whether the national law on the basis of which Mr Delvigne has been removed from the electoral roll is compatible with those provisions of the Charter.

39 In those circumstances, the questions referred for a preliminary ruling have a direct connection with the subject-matter of the dispute in the main proceedings and are consequently admissible.

Substance

40 As a preliminary point, it will be recalled that Article 52(2) of the Charter provides that rights recognised by the Charter for which provision is made in the Treaties are to be exercised under the conditions and within the limits defined by those Treaties.

41 It must be noted in that regard that, according to the explanations relating to the Charter, which, in accordance with the third subparagraph of Article 6(1) TEU and Article 52(7) of the Charter, must be given due regard for the purpose of interpreting it, Article 39(1) of the Charter corresponds to the right guaranteed in Article 20(2)(b) TFEU. Article 39(2) of the Charter corresponds to Article 14(3) TEU. Those explanations also state that Article 39(2) takes over the basic principles of the electoral system in a democratic State.

42 As regards Article 20(2)(b) TFEU, the Court has already held that that provision is confined to applying the principle of non-discrimination on grounds of nationality to the exercise of the right to vote in elections to the European Parliament, by providing that every citizen of the Union residing in a Member State of which he is not a national is to have the right to vote in those elections in the Member State in which he resides, under the same conditions as nationals of that State (see, to that effect, judgment in *Spain* v *United Kingdom*, C-145/04, EU:C:2006:543, paragraph 66).

43 Thus, Article 39(1) of the Charter is not applicable to the situation at issue in the main proceedings, since, as is evident from the material in the file available to the Court, that situation concerns a Union citizen's right to vote in the Member State of which he is a national.

44 As regards Article 39(2) of the Charter, it is apparent from the considerations in paragraph 41 of the present judgment that this constitutes the expression in the Charter of the right of Union citizens to vote in elections to the European Parliament in accordance with Article 14(3) TEU and Article 1(3) of the 1976 Act.

45 It is clear that the deprivation of the right to vote to which Mr Delvigne is subject under the provisions of national legislation at issue in the main proceedings represents a limitation of the exercise of the right guaranteed in Article 39(2) of the Charter.

46 In that regard, it must be borne in mind that Article 52(1) of the Charter accepts that limitations may be imposed on the exercise of rights such as those set forth in Article 39(2) of the Charter, as long as the limitations are provided for by law, respect the essence of those rights and freedoms and, subject to the principle of proportionality, are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others (see, to that effect, judgments in *Volker und Markus Schecke and Eifert*, C-92/09 and C-93/09, EU:C:2010:662, paragraph 50, and *Lanigan*, C-237/15 PPU, EU:C:2015:474, paragraph 55).

47 In the context of the main proceedings, since the deprivation of the right to vote at issue stems from the application of the combined provisions of the Electoral Code and the Criminal Code, it must be held that it is provided for by law.

48 Furthermore, that limitation respects the essence of the right to vote referred to in Article 39(2) of the Charter. The limitation does not call into question that right as such, since it has the effect of excluding certain persons, under specific conditions and on account of their conduct, from those entitled to vote in elections to the Parliament, as long as those conditions are fulfilled.

49 Lastly, a limitation such as that at issue in the main proceedings is proportionate in so far as it takes into account the nature and gravity of the criminal offence committed and the duration of the penalty.

50 As the French Government notes in the observations it submitted to the Court, the deprivation of the right to vote to which Mr Delvigne is subject as a result of his being sentenced to a term of 12 years' imprisonment for a serious crime was applicable only to persons convicted of an offence punishable by a custodial sentence of between five years and life imprisonment.

51 Furthermore, the French Government submitted that national law, in particular Article 702-1 of the Code of Criminal Procedure, as amended, provides for the possibility of a person in Mr Delvigne's situation applying for, and obtaining, the lifting of the additional penalty of loss of civic rights leading to the deprivation of his right to vote.

52 It follows from the foregoing that Article 39(2) of the Charter does not preclude legislation of a Member State, such as that at issue in the main proceedings, from excluding, by operation of law, from those entitled to vote in elections to the European Parliament persons who, like the applicant in the main proceedings, were convicted of a serious crime and whose conviction became final before 1 March 1994.

53 As regards the rule as to the retroactive effect of a more lenient criminal law, set out in the last sentence of Article 49(1) of the Charter, that rule states that if, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty is to be applicable.

54 In the present case, as noted in paragraphs 16 and 22 of the present judgment, when the old Criminal Code was reformed in 1994, the deprivation of the right to vote, as an ancillary penalty resulting by operation of law from a criminal conviction, was abolished and replaced by an additional penalty which must be imposed by a court pursuant to Article 131-26 of the new Criminal Code and which may not exceed ten years in the case of a conviction for a serious offence and five years in the case of a conviction for a less serious offence.

55 That amendment did not however affect Mr Delvigne's situation, since, owing to the fact that he was convicted of a serious crime before 1 March 1994, he remains subject to an indefinite voting ban under the combined provisions of the Electoral Code and Article 370 of the Law of 16 December 1992, as amended. The French Government explained at the hearing that the reason for maintaining the effect of convictions that became final before 1 March 1994 had been that the national legislature wanted to ensure that the deprivation of the right to vote resulting from a criminal conviction did not immediately automatically disappear on the entry into force of the new Criminal Code, when that code maintains the deprivation of the right to vote in the form of an additional penalty.

56 Suffice it to note in that regard that the rule of retroactive effect of the more lenient criminal law, contained in the last sentence of Article 49(1) of the Charter, does not preclude national legislation such as that at issue in the main proceedings since, as is apparent from the wording of Article 370 of the Law of 16 December 1992, as amended, that legislation is limited to maintaining the deprivation of the right to vote resulting, by operation of law, from a criminal conviction only in respect of final convictions by judgment delivered at last instance under the old Criminal Code.

57 In any event, as noted in paragraph 51 of the present judgment, that legislation expressly provides for the possibility of persons subject to such a ban applying for, and obtaining, the lifting of that ban. As is apparent from the wording of Article 702-1 of the Code of Criminal Procedure, as amended, that option is available to anyone deprived of the right to vote whether as a result, by operation of law, of a criminal conviction under the old Criminal Code, or as a result of a court having imposed an additional penalty under the provisions of the new Criminal Code. In that context, the seising of a national court having jurisdiction under that provision by a person in Mr Delvigne's situation, who wishes to have a ban that resulted, by operation of law, from a criminal conviction under the old Criminal Code lifted, paves the way for that person's individual situation to be reassessed, including with regard to the duration of that ban.

58 Having regard to all the foregoing considerations, the answer to the questions referred is that Article 39(2) and the last sentence of Article 49(1) of the Charter must be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, which excludes, by operation of law, from those entitled to vote in elections to the European Parliament persons who, like Mr Delvigne, were convicted of a serious crime and whose conviction became final before 1 March 1994.

Costs

59 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:

Article 39(2) and the last sentence of Article 49(1) of the Charter of Fundamental Rights of the European Union must be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, which excludes, by operation of law, from those entitled

to vote in elections to the European Parliament persons who, like the applicant in the main proceedings, were convicted of a serious crime and whose conviction became final before 1 March 1994.

[Signatures]