

Union Citizenship as a Status of Political Integration

ECJ Case C-808/21, *Commission v Czech Republic* and
Case C-814/21, *Commission v Poland*

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INTRODUCTION

After the more recent *Commission v Malta*,¹ one might be forgiven for overlooking the decisions in *Commission v Czech Republic*² and *Commission v Poland*.³ *Commission v Malta*, an infringement action taken against Malta by the Commission in light of the former's 'golden passports' scheme, certainly garnered more attention, marks a decisive shift in the balance between Union law and member state competence in the area of nationality law and raises wider questions about the nature of the Union polity and the legitimacy of the Court of Justice's reasoning.⁴ It already has the makings of a classic. Nonetheless, to overlook

¹ECJ 29 April 2025, Case C-181/23, *Commission v Malta*, ECLI:EU:C:2025:283.

²ECJ 19 November 2024, Case C-808/21, *Commission v Czech Republic*, ECLI:EU:C:2024:962.

³ECJ 19 November 2024, Case C-814/21, *Commission v Poland*, ECLI:EU:C:2024:963.

⁴For various contributions in blog format see D. Spieker, 'It's Solidarity, Stupid! In Defence of *Commission v Malta*', *Verfassungsblog*, 7 May 2025, <https://verfassungsblog.de/its-solidarity-stupid/>, visited 14 January 2026; M. Van den Brink, 'Why Bother with Legal Reasoning? The CJEU Judgment in *Commission v Malta* (Citizenship by Investment)' *GlobalCit*, 2 May 2025, <https://globalcit.eu/why-bother-with-legal-reasoning-the-cjeu-judgment-in-commission-v-malta-citizenship-by-investment/>, visited 14 January 2026; R. O'Neill, 'The Silent Engine of European Citizenship', *Verfassungsblog*, 7 May 2025, <https://verfassungsblog.de/the-silent-engine-of-european-citizenship/>,

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Commission v Czech Republic and *Commission v Poland* would be a mistake. First, these judgments can, in hindsight, be seen as precursors to the more famous *Commission v Malta*, announcing in advance one of the major themes of that judgment, namely the association of Union citizenship with the wider set of constitutional developments taking place since *Opinion 2/13*.⁵ A good claim, first evident in *Commission v Czech Republic* and *Commission v Poland* and further articulated in *Commission v Malta*, can be made to the effect that Union citizenship now forms part of the supposed ‘constitutional core’ of the Union⁶ or the ‘very identity of the European Union as a legal order’.⁷ In some respects, these judgments are John the Baptist to *Commission v Malta*’s Jesus.

In addition, they have a significance in and of themselves, in developing the explicitly political dimension to Union citizenship. The significance of this for Union citizenship and for citizenship more generally should not be underestimated. Union citizenship has been called ‘Roman to its core’,⁸ emphasising individual legal rights of liberty and in particular free movement while neglecting the classic understanding of citizenship as a status and practice of political participation and action.⁹ While this has changed in recent decades, *Commission v Poland* and *Commission v Czech Republic* go some way towards remedying this deficit in the political dimension of Union citizenship. It also closely associates Union citizenship, in particular the rights contained in Article 22 TFEU, with the principle of representative democracy articulated in Article 10 TEU, which in turn is a specific expression of the value of democracy as contained in Article 2 TEU.

The following note is structured as follows. The next section outlines the facts and context before a description of the Opinions of Advocate General de la Tour

visited 14 January 2026; S. Cox, ‘The EU Free Market Does Not Extend to Citizenship’, *Verfassungsblog*, 30 April 2025, <https://verfassungsblog.de/the-eu-free-market-does-not-extend-to-citizenship/>, visited 14 January 2026; D. Kochenov, ‘Never Mind the Law, Again: *Commission v Malta* (C-181/23)’, *EU Law Live*, 30 April 2025, <https://eulawlive.com/op-ed-never-mind-the-law-again-commission-v-malta-c-181-23/>, visited 14 January 2026; and S. Coutts, ‘Citizenship as a Constitutional Status: *Commission v Malta*’, *GlobalCit*, <https://globalcit.eu/citizenship-as-a-constitutional-status-commission-v-malta/>, visited 14 January 2026.

⁵ECJ 18 December 2014, Opinion 2/13, *Accession to the European Convention on Human Rights*, ECLI:EU:C:2014:2454.

⁶A. von Bogdandy, *The Emergence of European Society through Public Law: a Hegelian and Anti-Schmittian Approach* (Oxford University Press 2024) p. 90 ff. See also J. Bast and A. von Bogdandy, ‘The Constitutional Core of the Union: on the CJEU’s New, Principled Constitutionalism’, 61 *Common Market Law Review* (2024) p. 1471.

⁷ECJ 16 February 2021, Case C-156/21, *Hungary v Parliament and Council*, ECLI:EU:C:2022:97, para. 127.

⁸C. Joppke, *Citizenship and Immigration* (Polity 2010) p. 161.

⁹E. Isin, *Being Political: Genealogies of Citizenship* (University of Minnesota Press 2002).

and the judgment is presented. The following section offers a comment on the cases, focusing on the development of Union citizenship into a limited status of political integration on the one hand and the wider constitutional techniques and implications of the cases on the other.

FACTS AND CONTEXT

Article 22(1) and (2) TFEU contain the rights to vote and to stand for election for mobile Union citizens in their member state of residence in municipal and European Parliament elections respectively.¹⁰ These electoral rights shall be exercised ‘under the same conditions as nationals of that State’. It also provides a legal basis for the adoption of detailed arrangements for the exercise of these rights. Under this provision, the Council has adopted Directives 94/80/EC¹¹ and 93/109/EC¹² providing detailed rules on the application of these rights in local and European elections respectively.

Poland and the Czech Republic had implemented these Directives. Non-national Union citizens were eligible to stand and vote in both municipal and European Parliament elections in these member states. However, membership of political parties, a topic not covered by the Directives, was limited to nationals.¹³ In both states political parties were involved in nominating candidates to local and European Parliament elections. In the Czech Republic, candidates for local elections were proposed by ‘electoral parties’, formed by political parties, movements or independent candidates or associations of these entities. For European Parliament elections, a list system was used and only political parties or movements could submit lists. Non-party members could be included on party lists. In Poland, nominations for both municipal and European Parliament elections were made by ‘electoral committees’ which could be formed by political parties, coalitions of political parties or voters. A minimum of 15 nationals with

¹⁰Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, O.J. 2008, C115/01, Art 22(1) and (2).

¹¹Council Directive 94/80/EC laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals, O.J. 1994, L 368/38 as amended by Council Directive 96/30/EC, O.J. 1996, L 122/14.

¹²Directive 93/109/EC laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, O.J. 1993, L 329/27 as amended by Directive 2013/1/EU, O.J. 2013, L 26/27.

¹³Opinion of AG de la Tour 11 January 2024, Case C-808/21, *Commission v Czech Republic*, ECLI:EU:C:2024:12, para. 10 and Opinion of AG de la Tour 11 January 2024, Case C-814/21, *Commission v Poland*, ECLI:EU:C:2024:15, para. 10.

the right to vote was required in order to form a voters' electoral committee.¹⁴ Furthermore, in Poland political parties enjoyed certain financial advantages, including a state subsidy¹⁵ and access to public broadcasters.¹⁶ Finally, also in Poland, while electoral committees formed by political parties can draw on funds of those parties, voters' electoral committees were limited to contributions from permanently resident nationals.¹⁷

Considering that the exclusion of non-national Union citizens from political parties breached the requirements of Article 22 TFEU, in particular that they could not enjoy their right to vote and stand for election in local and European elections 'under the same conditions as nationals', the Commission brought infringement actions against both states. Infringement proceedings were initially launched in 2012 (Czechia) and 2013 (Poland) with reasoned opinions in April of 2014¹⁸ and referrals to the Court taking place in 2021. We can only speculate on the delay between the issuing of the reasoned opinions and the final decision to bring infringement proceedings.¹⁹ However, the decision of the Commission to refer at this point may be related to a broader project on the part of the Commission to develop, via infringement actions, a more robust constitutional core to Union law in response to worrying tendencies in some member states²⁰ and to associate Union citizenship with this development as described further below.

OPINIONS OF ADVOCATE GENERAL DE LA TOUR

Advocate General de la Tour delivered almost identical Opinions in both cases on 11 January 2024, rejecting the arguments of the member states and stating that the exclusion of mobile Union citizens from political party membership breached

¹⁴Opinion in *Commission v Poland*, *supra* n. 13, para. 17.

¹⁵*Ibid.*, para. 13.

¹⁶*Ibid.*, para. 11.

¹⁷*Ibid.*, para. 22.

¹⁸A third case, opened against Latvia, was subsequently dropped. See European Commission, *Memo: April infringements package: main decisions (16 April 2014)* (2014) ec.europa.eu/commission/presscorner/detail/en/memo_14_293, visited 14 January 2026.

¹⁹For a useful history of these actions in the broader context of the Commission's democracy agenda see N. Vissers, 'Join the (Political) Party: The CJEU's Emerging Role as a Guardian of Democracy in Cases C-808/21 and C-814/21', *Maastricht Journal of European and Comparative Law* (2025) (pre-print publication, DOI: 10.1177/1023263X251362966).

²⁰Alongside the rule of law judgments see *Commission v Poland*, *supra* n. 3, and Opinion of AG Čapeta 2 June 2025, Case C-769/22, *Commission v Hungary (Values of the Union)*, ECLI:EU:C:2025:408 (judgment pending at time of writing).

Article 22 TFEU. This exclusion was not excused by the application of Article 4(2) TEU.

Relying on the hierarchy of norms, the Advocate General opined that the scope of Article 22 TFEU, as a provision of primary law, could not be defined or limited by Directive 93/80/EC and Directive 94/109/EC, provisions of secondary law. These measures only covered the actual exercise of electoral rights and not the wider context in which they operated.²¹ He then interpreted Article 22 TFEU in light of the ‘two pillars upon which it is based, that is to say, citizenship of the Union and representative democracy’.²² Regarding citizenship of the Union, the Advocate General noted that Union citizenship includes the right to move and reside freely throughout the territory of the member states and the principle of non-discrimination on the grounds of nationality. To this he added the importance of the principle of representative democracy as reflected in Article 10 TEU.²³ The Advocate General also noted the contribution political representation can make to the integration of citizens in their member state of residence²⁴ and the role that political parties play, including in terms of resources,²⁵ in facilitating the exercise of political rights.²⁶ Finally, Article 22 TFEU must be assessed in light of the right of freedom of association enshrined in Article 12(1) Charter and freedom of expression contained in Article 11 Charter.²⁷ Taking these points together the Advocate General stated that ‘any barrier to the exercise of electoral rights outside the respective framework determined by Directives 93/109 and 94/80, on grounds of nationality, constitutes discrimination within the scope of the Treaties, which is prohibited’.²⁸

Having outlined these considerations, the Advocate General stated that the exclusion of non-nationals from political parties constituted such a ‘barrier to the exercise of electoral rights’ and breached Article 22 TFEU, given the difference in

²¹Opinion in *Commission v Poland*, *supra* n. 13, para. 91 and Opinion in *Commission v Czech Republic*, *supra* n. 13, para. 64.

²²Opinion in *Commission v Poland*, *supra* n. 13, para. 93 and Opinion in *Commission v Czech Republic*, *supra* n. 13, para. 66.

²³Opinion in *Commission v Poland*, *supra* n. 13, para. 100 and Opinion in *Commission v Czech Republic*, *supra* n. 13, para. 73.

²⁴Opinion in *Commission v Poland*, *supra* n. 13, para. 102 and Opinion in *Commission v Czech Republic*, *supra* n. 13, para. 75.

²⁵Opinion in *Commission v Poland*, *supra* n. 13, para. 107 and Opinion in *Commission v Czech Republic*, *supra* n. 13, para. 75.

²⁶Referencing the findings of the Venice Commission in Opinion in *Commission v Poland*, *supra* n. 13, paras. 107-108 and Opinion in *Commission v Czech Republic*, *supra* n. 13, paras. 81-82.

²⁷Opinion in *Commission v Poland*, *supra* n. 13, para. 110 and Opinion in *Commission v Czech Republic*, *supra* n. 13, para. 84.

²⁸Opinion in *Commission v Poland*, *supra* n. 13, para. 104 and Opinion in *Commission v Czech Republic*, *supra* n. 13, para. 77.

opportunities open to national and non-national Union citizens.²⁹ In the case of *Commission v Poland*, the Advocate General also pointed to ‘an inequality concerning the financing of electoral committees’.³⁰

Addressing a plea raised by the member states that Article 4(2) TEU and national constitutional identity may justify a limitation on the right of equal treatment, the Advocate General said that ‘the organisation of national political life, to which political parties contribute, is part of the national identity’.³¹ However, the involvement of non-national Union citizens in the political activities of political parties ‘is a matter for those political parties’.³² Furthermore, Article 4(2) TEU must be read in light of ‘provisions of the same rank’,³³ including the rights contained in the Charter of Fundamental Rights and the principles of democracy and equality which ‘form part of the founding values of the European Union’.³⁴ The result was that Article 4(2) TEU could never justify a derogation from these core values and principles.

JUDGMENTS OF THE EUROPEAN COURT OF JUSTICE

In both judgments, the Court begins by finding that the rights contained in Article 22 TFEU are not exhausted by the rights explicitly mentioned by that provision and by the secondary measures adopted to give them effect.³⁵ In determining the precise scope of Article 22 TFEU, it analyses the connections between the Union citizenship, free movement and the electoral rights contained in Article 22 TFEU. First, it notes that Union citizenship ‘is destined to be the fundamental status of the nationals the Member States’.³⁶ Second, the Court points out that, according to Article 10(1) TEU, the functioning of the EU is to be founded on representative democracy, itself an expression of democracy as a

²⁹Opinion in *Commission v Poland*, *supra* n. 13, para. 119 and Opinion in *Commission v Czech Republic*, *supra* n. 13, para. 109.

³⁰Opinion in *Commission v Poland*, *supra* n. 13, para. 121.

³¹*Ibid.*, para. 127 and Opinion in *Commission v Czech Republic*, *supra* n. 13, para. 127.

³²Opinion in *Commission v Poland*, *supra* n. 13, para. 128 and Opinion in *Commission v Czech Republic*, *supra* n. 13, para. 128.

³³Opinion in *Commission v Poland*, *supra* n. 13, para. 130 and Opinion in *Commission v Czech Republic*, *supra* n. 13, para. 130.

³⁴Opinion in *Commission v Poland*, *supra* n. 13, para. 131 and Opinion in *Commission v Czech Republic*, *supra* n. 13, para. 131.

³⁵*Commission v Czech Republic*, *supra* n. 2, paras. 103 and 106 and *Commission v Poland*, *supra* n. 3, paras. 102 and 105.

³⁶*Commission v Czech Republic*, *supra* n. 2, para. 109 and *Commission v Poland*, *supra* n. 3, para. 108.

value which is listed as one of the values of the Union in Article 2 TEU.³⁷ Third, Article 22 TFEU has the dual objective of conferring on mobile Union citizens both ‘the right to participate in the democratic electoral process of that Member State’ and equal treatment of Union citizens.³⁸ This, in turn, is linked to ‘the gradual integration of the EU citizen ... in the society of the host Member State’.³⁹ By reserving political party membership to nationals neither the Czech Republic nor Poland ‘afforded equal access to the means available ... for the purposes of exercising’⁴⁰ Article 22 TFEU rights. Political party membership brings with it various benefits, including administrative and financial benefits, and is likely to increase a candidate’s chances of electoral success.⁴¹

In considering the member states’ argument that Article 4(2) TEU justified the exclusion of non-nationals from political parties, the Court found that that provision covered ‘the organisation of national political life, to which political parties and political movements contribute’.⁴² However, it ‘neither requires the Member State concerned to grant those citizens the right to vote and to stand as a candidate in national elections, nor prohibits it from adopting specific rules on decision making within a political party or political movement regarding the nomination of candidates in national elections’.⁴³ Furthermore, Article 4(2) TEU must be read in light of provisions of the same rank, in particular Articles 2 and 10 TEU and cannot justify a derogation from the principles and values expressed in those provisions.

COMMENT

While the outcome in *Commission v Czech Republic* and *Commission v Poland* may not have been surprising – directly discriminatory measures on the grounds of

³⁷*Commission v Czech Republic*, *supra* n. 2, para. 116 and *Commission v Poland*, *supra* n. 3, para. 114.

³⁸*Commission v Czech Republic*, *supra* n. 2, para. 123 and *Commission v Poland*, *supra* n. 3, para. 121.

³⁹*Commission v Czech Republic*, *supra* n. 2, para. 125 and *Commission v Poland*, *supra* n. 3, para. 123.

⁴⁰*Commission v Czech Republic*, *supra* n. 2, para. 127 and *Commission v Poland*, *supra* n. 3, para. 125.

⁴¹*Commission v Czech Republic*, *supra* n. 2, para. 151 and *Commission v Poland*, *supra* n. 3, para. 142.

⁴²*Commission v Czech Republic*, *supra* n. 2, para. 154 and *Commission v Poland*, *supra* n. 3, para. 153.

⁴³*Commission v Czech Republic*, *supra* n. 2, para. 155 and *Commission v Poland*, *supra* n. 3, para. 154.

nationality will always be suspicious under Union law⁴⁴ – the judgments are nonetheless remarkable in just how far they follow the submissions of the Commission in developing the status of Union citizenship as one involving a certain degree of political integration and in using the opportunity to further develop its case law on the values of Article 2 TEU and in establishing a link between the constitutional core of Union law and Union citizenship.

A status of political integration

Union citizenship has long been characterised as a status of ‘social integration’,⁴⁵ allowing the mobile Union citizenship to integrate into the society of the host member state. *Commission v Czech Republic* and *Commission v Poland* add political to social integration or rather conceive social integration as including a certain degree of political integration. Indeed, this is what lies behind the central question of legal interpretation in the judgments, namely the proper scope of Article 22 TFEU. Is it merely the extension of the bare right to vote and stand for election in local and European elections, the capacity to cast a ballot and be nominated, or does it extend more generally to participation in the political life of the host member state, as argued by the Commission? The Court is quite clear. ‘Article 22 TFEU seeks . . . to confer on EU citizens residing in a Member State of which they are not nationals the right to participate in the democratic electoral process of that Member State’.⁴⁶ This ‘extends to’, but is not limited to, the rights to vote and stand for election.

It is important to note the characterisation of the Article 22 TFEU rights as political in nature and its emphasis on the wider right of political participation rather than relying narrowly on the principle of non-discrimination alone. In *Delvigne*, the rights contained in Article 22 TFEU were ‘*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’ (emphasis added).⁴⁷ In *Commission v Czech Republic* and *Commission v Poland* this characterisation of the right as a manifestation of the principle of non-discrimination is maintained;⁴⁸

⁴⁴Although see *Vissers*, *supra* n. 19, p. 8–9 on a possible argument that the reference to the adoption of directives in Art. 22 TFEU implies that such matters should be regulated by the legislator.

⁴⁵L. Azoulai, ‘La Citoyenneté Européenne, un Statut d’Intégration Sociale’, in G. Cohen-Jonathan et al. (eds.), *Chemins d’Europe: Mélanges en l’honneur de Jean Paul Jacqué* (Daloz 2010).

⁴⁶*Commission v Czech Republic*, *supra* n. 2, para. 123 and *Commission v Poland*, *supra* n. 3, para. 121.

⁴⁷ECJ 6 October 2015, Case C-650/13, *Thierry Delvigne v Commune de Lesparre Médoc and Préfet de la Gironde*, ECLI:EU:C:2015:648, para. 42.

⁴⁸*Commission v Czech Republic*, *supra* n. 2, para. 96 and *Commission v Poland*, *supra* n. 3, para. 95.

however, it is enriched by a series of statements and association with provisions which leave little doubt about the political nature of these rights. Contrary to the position of the Czech Republic, the Court follows the Commission's invitation to approach the case on the basis of Article 22 TFEU, the article containing political rights, rather than the general prohibition on discrimination on the grounds of nationality found in Article 18 TFEU.⁴⁹ Article 22 TFEU is then linked to Article 10 TEU and the principle of representative democracy, which in turn reflects the value of democracy as found in Article 2 TEU. The rights of association and expression are also cited to support the broader interpretation of Article 22 TFEU.⁵⁰ Equal treatment is certainly still part of the assessment, as indicated by the test formulated by the European Court of Justice – that Union citizens 'must be afforded equal access to the means available to nationals of that Member State for the purposes of exercising those rights effectively'.⁵¹ However, it is equal treatment read in light of principles of representative democracy and various associated rights and in the service of the effective exercise of 'a right to participate in the democratic electoral process'⁵² of host member states.

This conclusion, that Union citizenship entails the broader right of political participation, is linked to the older vocation of Union citizenship as a status of social integration. Political integration is seen as connected to other forms of integration and founded on the rights of free movement and residence. These are connected in turn with the Article 22 TFEU rights.⁵³ It follows from this connection that these rights are 'intended, amongst other things, to promote the gradual integration of the EU citizen concerned in the society of the host Member State'.⁵⁴ However, it would be a mistake to see the relationship between the political and social lives of mobile Union citizens as narrowly instrumental. Rather, it should be seen as a holistic view of integration into the community of the host member state where social and political integration are connected and mutually supporting. Indeed, the Court also notes that political representation is

⁴⁹*Commission v Czech Republic*, *supra* n. 2, para. 97 and *Commission v Poland*, *supra* n. 3, para. 96.

⁵⁰*Commission v Czech Republic*, *supra* n. 2, paras. 117-119 and *Commission v Poland*, *supra* n. 3, paras. 115-117.

⁵¹*Commission v Czech Republic*, *supra* n. 2, para. 127 and *Commission v Poland*, *supra* n. 3, para. 125.

⁵²*Commission v Czech Republic*, *supra* n. 2, para. 123 and *Commission v Poland*, *supra* n. 3, para. 121.

⁵³*Commission v Czech Republic*, *supra* n. 2, para. 113 and *Commission v Poland*, *supra* n. 3, para. 114.

⁵⁴*Commission v Czech Republic*, *supra* n. 2, para. 125 and *Commission v Poland*, *supra* n. 3, para. 123.

the ‘corollary of integration’.⁵⁵ Political participation adds a further dimension to the integration of the individual. It is a quite thick form of integration in the community. It involves participating in an ongoing fashion in the collective governance of the community, which entails actively advancing what they view to be the general interests of the community. It is not an individual or private activity or engagement but involves a distinctly public subjectivity. Indeed, in addition to facilitating an ever-thicker form of integration of the mobile Union citizen, it also mitigates EU citizenship’s overly individualistic and liberal character with its focus on (private) rights of economic participation, free movement and residence⁵⁶ by adding a public and political dimension.

This right of political participation in the democratic life of the host member state is noteworthy from the point of view of citizenship more generally by relativising nationality in one of the few areas where it retains an exclusive character, namely political participation. While we can overstate the decline of nationality,⁵⁷ it is undeniable that a combination of the universalising tendencies of human rights on the one hand⁵⁸ and the development of statuses for non-national long-term residents with a significant range and security of rights,⁵⁹ has reduced the range of citizen-specific rights.⁶⁰ However, one area which remains exclusive to citizens is political participation.⁶¹ Political participation, even at a local level, is one of the few areas which largely remain reserved to nationals. It requires involvement in exercising collective self-determination and, at the national level, involvement in the exercise of popular sovereignty. There are certain states which extend, particularly local, voting rights to long-term migrants or to nationals of closely associated states,⁶² the EU being the most significant of these arrangements.⁶³ The judgments in *Commission v Czech Republic* and

⁵⁵*Commission v Czech Republic*, *supra* n. 2, para. 126 and *Commission v Poland*, *supra* n. 3, para. 124.

⁵⁶M. Everson, ‘The Legacy of the Market Citizen’, in J. Shaw and G. More (eds.), *New Legal Dynamics of European Union* (Clarendon Press 1995); A.J. Menéndez and E.D.H. Olsen, *Challenging European Citizenship: Ideas and Realities in Contrast* (Routledge 2020).

⁵⁷R. Hansen, ‘The Poverty of Postnationalism: Citizenship, Immigration, and the New Europe’, 34 *Theory and Society* (2008) p. 1.

⁵⁸For the classic intervention see Y. Soysal, *Limits of Citizenship: Migrants and Postnational Membership* (The University of Chicago Press 1994).

⁵⁹T. Hammar, *Democracy and the Nation State: Aliens, Denizens and Citizens in a World of International Migration* (Ashgate 1990).

⁶⁰C. Joppke, ‘The Inevitable Lightening of Citizenship’, 51 *European Journal of Sociology* (2010) p. 9.

⁶¹The other significant and important exclusive citizen right is the unconditional right to access the territory of the state.

⁶²J. Shaw, *The Transformation of Citizenship in the European Union: Electoral Rights and the Restructuring of Political Space* (Cambridge University Press 2007).

⁶³See *ibid.*

Commission v Poland acknowledge this development of extending electoral rights to non-nationals in certain, second order, elections and enriches it by articulating a broader understanding of political participation which extends to, but goes beyond, the casting of a ballot. It offers a further demonstration of Union citizenship's exceptional nature as a transnational status and further closes the gap in terms of rights between nationals and non-national Union citizens.

A limited status of political integration

The gap is closed a little, but not eliminated, for there is an important qualification in the judgment. The political integration of the Union citizen has its limits, acknowledged by both the Advocate General and the Court. Both note that 'national political life . . . is part of national identity within the meaning of Article 4(2) TEU' (emphasis added).⁶⁴ Moreover, for the Court of Justice, 'EU citizens who reside in the Czech Republic but are not nationals thereof are not in a comparable situation to nationals of that Member State so far as concerns the exercise of the right to vote and to stand as a candidate in national elections',⁶⁵ as clear an indication as possible that the exclusion of non-nationals from national elections is permissible under Union law. National elections remain the preserve of nationals. This is logical and reflects both normative concerns and also the nature of Union citizenship. Normatively, electoral rights and broader political participation at a national level reflect participation in the exercise of collective self-determination and the sovereign popular will. Since the French Revolution, the necessary condition for this is the existence of a people, another term for the body of citizens.⁶⁶ If national citizenship means anything, it means full membership of the political community and ultimately, in a democratic republic, sharing in the exercise of sovereign power. This can be justified by the need to ensure that only full members, who have made an appropriate commitment and have a sufficient affinity and identification with the political community such that collective decision making is possible,⁶⁷ can legitimately exercise political power in that community.⁶⁸ Indeed, this reservation of national politics to nationals is

⁶⁴*Commission v Czech Republic*, *supra* n. 2, para. 154 and *Commission v Poland*, *supra* n. 3, para. 153.

⁶⁵*Commission v Czech Republic*, *supra* n. 2, para. 157.

⁶⁶*In the matter of Article 26 and the Electoral (Amendment) Bill*, 1983 [1984] IR 268 (IESC).

⁶⁷C. Closa, 'The Concept of Citizenship in the Treaty on European Union', 29 *Common Market Law Review* (1992) p. 1137.

⁶⁸There are some exceptions to the extension of national electoral rights to non-nationals but these are rare indeed. The clearest example in a European context is the extension of voting rights in national parliamentary elections in the UK to Irish and Commonwealth citizens and in Ireland to UK citizens. However, this can be seen as a result of the UK's imperial past and the legal assimilation

reflected in the legislation implementing the transnational electoral rights themselves.⁶⁹

To require the extension of national electoral rights and rights of political participation to national elections would be to overestimate the extent to which Union citizens do in fact form part of the 'body politic' of the host member state⁷⁰ and would entail a significant, perhaps decisive, step towards the replacement of member state citizenship by Union citizenship.⁷¹ This would not only be contrary to Article 20 TFEU but also the very ethos of Union citizenship which is designed to foster ever closer Union between the peoples of Europe, not their replacement.

However, while such a distinction between national political life and other spheres of political life can be made relatively easily with respect to electoral rights (one can draw up rules of eligibility), it is more difficult with respect to wider political participation. One has some sympathy for the argument of the Czech Republic that creating two classes of political party members – nationals and non-nationals – one of which may engage in politics relative to 'national' political life and another which is limited to local or European, might be difficult in practice.⁷² Politics is rarely so compartmentalised; political issues and ideologies map across different electoral contexts. While there are local, European and national elections, there are not necessarily separate local, European and national politics. Or if there are, they are not at all clearly demarcated but are fluid, run into each other and form part of a wider whole. The very fact that the same political parties contest local and national (and European) elections illustrates this point. The natural locus and centre of gravity for politics is normally national, a fact which

of Irish nationals in UK nationality law and correspondingly an act of reciprocity on the part of Ireland *vis-à-vis* UK nationals. Indeed, the extension of national parliamentary voting rights to non-nationals (ie UK nationals) was not automatic in Ireland but required constitutional amendment after the Irish Supreme Court found the first attempt to be unconstitutional as the definition of the Irish people, represented in the Parliament, corresponded to the citizen body. See *In the matter of Article 26 and the Electoral (Amendment) Bill, 1983*, *supra* n. 66.

⁶⁹See Directive 94/80/EC, *supra* n. 11, Art. 5(3) and (4) which allow member states to limit certain local offices to nationals and to prevent non-national Union citizens from participating in the election or formation of national parliaments. See the discussion in some member states on the introduction of these rights (including the need for constitutional amendment) in S. O'Leary, *The Evolving Concept of Community Citizenship: From the Free Movement of Persons to Union Citizenship* (Kluwer 1996).

⁷⁰Union citizens who are sufficiently integrated such that they can genuinely be said to be full members of the community and part of the body politic should be entitled to participate in national elections but through the medium of naturalisation.

⁷¹It may also justify even more intrusive supervision or possibly harmonisation of member state nationality law, given the spillover effects on the democratic system of other member states, tilting the balance towards the primacy of Union citizenship over member state nationality.

⁷²*Commission v Czech Republic*, *supra* n. 2, para. 156.

reflects the ongoing importance of the (national) state to political life. It is not credible that the Union citizen can artificially limit him or herself as a political subject to local and European elections when acting within a national political party and where politics remains primarily nationally framed. Or if it is, it puts that Union citizen party member in a very peculiar and perhaps marginalised position within the party and one in tension with the Court's goal of facilitating the integration of the Union citizen and ensuring equal treatment.

The point is even more visible when one considers precisely what is being decided in *Commission v Czech Republic* and *Commission v Poland*, namely political party membership. Almost by definition (and certainly in an ideal sense), political parties articulate a vision of the public good.⁷³ They develop a political programme based on a particular political vision which should reflect a comprehensive understanding of the public good. For national political parties, that public is primarily national in nature. The Court of Justice, drawing on the Treaties, acknowledges that political parties contribute to the functioning of representative democracy. Indeed, they do, by providing vehicles for political contestation, the development of ideas of the public good and, ultimately, collective will formation.⁷⁴ In other words, they play a crucial role in a process which culminates in the exercise of popular sovereignty. *Commission v Czech Republic* and *Commission v Poland* permit the mobile Union citizen to become a partisan within a national context, to share and contribute to the political party's (necessarily comprehensive and nationally situated) ideals and political programme and at the same time permit member states to restrict that partisanship to decidedly limited and second order areas of the party's activities. It may be that this tension – between facilitating the political integration of the Union citizen and his or her participation in democratic life of the host member state on the one hand and yet preserving national electoral rights and perhaps political participation more broadly to nationals on the other – is inevitable and a natural consequence of the Union citizen as an individual who is highly integrated, or rather integrable into the *society* of the host member state,⁷⁵ and yet is not a full member of the national *political* community.

Citizenship, democracy and the identity of the Union

If *Commission v Poland* and *Commission v Czech Republic* are a further step in the politicisation of Union citizenship and in particular the development of Union

⁷³J. White and L. Ypi, *The Meaning of Partisanship* (Oxford University Press 2016) ch 2.

⁷⁴*Ibid.*

⁷⁵L. Azoulai et al., 'Being a Person in the European Union', in L. Azoulai et al. (eds.), *Constructing the Person in EU Law: Rights, Roles, Identities* (Hart Publishing 2017) p. 7.

citizenship as a status of political, alongside social, integration, they also have the related effect of linking the principle of representative democracy and the democratic governance of the Union to citizenship. An ever-closer link is established between the status of Union citizen and the Union citizen as a political actor and the democratic credentials of the Union. The politicisation of Union citizenship is mirrored by the ongoing 'citizenification' of democracy in the Union and its integration into the 'constitutional core' of the Union. This in turn has implications for the reasoning, which tilts towards principled, constitutional reasoning.⁷⁶

This link between Union citizenship and the system of representative democracy in the Union and the values of the Union, in particular that of democracy, can be found at two points in the judgments. First, when interpreting the scope of the rights contained in Article 22 TFEU and in particular in making the finding that that article extends beyond the mere right to cast a ballot, to include 'the right to participate in the democratic electoral process of [the host] Member State'.⁷⁷ The Court supports this interpretation by pointing to the fact that 'under Article 10(1) TEU, the functioning of the European Union is to be founded on representative democracy, which gives concrete expression to democracy as a value [which is] one of the values on which the European Union is founded'.⁷⁸ This is then connected to the status of Union citizenship as reflected in Article 10(2) and (3) TEU.⁷⁹ Second, the connection is also made when the Court analyses the Article 4(2) TEU argument raised by the member states to justify their practices of excluding mobile Union citizens from party membership. Going further than the Advocate General, the Court deploys the formulae developed in the rule of law and Article 2 TEU jurisprudence, in particular the muscular statement originating in *Hungary v Parliament and Council*,⁸⁰ that 'Article 2 TEU is not merely a statement of policy guidelines or intentions but contains values which are an integral part of the very identity of the European Union as a common legal order, values which are given concrete expression in principles containing legally binding obligations for the Member States'.⁸¹

⁷⁶Bast and von Bogdandy, *supra* n. 6.

⁷⁷*Commission v Czech Republic*, *supra* n. 2, para. 123 and *Commission v Poland*, *supra* n. 3, para. 121.

⁷⁸*Commission v Czech Republic*, *supra* n. 2, para. 114 and *Commission v Poland*, *supra* n. 3, para. 112.

⁷⁹*Commission v Czech Republic*, *supra* n. 2, para. 115 and *Commission v Poland*, *supra* n. 3, para. 113.

⁸⁰*Hungary v Parliament and Council*, *supra* n. 7.

⁸¹*Commission v Czech Republic*, *supra* n. 2, para. 160 and *Commission v Poland*, *supra* n. 3, para. 157.

Further paragraphs stress the links between the principle of democracy, equal treatment, Article 10 TEU and Article 2 TEU.⁸²

What are the implications of this increasingly tight link between Union citizenship and the system of representative democracy on which the Union is founded and between Union citizenship and the Article 2 TEU values? Their immediate function in the judgment is to foreclose any reliance on Article 4(2) TEU by the member states. The interpretation of Article 4(2) TEU and its interaction with Article 2 TEU values is worth noting. The approach of the member states implies a rule-exception relationship between the articles whereby one rule or principle (equality of Union citizens and democracy) is in conflict or tension with another rule or principle (reservation of wider political participation to nationals) and is resolved by application of a justified exception (national constitutional identity). Such an approach envisages the possibility of a conflict between the values of the Union and national constitutional identity. The Court's approach implicitly rejects this possibility. It is not just that 'Article 4(2) TEU must be read in light of provisions of the same rank ... and cannot exempt Member States from the obligation to comply with the requirements arising from [Articles 2 and 10 TEU]'.⁸³ More than that, 'the principles ... are an integral part of the identity and common values of the European Union [and] are principles to which the Member States adhere and whose observance they must ensure in their territories'.⁸⁴ 'Observing those principles (by extending the right to join political parties to mobile Union citizens) ... *cannot* be regarded as undermining the national identity of [a] Member State' (emphasis added).⁸⁵ This is a harmonious reading of the relationship between Articles 2 and 4(2) TEU, the implication being that Article 2 TEU values, being values 'to which the Member States adhere', form part of the national constitutional identities of the member states.⁸⁶ There simply cannot be a conflict between the two.

Aside from the important doctrinal point that Article 4(2) TEU cannot be used to somehow 'derogate' from the values contained in Article 2 TEU, there are further implications of the association between Union citizenship, the principle of democracy and the 'identity and common values of the European Union'. Conceptually, it involves asserting the existence of a supranational element to the

⁸²*Commission v Czech Republic*, *supra* n. 2, paras. 158 and 161-163 and *Commission v Poland*, *supra* n. 3, paras. 155 and 158-160.

⁸³*Commission v Czech Republic*, *supra* n. 2, para. 158 and *Commission v Poland*, *supra* n. 3, para. 155.

⁸⁴*Commission v Czech Republic*, *supra* n. 2, para. 162 and *Commission v Poland*, *supra* n. 3, para. 159.

⁸⁵*Commission v Czech Republic*, *supra* n. 2, para. 162 and *Commission v Poland*, *supra* n. 3, para. 159.

⁸⁶I am grateful to Miriam Schuler for a discussion on this point.

Union's body politic, positing the Union citizen – and by extension the Union citizenship body – as a single collective which can act as a legitimating actor in the Union's system of representative democracy. This is already evident in *Delvigne*,⁸⁷ which directly linked the status of Union citizenship with European Parliament elections, following the changed language in the Treaty of Lisbon that the European Parliament now represented the citizens of the Union rather than the peoples of the member states.⁸⁸ This develops a more traditional conception of democracy and democratic legitimacy of the Union as one which is linked to a defined political community. It is arguably legitimacy enhancing; governance in the Union is not free floating but can be said to (at least partly) be the expression of a collective actor – a body of citizens, which authorises the exercise of power.⁸⁹ In this sense, it prefigures *Commission v Malta* and the 'single polity' posited by the Commission and implicitly accepted by the Court of Justice in that judgment.⁹⁰ At the same time, it must be acknowledged that such a conception of democracy – as an act of collective self-governance with the implication of a defined collective – necessarily has exclusionary effects. Non-citizens will be excluded from political participation.

On a practical level, the link made by the Court between Union citizenship, the democratic functioning of the Union and the values of the Union has the dual effect of facilitating greater Court of Justice supervision of national citizenship laws on the one hand and laws relating to the democratic process on the other. The importance of Union citizenship as a status which is linked to the democratic functioning of the Union justifies a more interventionist approach on the part of the Court of Justice to protect the 'integrity' of that status. This in fact occurred soon afterwards in *Commission v Malta*, where the political rights of Union citizenship and the fact that Union citizens 'participate directly in the democratic life of the Union' had the effect that 'the exercise by the Member States of their power to lay down the conditions for granting their nationality has consequences for the functioning of the European Union as a common legal order'.⁹¹

Second, in combination with Articles 10 and 2 TEU, the association of Union citizenship with the democratic functioning of the Union may provide further normative resources for the Court of Justice to extend its supervision over national

⁸⁷*Delvigne*, *supra* n. 47.

⁸⁸See Art. 10 TEU.

⁸⁹For a related discussion of constituent power see M. Patberg, *Constituent Power in the European Union* (Oxford University Press 2020).

⁹⁰*Commission v Malta*, *supra* n. 1, para. 7.

⁹¹*Ibid.*, para. 89. See also L.D. Spieker, 'Dismissing the Genuine Link by Disregarding Constitutional Principles' *Verfassungsblog*, 9 October 2024, <https://verfassungsblog.de/dismissing-the-genuine-link/>, visited 14 January 2026.

electoral laws and democratic practices.⁹² While *Commission v Czech Republic* and *Commission v Poland* are technically limited to discussing European Parliament elections, the judgments could be read as being significant for the importance of democracy more generally to the functioning of the Union, especially representative democracy, including national elections and national democratic processes and the conditions for their realisation. Likely unease about the totalising possibility of Article 2 TEU, potentially subjecting all manner of member state laws and practices to the supervision of Union law, has resulted in an interpretation which avoids the invocation of Article 2 TEU as a standalone provision in the sense of being able, in and of itself, to bring a matter within the scope of Union law. Instead, Article 2 TEU is always invoked as a provision which finds ‘concrete expression’ in other articles of the Treaties such as Articles 10⁹³ or 19 TEU.⁹⁴ Stressing the links between the status of Union citizenship, the values of Article 2 TEU and the principle of representative democracy found in Article 10 TEU opens up more clearly the possibility for the supervision of national laws which impact on the democratic functioning of the Union and the political rights of Union citizens. The infringement action against Poland for a new law setting up a committee to assess ‘Russian influence’ on public officials was based on Articles 2 and 10 TEU and is an example of this new possibility.⁹⁵ The statements in *Commission v Poland* and *Commission v Czech Republic* that Article 10 TEU and Article 22 TFEU give ‘concrete form’ and ‘concrete expression’ to the principles of democracy as found in Article 2 TEU,⁹⁶ echo the manner in which Article 19 TEU is said to give concrete expression to the rule of law and may have implications for the pending infringement action against Poland.

The judgments, especially in the later parts when discussing Article 4(2) TEU, can be said to anticipate *Commission v Malta* by associating Union citizenship with the systemic and constitutionalised understanding of the Union legal order

⁹²For a more detailed discussion and linking to *Delvigne*, *supra* n. 47 and ECJ 19 December 2019, Case C-502/19, *Procédure pénale en présence de Oriol Junqueras Vies*, ECLI:EU:C:2019:1115, see *Visser*, *supra* n. 19, p. 11–12.

⁹³*Commission v Czech Republic*, *supra* n. 2, para. 114.

⁹⁴ECJ 27 February 2018, Case C-64/16, *Associação Sindical dos Juizes Portugueses v Tribunal de Contas* ECLI:EU:C:2018:117, para. 32. Even in the pending case of *Commission v Hungary*, where the Commission is taking an infringement action claiming that measures restricting the publication and display of LGBTQ+ material, the Commission, while arguing for a separate infringement based on Art. 2 TEU, is not arguing that Art. 2 TEU itself brings the matter within the scope of Union law. See *Commission v Hungary (Values of the Union) (Opinion of AG Ćapeta)*, *supra* n. 20, paras. 31–33.

⁹⁵Rule of Law: Commission launches infringement procedure against Poland for violating EU law with the new law establishing a special committee IP/23/3134.

⁹⁶*Commission v Czech Republic*, *supra* n. 2, paras. 160–161.

posited in *Opinion 2/13*⁹⁷ and developed subsequently by the Court of Justice in a range of cases.⁹⁸ Article 2 TEU, in a by now familiar formula, is said to contain ‘values which are an integral part of the very identity of the European Union as a common legal order’.⁹⁹ Following Article 10(1) TEU, the functioning of the EU is then said to be founded on the principle of representative democracy.¹⁰⁰ Finally, the rights of EU citizens contained in Article 22 TFEU give concrete expression to this principle and that of equal treatment, principles which are ‘an integral part of the identity and common values of the European Union’.¹⁰¹ This integration of Union citizenship into the constitutional core of the Union centred on values, structural principles and the identity of the EU’s legal system, evident at in *Commission v Poland* and *Commission v Czech Republic* emerges clearly in *Commission v Malta*, where the Court finds that:

the provisions relating to citizenship of the Union are among the fundamental provisions of the Treaties, which are part of the framework of a system that is specific to the European Union and which are structured in such a way as to contribute to the implementation of the process of integration that is the *raison d’être* of the European Union itself and thus forms a part of its constitutional framework.¹⁰²

CONCLUSION

While turning on a narrow question of direct discrimination on the grounds of nationality with respect to political party membership, the two infringement actions annotated here are rich in their implications both for Union citizenship and for wider constitutional developments in Union law. There are two complementary moves in the judgment. On the one hand, the Court further politicises Union citizenship, enriching its transnational political dimension by finding that Article 22 TFEU goes beyond bare electoral rights and extends to a right to participate in the democratic life of the host member state. These judgments add political integration to the already well-established social

⁹⁷*Opinion 2/13*, *supra* n. 5.

⁹⁸See for example ECJ 10 December 2018, Case C-621/18, *Andy Wightman and Others v Secretary of State for Exiting the European Union*, ECLI:EU:C:2018:999 and *Hungary v Parliament and Council*, *supra* n. 7.

⁹⁹*Commission v Czech Republic*, *supra* n. 2, para. 160 and *Commission v Poland*, *supra* n. 3, para. 157.

¹⁰⁰*Commission v Czech Republic*, *supra* n. 2, para. 161 and *Commission v Poland*, *supra* n. 3, para. 158.

¹⁰¹*Commission v Czech Republic*, *supra* n. 2, para. 162.

¹⁰²*Commission v Malta*, *supra* n. 1, para. 91.

integration which forms the heart of Union citizenship as a transnational status, opening up the possibility of the Union citizen integrating in manner which is distinctly public and permitting them to engage in a process of contributing, in association with other citizens, to the articulation and pursuit of the common good of the community. On the other hand, the judgments associate Union citizenship with the democratic functioning of the Union, which in turn is connected to the values and ‘very identity’ of the Union. Conceptually, it reinforces the trend, since Lisbon, of recognising the existence of a ‘single European polity’,¹⁰³ itself capable of being the subject of democracy at a supranational level. More generally, the association of Union citizenship with the ‘constitutional core’, reflected in the principled constitutional approach to interpretation, amplifies the Court’s supervisory power both with respect to Union citizenship and with respect to democratic processes.

Finally, these are constitutional judgments and should be read and judged as such. As noted, what is remarkable about these judgments is not so much the outcome – these are directly discriminatory measures and would always be suspicious under Union law – but rather the approach. This includes the normative sources that the Court draws on and the links made by the Court between these different sources. This being an infringement action, role of the Commission and its pleadings should also be acknowledged. In the interpretation of Article 22 TFEU, a test is developed which draws on the ‘fundamental status’ of citizenship, the principle of democracy, the values of the Union and the social integration of the mobile Union citizen. Technically, the fundamental nature of the status of citizenship and the principle of democracy are not necessary for the conclusion. However, they turn what would otherwise be a judgment about the effective use of specific, local transnational electoral rights and non-discrimination into a statement of principle and a characterisation of Union citizenship as a constitutional status which is associated with Article 2 TEU values and the ‘very identity of the EU legal order’. These judgments are located within the development of Union citizenship. They build on the past and point towards the future. In grounding the interpretation of Article 22 TFEU in the integration of the Union citizen, they root it in a reasoning which animates much of the existing body of Union citizenship law. In associating this with democracy and Article 2 TEU values, they point to a new future for Union citizenship as a constitutional

¹⁰³See Opinion of AG Collins, 4 October 2024 in Case C-181/23, *Commission v Malta*, ECLI: EU:C:2024:849. See the assertion of the existence of a ‘single polity’ by the Commission (para. 18) and endorsement by AG Collins (para. 46): ‘EU citizens are, moreover, constituent actors of the European Union in a single polity, evidenced in particular by the right to vote and to stand as candidates to the European Parliament’. Although, he does qualify this in a footnote stating that ‘that “single polity” is limited by the Provisions of the Treaties and is therefore not to be equated to that of a State’ (see fn. 40 of the Opinion).

status. These are activist judgments, not in the sense that they give a reading of the law contrary to what an 'ordinary' reading of the text might suggest, but in the sense that they go much further than is strictly speaking necessary in developing certain constitutional principles.

Is this justified? This will depend on one's view of the role of constitutional courts and accepted means of constitutional interpretation. As a constitutional court, the Court of Justice has a duty to develop the constitution in a coherent and consistent manner, in particular in response to 'the felt necessities of the time',¹⁰⁴ while remaining true to the underlying spirit and principles of that constitution. It also has a duty to justify these developments in acceptable methods of interpretation and grounded in appropriate legal sources.¹⁰⁵ These judgments are part of a developing set of constitutional judgments which mark a major evolution of the Union as a constitutional order. They are audacious, court-led and involve a creative syncretism of structural principles¹⁰⁶ and various programmatic provisions in the Treaties. However, they *are* grounded in legal materials, either the text of the Treaties themselves or in long-established, and accepted, lines of jurisprudence and develop these in a coherent manner. This is equally true of *Commission v Poland* and *Commission v Czech Republic*.

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¹⁰⁴J. Goldsworthy, 'Constitutional Interpretation', in M. Rosenfeld and A. Sajó (eds.), *The Oxford Handbook of Comparative Constitutional Law* (Oxford University Press 2012) p. 715.

¹⁰⁵N. Nic Shuibhne, *The Coherence of EU Free Movement Law: Constitutional Responsibility and the Court of Justice* (Oxford University Press 2013) ch 1.

¹⁰⁶L. Azoulay, 'Structural Principles in EU Law: Internal and External', in M. Cremona (ed.), *Structural Principles in EU External Relations Law* (Hart Publishing 2018).