

## THE EUROPEANIZATION OF POLITICAL RIGHTS IN CZECHIA: IMPACT OF THE CJEU JUDGMENT C-808/21

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**Abstract:** *The EU Court of Justice has recently delivered judgment C-808/21 Commission v Czech Republic, which has a significant impact on the political rights of Union citizens. According to the Court, by denying EU citizens who are not Czech nationals but who reside in Czechia the right to become a member of a political party, Czechia has failed to fulfil its obligations under Article 22 TFEU. A similar judgment of the Court of Justice has been delivered in the proceedings against Poland. This paper aims to analyse and explain the slow Europeanization of political rights in Czechia. In particular, it puts the Court's judgment concerning the Czech case in the context of this process, analyses the judgment and focuses on the impact of the judgment on Czech law. The significance of the judgment for Union citizenship in the process of becoming "the fundamental status of nationals of the Member States" is also addressed.*

**Keywords:** *EU citizenship; political rights; membership in political parties; Court of Justice of the EU; Czechia.*

### INTRODUCTION

The Court of Justice of the European Union (hereinafter also the "Court") has recently delivered judgment C-808/21 *Commission v Czech Republic*<sup>1</sup>, which has a significant impact on the political rights of EU<sup>2</sup> citizens. According to the Court, by denying EU citizens who are not Czech nationals but who reside in Czechia the right to become a member of a political party, Czechia has failed to fulfil its obligations under Article 22 TFEU.<sup>3</sup> A similar judgment of the Court of Justice has been delivered in the proceedings against Poland.<sup>4</sup> Article 22 TFEU guarantees the right of every Union citizen residing in a Member State of which he is not a national to vote and to stand as a candidate in municipal elections and in elections to the European Parliament (EP), under the same conditions as nationals of the host state. Whereas Article 22 TFEU and other EU law provisions are silent on Union citizens' rights to membership in political parties in a host Member State, this right has become a "by-product" of electoral rights and the principle of non-discrimination. The interpretation of Article 22 TFEU in the judgment extends political rights of the Union citizens residing in Czechia, and the judgment contributes to the Europeanization of political rights therein. Moreover, it is significant for Union citizenship as such, as it extends the range of rights of Union citizens and strengthens their status as political actors.

This paper aims to analyse and explain the Europeanization of political rights in Czechia. In particular, it puts the Judgment in the context of this process and focuses on the

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<sup>1</sup> Judgment of the Court of Justice of 19 November 2024, C-808/21 *European Commission v Czech Republic*, EU:C:2024:962, hereinafter the "Judgment" or "*Commission v Czech Republic*".

<sup>2</sup> "European Union" or "Union".

<sup>3</sup> Treaty on the Functioning of the European Union, consolidated version (OJ C 202 of 7.6.2016, p. 47).

<sup>4</sup> Judgment of the Court of Justice of 19 November 2024, C-814/21 *European Commission v Republic of Poland*, EU:C:2024:963, hereinafter "*Commission v Poland*".

impact of the Judgment on Czech law. In addition, the significance of the Judgment for Union citizenship in the process of becoming “the fundamental status of nationals of the Member States”<sup>5</sup> shall also be addressed.

## I. THE DEVELOPMENT OF UNION CITIZENS’ POLITICAL RIGHTS IN CZECHIA

When the Czech Republic was established in 1993, political rights were reserved to Czech nationals.<sup>6</sup> This approach derived from the traditional concept of citizenship as a mutual legal relationship between a state and an individual. Both the state and its nationals have rights and duties. Under this concept, nationals possess political rights, whereas foreigners are, in principle, excluded from political life in the state. Czechia is not historically unique vis-à-vis this traditional attitude to the political rights of foreigners. Germany<sup>7</sup> and France<sup>8</sup>, for instance, supported these views in the past.

However, over recent decades, the European Union has promoted political participation of Union citizens. The Maastricht Treaty, signed in 1992, introduced EU citizenship and the right of every Union citizen to vote and to stand as a candidate in municipal elections and in the EP elections in the Member State of residence.<sup>9</sup>

During the accession process to the EU, Czechia introduced electoral rights for EU citizens<sup>10</sup> via Act No. 491/2001 Coll., on Elections to Municipal Councils (hereinafter the “Act on Municipal Elections”) and Act No. 62/2003 Coll., on Elections to the European Parliament (hereinafter the “Act on EP Elections”). Beyond EU commitments, Czechia introduced the right of EU citizens to participate in local referendums.<sup>11</sup> The right to become member of a Czech political party continued to be reserved for Czech nationals for in EU law, there was no explicit obligation for the Member States to grant this right at the national level.

When it comes to Czech constitutional law, no amendments were adopted concerning political participation of EU citizens. The Czech Charter of Fundamental Rights and Freedoms<sup>12</sup> (hereinafter the “Czech Charter”) provides in Article 20(2) that (only) Czech nationals “have the right to form political parties and political movements and

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<sup>5</sup> Judgment of the Court of Justice of 20 September 2001, C-184/99 *Rudy Grzelczyk v Centre public d’aide sociale d’Ottignies-Louvain-la-Neuve*, EU:C:2001:458, para. 31.

<sup>6</sup> “Citizens” and “nationals” are used as synonyms in this Article.

<sup>7</sup> In Germany, the debate on extending voting rights to foreigners in Germany was initiated in the late 1970s due to immigration. However, up to now, EU citizens only have electoral rights in municipal elections and elections to the European Parliament. See PEDROZA L. The persistence of debates on voting rights for foreign residents in Germany, 28 November 2022 [2025-04-06]. Available at: <<https://www.bpb.de/themen/migration-integration/kurzdoersiers/514335/the-persistence-of-debates-on-voting-rights-for-foreign-residents-in-germany/>>.

<sup>8</sup> Until 1992, only French nationals had electoral rights under the French Constitution of 1958 (Article 3). Since then, the right to vote and stand as candidates in municipal elections has been guaranteed to Union citizens in Article 88-3. See for more details FERBRACHE, F. Local electoral rights for non-French residents? A case-study analysis of British candidates and councillors in French municipal elections. *Citizenship Studies*. 2019, Vol. 23, Issue 5.

<sup>9</sup> Article 8b TEU.

<sup>10</sup> The notion “Union citizens” or “EU citizens” mean, in this paper, either nationals of all EU Member States or nationals of EU Member States except for Czech nationals, depending on the context.

<sup>11</sup> See section 2 of Act No. 22/2004 Coll., on Local Referendum.

<sup>12</sup> Constitutional Act No. 2/1993 Coll.

to associate therein”. Nevertheless, although constitutional law does not grant political rights to foreigners even after the accession to the EU, other legal sources (Acts of Parliament, international agreements) may introduce higher standards of fundamental rights and extend political rights of foreigners.

Gradually, it became clear that Czech national legislation did not completely comply with EU law. Firstly, Union citizens were discriminated by the requirement of “permanent residence” in local elections. The Act on Municipal Elections seemingly set out the same condition of permanent residence (in Czech: “trvalý pobyt”) for Czech nationals and EU citizens at the municipal level. However, a dissimilar interpretation of the “permanent residence” notion led to unequal treatment of EU citizens. In the case of Czech nationals, the interpretation was based on Act No. 133/2000 Coll., on Register of Population and Birth Numbers, according to which the place of “permanent residence” is usually an address where the person lives in a municipality, and it can be obtained very simply by notification of the address to the municipal authority. On the contrary, the “permanent residence” of EU citizens was interpreted in the sense of Act No. 326/1999 Coll., on the Residence of Foreigners in the Czech Republic. Under this act, EU citizens achieve “permanent residence” after five years of residence in Czechia.<sup>13</sup> Accordingly, EU citizens residing less than five years were deprived of electoral rights in municipal elections.

This problem was finally resolved by the Regional Court in Brno.<sup>14</sup> The Court recognised the right to vote in municipal elections of a Slovak national who was temporarily residing in the Czech Republic. It concluded that Article 20(2)(b) and Article 22(1) TFEU as well as the relevant provisions of Directive 94/80/EC on municipal elections<sup>15</sup> were not implemented in the Act on Municipal Elections correctly, and consequently, they had a direct effect.

Secondly, membership of EU citizens in Czech political parties has been the subject of a long-standing debate. As explained, the Czech Charter does not grant the political rights of Union citizens, but it also does not preclude higher standards of political rights enshrined in an Act of Parliament or an international agreement. Provisions on political parties and political movements (hereinafter “political parties”) are established in Act No. 424/1991 Coll., on Association in Political Parties and Political Movements (hereinafter “Act on Association in Political Parties”). It stipulates in Section 1(1) that “[c]itizens [in Czech: “občané”<sup>16</sup> - author’s note] are entitled to associate in political parties and political movements [...]”. Section 2(3) provides that “[o]nly citizens older than 18 years of age may be associated in political parties and movements”.

Accordingly, some Czech legal experts held a view that membership in Czech political parties was obviously conditional on Czech citizenship<sup>17</sup> regardless of the accession

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<sup>13</sup> Section 87g of Act No. 326/1999 Coll.

<sup>14</sup> Order of the Regional Court in Brno of 19 September 2014, 64A 6/2014-20.

<sup>15</sup> Council Directive 94/80/EC of 19 December 1994 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 (OJ L 3768 of 31.12.1994, p. 38).

<sup>16</sup> The Czech expression “občané” can be translated as both citizens and nationals.

<sup>17</sup> ROTH, J. K právní povaze členství v politické straně. *Bulletin Advokacie*, 2006, Vol. 37, Issue 11–12, p. 88 or PŠENIČKA S. *Zákon o sdružování v politických stranách a v politických hnutích s komentářem a judikaturou*, Praha: Leges, 2017, pp. 9, 10, 12.

to the EU. This opinion was shared by the Ministry of Interior of the Czech Republic, responsible for registration and due functioning of political parties. The ministry interpreted the term “citizens” as “citizens of the Czech Republic”. Also, the Supreme Administrative Court ruled in its judgment of 10 January 2018, 6 As 84/2017-27, that under EU law as well as Czech law, Union citizens had no right to become members of national political parties.<sup>18</sup>

By contrast, other Czech scholars<sup>19</sup> expressed their views that the situation changed after EU accession. They referred to the electoral rights of Union citizens and the principle of non-discrimination. Their view was also supported by the former Czech ombuds-person Anna Šabatová in her opinion of 2014.<sup>20</sup> EU citizens would be discriminated against when exercising the right to stand as candidates in EP elections or local elections if they were not allowed to join Czech political parties. Although Czech law did not preclude EU citizens to stand as candidates in EP and local elections, they were disadvantaged because it was more complicated for them to be selected as non-member candidates on a candidate list of a political party. Furthermore, EU citizens could stand as independent candidates in municipal elections, but they had to submit – unlike political parties – a petition signed by a certain number of voters supporting their candidacy.<sup>21</sup> It should be added that the authors of a respected commentary to the Charter of Fundamental Rights of the EU (hereinafter “EU Charter”) observe that equal voting rights imply full equality in all political activities relating to the elections, such as the right to be a member of or to found a political party.<sup>22</sup>

Thirdly, those who want to vote in EP elections or municipal elections must be registered on the permanent electoral roll set up by a municipal authority. Czech nationals who are resident in a particular municipality are registered automatically. By contrast, EU citizens must apply for registration.<sup>23</sup> Although unequal treatment of EU citizens concerning registration is not as grave as the other two cases described above, Czech legislation still makes it more difficult for them to vote. It is worth noting that according to the European Commission (hereinafter the “Commission”), some Member States, e.g. Belgium, Denmark and Lithuania, enrol all citizens automatically.<sup>24</sup>

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<sup>18</sup> For more detailed analysis of the judgment see SVOBODOVÁ, M. Have EU citizens a right to become members of national political parties? View from the EU law and Czech law perspectives. *Czech Yearbook of Public and Private International Law*. 2020, Vol. 11.

<sup>19</sup> See, for instance, ANTOŠ, M. Politická participace cizinců v České republice. *Politologický časopis*. 2012, Vol. 19, Issue 2, SKALKA T. O členství občanů jiných členských států Evropské unie v českých politických stranách. *Časopis pro právní vědu a praxi*. 2018, Vol. 26, Issue 2.

<sup>20</sup> See Občané EU žijící v ČR mají právo účastnit se politického života, press release, 23 July 2014, [2025-04-04]. Available at: <<https://www.ochrance.cz/aktualne/tiskove-zpravy-2014/obcane-eu-zijici-v-cr-maji-pravo-ucastnit-se-politickeho-zivota/>>.

<sup>21</sup> Section 21(4) of the Act on Municipal Elections.

<sup>22</sup> See PEERS, S., HARVEY, T., KENNER, J., WARD, A. (eds.). *The EU Charter of Fundamental Rights. A Commentary*. 2<sup>nd</sup> edition. Oxford: Hart Publishing, 2021, p. 1120.

<sup>23</sup> Section 28 of the Act on Municipal Elections and Section 28 of the Act on EP Elections.

<sup>24</sup> Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the application of Directive 94/80/EC on the right to vote and to stand as a candidate in municipal elections, COM (2018) 44 final, p. 6.

## II. JUDGMENT COMMISSION V CZECH REPUBLIC

In November 2024, the EU Court of Justice delivered the Judgment concluding that Czech legislation and its application concerning the membership in national political parties is contrary to Article 22 TFEU. Likewise, the Court issued judgment *Commission v Poland* with a similar statement.

The Commission monitored the (non)existence of EU citizens' rights to become members of political parties in a host Member State. The Commission claimed that, in its view, the right of EU citizens to join national political parties can be derived from the electoral rights of EU citizens in the EP elections and municipal elections guaranteed by the Treaties<sup>25</sup> and EU Charter. Initially, the Commission identified 11 Member States that denied EU citizens the right to join a political party.<sup>26</sup> Finally, only Czechia and Poland were brought before the Court of Justice. The Commission maintained in the suit that Czechia failed to fulfil its obligations under Article 22 TFEU by denying EU citizens the right to become member of Czech political parties. Poland was granted leave to intervene in support of Czechia, and likewise Czechia was granted leave to intervene in the proceedings with Poland.

The Advocate General J. R. de la Tour issued his opinion on 11 January 2024<sup>27</sup> and the Grand Chamber of the Court delivered its judgment on 19 November 2024. The Advocate General (AG) proposed that the Court should uphold the Commission's action, and the Court followed his opinion.

The interpretation of Article 22 TFEU is crucial for the Court's decision, and it is based on three pillars. Firstly, the Court concedes that Article 22 TFEU contains no reference to the conditions for acquiring membership of a political party. However, EU citizens enjoy electoral rights "under the same conditions" as nationals of the Member State in which they reside. The Court holds that although the determination of those conditions falls within the competence of the Member States, when exercising that competence, they are required to comply with EU law.<sup>28</sup>

Secondly, Article 22 is included in Part Two of the TFEU, containing provisions on non-discrimination and on Union citizenship. In this context, the Court refers to *Grzelczyk* and reminds its vision that EU citizenship is destined to be the fundamental status of the Member States' nationals. Accordingly, interpretation of Article 22 TFEU cannot be restrictive. The Court refuses the claim of Czechia that electoral rights of EU citizens are construed as an exception to a rule that only nationals of Member States may participate in the political life thereof.<sup>29</sup>

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<sup>25</sup> Treaty on European Union, consolidated version (OJ C 202 7.6.2016, p. 13), and Treaty on the Functioning of the European Union.

<sup>26</sup> Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions under Article 25 "On progress towards effective EU Citizenship 2011-2013", COM (2013) 270 final.

<sup>27</sup> Opinion of the Advocate General of 11 January 2024, C-808/21 *European Commission v Czech Republic*, EU:C:2024:12.

<sup>28</sup> Judgment of the Court, paras. 93–104.

<sup>29</sup> Judgment of the Court, paras. 109–111.

Thirdly, the Court concludes that membership in a political party significantly contributes to the effective exercise of the right to stand for election granted by Article 22 TFEU. Consequently, Article 22 TFEU requires that EU citizens residing in a Member State of which they are not nationals must be afforded equal access to the means available to nationals of that Member State for the purpose of exercising their electoral rights effectively.<sup>30</sup> The Court analyses Czech electoral rules in the light of equal treatment and finds that EU citizens do not enjoy equal access to the means available to Czech nationals.<sup>31</sup>

The Court also focuses on respect for national identity, as defined in Article 4(2) TEU, which is one of the arguments against the right of EU citizens to membership in national political parties. Political parties play an important role in the political structures of the Member States. The Court acknowledges that organisation of national political life, to which political parties contribute, is part of national identity. However, Article 22 TFEU neither requires a Member State to grant EU citizens electoral rights in national elections nor prohibits it from adopting specific rules on decision-making within a political party regarding the nomination of candidates in national elections. As a result, the right of EU citizens to acquire membership in national political parties cannot be regarded as undermining the national identity of that State.<sup>32</sup>

Finally, the Court finds that by denying EU citizens the right to become a member of a political party, Czechia has failed to fulfil its obligations under Article 22 TFEU.

### III. COMMENTS ON THE JUDGMENT

The Judgment has a significant impact on political rights in Czechia. However, it is not surprising. The Court of Justice continues to develop EU citizenship and to combat discrimination on grounds of nationality. Although the Court is sometimes criticised for its judicial activism,<sup>33</sup> the Judgment is a convincing decision even though certain claims are disputable (see *infra*). Historically, EU citizenship is based on three cornerstones: (i) free movement of persons, (ii) principle of non-discrimination, and (iii) direct electoral rights of Member States' nationals in the EP elections. That is why the Court of Justice had used the notion "Community citizens" in its case law even before 1993 when EU citizenship was introduced by the Maastricht Treaty.<sup>34</sup> All three cornerstones of Union citizenship are reflected in Article 22 TFEU, i.e. the Court touched upon the very foundations of European integration when interpreting this provision.

As outlined, there are three pillars to the Court's reasoning in the Judgment. The Court recalls that EU citizenship "is destined to be the fundamental status of nationals of the Member States". Indeed, the Court has been materializing its ambitious vision for many years. As K. Lenaerts, the president of the Court of Justice, notes, the Court of

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<sup>30</sup> Judgment of the Court, paras 122–127.

<sup>31</sup> Judgment of the Court, para 152.

<sup>32</sup> Judgment of the Court, paras 154–162.

<sup>33</sup> See, for instance, DAWSON, M., DE WITE, B., MUIR, E. (eds.) *Judicial activism at the European Court of Justice: causes, responses and solutions*. Cheltenham: Edward Elgar Publishing, 2013.

<sup>34</sup> See, for instance, judgment of the Court of Justice of 7 July 1992, C-370/90 *The Queen v Immigration Appeal Tribunal et Surinder Singh, ex parte Secretary of State for Home Department*, EU:C:1992:296.

Justice builds EU citizenship “stone by stone”.<sup>35</sup> Many examples of relevant judgments can be referred to, eg C-34/09 *Zambrano*<sup>36</sup> or more recent cases C-490/20 *Pancharevo*<sup>37</sup> and C-4/23 *Mirin*<sup>38</sup>. Thus, *Commission v Czech Republic* (and *Commission v Poland*) are another “stone” for the construction of Union citizenship. The development of Union citizenship via jurisprudence of the Court of Justice seems to be particularly important at the present time because the Member States are not willing to amend the Treaties and extend Union citizens’ rights at EU level.

The Court concedes that Article 22 TFEU contains no reference to the conditions for acquiring membership of a political party and that the determination of those conditions falls within the competence of the Member States. But, when exercising that competence, they are required to comply with EU law. This approach enables the Court to impose limits on the exercise of the competences. It stems from the settled case-law. For instance, although loss of nationality of a Member State is not regulated by EU law, where it entails loss of EU citizenship, the Court requires the Member States to observe certain conditions (e.g. C-135/08 *Rottmann*<sup>39</sup> or, recently, joined cases C-684/22 to C-686/22 *Stadt Duisburg*<sup>40</sup>). This also holds true in the area of political rights of Union citizens (see C-300/04 *Eman*).<sup>41</sup>

In the Court’s view, EU law requires that EU citizens residing in a host Member State are to be afforded equal access to the means available to nationals of that Member State in the elections. This requirement derives from the principle of non-discrimination on grounds of nationality. This argument is used not only by the Court, but also by legal scholars.<sup>42</sup> Moreover, V. Šimíček, a former judge of the Czech Constitutional Court, says that Union citizens have acquired electoral rights in Czechia (in some elections) which are recognized by the State, and thus, the State must provide them with the same instruments as their political rivals possess in order to exercise these rights. Only such conditions are in conformity with Czech constitutional law.<sup>43</sup> Failing that is in breach of the principle of equal suffrage, free elections and political pluralism.<sup>44</sup>

It is clear that the Court’s Judgment touches upon the sensitive area of state sovereignty in the field of political rights. Although the reasoning of the Court is convincing, there are also questionable conclusions in the Judgment. The Court refused the argument of

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<sup>35</sup> See LENAERTS, K. EU citizenship and the European Court of Justice’s ‘stone-by-stone’ approach. *International Comparative Jurisprudence*. 2015, Vol. 1, Issue 1, p. 2.

<sup>36</sup> Judgment of the Court of Justice of 8 March 2011, C-34/09 *Gerardo Ruiz Zambrano v Office national de l’emploi (ONEm)*, EU:C:2011:124.

<sup>37</sup> Judgment of the Court of Justice of 14 December 2021, C-490/20 *V.M.A. v Stolichna obshtina, rayon “Pancharevo”*, EU:C:2021:1008.

<sup>38</sup> Judgment of the Court of Justice of 4 October 2024, C-4/23 *Mirin*, EU:C:2024:845.

<sup>39</sup> Judgment of the Court of Justice of 2 March 2010, C-135/08 *Janko Rottmann v Freistaat Bayern*, EU:C:2010:104.

<sup>40</sup> Judgment of the Court of Justice of 25 April 2024, joined cases C-684/22 to C-686/22 *Stadt Duisburg (Perte de la nationalité allemande)*, EU:C:2024:345.

<sup>41</sup> Judgment of the Court of Justice of 12 September 2006, C-300/04 *M. G. Eman and O. B. Sevinger v College van burgemeester en wethouders van Den Haag*, EU:C:2006:545.

<sup>42</sup> See footnotes 17, 18 and 21.

<sup>43</sup> See ŠIMÍČEK, V. Členství cizinců v politických stranách (aneb cizinec není našinec). *Jiné právo*, 11 August 2007 [2025-04-04]. Available at: <<https://jinepravo.blogspot.com/2007/08/lenstv-cizinc-v-politickch-stranch-aneb.html>>.

<sup>44</sup> See commentary to Article 20(2) of the Czech Charter in WAGNEROVÁ, E., ŠIMÍČEK, V., LANGÁŠEK, T., POŠPÍŠIL, I. (eds.). *Listina základních práv a svobod. Komentář*, Praha: Wolters Kluwer, 2012.

Czechia that, as a rule, only nationals of a Member State may participate in its political life. However, electoral rights have been traditionally reserved for the state's nationals. This is also reflected in international instruments. For instance, the UN International Covenant on Civil and Political Rights of 16 December 1966 stipulates in Article 25(b): “Every citizen shall have the right and the opportunity [...]: To vote and to be elected at genuine periodic elections [...]”.<sup>45</sup>

Moreover, the idea that Union citizenship is intended to constitute the fundamental status of Member States' nationals does not seem to be entirely shared by the Member States. Article 20(1) TFEU explicitly provides that “[c]itizenship of the Union shall be additional to and not replace national citizenship”. This provision was added by the Amsterdam Treaty. Later, it was modified by the Lisbon Treaty to emphasise that Union citizenship may only supplement national citizenship but not restrict it. The Court of Justice does not address this provision at all.

Also, Kochenov observes in relation to drafting and adopting the Maastricht Treaty that the early proposals used to include a national level of political representation among the political rights of EU citizens residing in another Member State. Nevertheless, the drafters gathered at the Maastricht IGC, fearful of further erosion of national sovereignty of the Member States, decided to exclude this level of representation from the Treaties.<sup>46</sup> Furthermore, no EU political documents have mentioned a right of Member States' nationals to membership in national political parties in the host Member State. In France, the introduction of the right to vote for foreigners was perceived as highly controversial.<sup>47</sup> It is also worth noting that since the Maastricht Treaty, the Member States have not granted any additional political rights of EU citizens resident therein in EU law.

#### IV. IMPACT OF THE JUDGMENT ON CZECH LAW

As a result of the Judgment, Union citizens now have the right to become members of political parties in Czechia. At the time the Judgment was delivered, the Act on Association in Political Parties stipulated in Section 2(3) that “citizens” older than 18 years may become members of Czech political parties. It was admissible to interpret this provision in conformity with the Judgment in a way that not only Czech citizens but also Union citizens were allowed to join political parties. In fact, statutes of some political parties were at that time already in line with the Act on Association in Political Parties as interpreted in light of the Judgment. For instance, the Statutes of the Civic Democratic Party<sup>48</sup> or the Statutes of Mayors and Independents<sup>49</sup> could have been viewed as being in conformity

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<sup>45</sup> See also Article 16 of the European Convention on Human Rights and Fundamental Freedoms.

<sup>46</sup> KOCHENOV, D. Free Movement and Participation in the Parliamentary Elections in the Member State of Nationality: An Ignored Link? *Maastricht Journal of European and Comparative Law*. 2009, Vol. 16, Issue 2, p. 15, draft version available at: <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1406586](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1406586)> [2025-11-20].

<sup>47</sup> See FERBRACHE, F. Local electoral rights for non-French residents? A case-study analysis of British candidates and councillors in French municipal elections. *Citizenship Studies*, 2019, Vol. 23, Issue 5, p. 502.

<sup>48</sup> In Czech: “Občanská demokratická strana”. See Article 3(1) of the Statutes, available at: <<https://www.ods.cz/o-nas/stanovy>> [2025-02-26].

<sup>49</sup> In Czech: “Starostové a nezávislí”. See Article 6(1) of the Statutes, available at: <<https://www.starostove-nezavisli.cz/o-nas/stanovy>> [2025-02-26].

with the Judgment. By contrast, those political parties which required Czech citizenship must have amended their statutes.

The Court of Justice does not expressly address the right of Union citizens to found a political party. Nevertheless, such a right can be inferred from its reasoning. The Court states that EU citizens residing in a host Member State must be afforded equal access to the means available to its nationals in the elections, i.e. they must be allowed to form a political party as well. Moreover, authors of the commentary to the EU Charter support this view (see *supra*). Thus, it was necessary to interpret Section 6(2) of the Act on Association in Political Parties, laying down that “citizens” older than 18 years of age may become members of a preparatory committee, in conformity with EU law too. The act provided that proposals for registration of political parties were submitted by preparatory committees. Registration at the Ministry of Interior is a condition for the establishment of a political party. The expression “citizens” must include both Czech and Union citizens.

Czechia has been obliged to comply with the Judgment. The above-mentioned interpretation of the Act on Association in Political Parties in light of the Judgment was a workable solution, it granted the right of membership in Czech political parties to any Union citizen, not only to those who are resident in Czechia. The broader concept of political rights of Union citizens was neither in breach of EU law nor Czech constitutional law. However, since political rights of foreigners are a sensitive issue in Czechia, the direct effect of Article 22(1)(2) TFEU should have been also considered because it concerned only Union citizens resident in Czechia.

Besides, the amendment to the Act on Association in Political Parties could have been expected since it would enhance legal certainty. Indeed, on 28 January 2025 an amendment to a government bill amending the electoral act and certain other acts in connection with the adoption of the act on election campaigns was proposed during the second reading of the bill in the Chamber of Deputies of the Parliament of the Czech Republic.<sup>50</sup> Its purpose was to amend the Act on Association in Political Parties in response to the Judgment. It stipulated that a national of another EU Member State older than 18 years of age who is registered for permanent or temporary residence in Czechia can also be a member of a political party. However, according to the proposed amendment, EU citizens cannot become members of the preparatory committee or the statutory body of a political party. The very enshrinement of the right of EU citizens to membership in political parties in Czechia is in accordance with the Judgment. In my opinion, the prohibition of EU citizens from being members of the statutory body of a political party is not contrary to EU law, as the statutory body of a political party – the presidium – is usually the main executive body which is involved in approving candidate lists for elections in which EU citizens cannot stand. This is why EU citizens can be excluded from membership in the statutory body of a political party. On the contrary, the ban on membership in the preparatory committee contravenes Article 22 TFEU, as interpreted by the Court of Justice (for reasons see *supra*).

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<sup>50</sup> Document of the Chamber of Deputies No. 779/3, 9th term of the Chamber of Deputies of the Parliament of the Czech Republic.

The proposed amendment to the Act on Association in Political Parties was adopted by the Parliament of the Czech Republic with no modifications, it is included in Act No. 235/2025.<sup>51</sup> To sum up, current wording of the Act on Association in Political Parties is rather minimalistic. It responds to the Judgment, but it is not entirely in line with EU law since it does not allow EU citizens to become members of the preparatory committee and, thus, to found a political party in Czechia.

Finally, it should also be mentioned that EU law has precedence over Czech law, including, in the Court of Justice's view, constitutional law. There is no controversy in terms of conformity of Article 20(2) of the Czech Charter with the Judgment since, as explained, other legal sources may introduce higher standards of fundamental rights than the Czech Charter.

Nevertheless, the Czech Constitutional Court, like other European high courts, formulated reservations to the principle of primacy of EU law over national law where some of them have denied observing EU law in exceptional cases.<sup>52</sup> Actually, the Czech Constitutional Court was the first national court that held that the Court of Justice had acted *ultra vires* in *C-399/09 Landtová*<sup>53</sup> and it refused to obey in its *Slovak Pensions* ruling.<sup>54</sup> Generally, the Czech Constitutional Court has found three potential reasons for disregarding EU law: i) threatening the very essence of state sovereignty, ii) encroachment on inalienable principles enshrined in Article 9(2) of the Czech Constitution<sup>55</sup> which include protection of human rights, democracy, rule of law principle and so forth,<sup>56</sup> iii) *ultra vires* acts of EU institutions.<sup>57</sup>

In my opinion, the Judgment does not raise any doubts as to the primacy of EU law. The interpretation of Article 22 TFEU in the Judgment cannot be regarded as a threat to the very essence of the sovereignty. The Court of Justice recognised a right of Union citizens to join Czech political parties, which is limited in nature. They have no right to full membership because they cannot stand as candidates in parliamentary elections etc. The Court of Justice does not encroach on the inalienable principles of the Czech Constitution since the right of Union citizens to join national political parties strengthens democracy and fundamental rights rather than weakening them. As to the *ultra vires* doctrine, the Court's reasoning is convincing and coincides with the views of a relevant number of Czech legal experts. It follows that the Court did not

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<sup>51</sup> Act No. 235/2025 amending the Electoral Act and certain other acts in connection with the adoption of the Act on Election Campaigns and on the Transparency and Targeting of Political Advertising.

<sup>52</sup> Namely high courts of Czechia, Denmark, Italy, Germany, Poland, Romania. See, for instance, TOMÁŠEK, M. National Courts are also Courts of the European Union. *The Lawyer Quarterly*. 2024, Vol. 14, Issue 1.

<sup>53</sup> Judgment of the Court of Justice of 22 June 2011, *C-399/09 Marie Landtová v Česká správa sociálního zabezpečení*, EU:C:2011:415.

<sup>54</sup> Judgment of the Czech Constitutional Court of 31 January 2012, Pl. ÚS 5/12. For more details see KOMÁREK, J. Playing with Matches: The Czech Constitutional Court's Ultra Vires Revolution, *Verfassungsblog*, 22 February 2012 [2025-01-20]. Available at: <<https://verfassungsblog.de/playing-matches-czech-constitutional-courts-ultra-vires-revolution/>>.

<sup>55</sup> Article 9(2) of the Constitutional Act No. 1/1993 Coll., Constitution of the Czech Republic, reads as follows: "Any changes in the essential requirements for a democratic state governed by the rule of law are impermissible". These requirements correspond to EU values (Article 2 TEU).

<sup>56</sup> Judgment of the Czech Constitutional Court of 8 March 2006, Pl. ÚS 50/04.

<sup>57</sup> *Slovak Pensions* judgment.

act *ultra vires*. All in all, it can be concluded that the Judgment does not violate Czech constitutional law.

## CONCLUSIONS

The Europeanisation of political rights has been a slow process in Czechia. The country has granted electoral rights to EU citizens since its EU accession. However, EU citizens have been discriminated on the grounds of nationality: (i) unequal treatment in local elections arising from the requirement of permanent residence in the Czech territory, (ii) no right to membership in Czech political parties, (iii) stricter conditions for registration on the electoral roll. The first case of unequal treatment Czech law has been remedied via the decision of the Regional Court in Brno, the second via the Judgment of the EU Court of Justice. Thus, the Court's Judgment is a major step in the entire process. EU citizens now have the right to become members of Czech political parties. The Judgment also substantially contributes to development of Union citizenship as it extends their political rights in host Member States. Accordingly, it is another "stone" in the construction of Union citizenship.

The right of EU citizens to join Czech political parties may also initiate a public debate on political rights of third-country nationals. In Czechia, there are currently more than 500,000 Ukrainian citizens. They basically have no political rights in Czechia, although they live, work, and pay taxes here. For this reason, the introduction of electoral right in municipal elections of third country nationals should be discussed.