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Op-Ed: “UK citizens who had previously exercised their free movement rights do not retain the status or benefits of Union citizenship: Opinion of Advocate General Collins in *Préfet du Gers*”

The EU-UK Withdrawal Agreement protects the rights of residence and non-discrimination of many British nationals and their families who moved to the EU before the end of the transitional period (31 December 2020). Those British nationals do not retain all the rights they previously held as Union citizens, though. The facts of *Préfet du Gers* ([C-673/20](#)) demonstrate this point nicely. A Union citizen has ‘the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State’ ([Article 22\(1\) TFEU](#)). Yet, the Withdrawal Agreement makes no mention of electoral rights other than the deliberate exclusion of those rights during the transitional period ([Article 127\(1\)](#)). Consequently, when the UK left the EU, the local authorities removed the applicant—a British national married to a French national who had been residing in France for the past 36 years—from the electoral roll in her local area. She thus lost the opportunity to vote in municipal elections. For the applicant, this meant she had no right to vote at all, as British nationals living overseas become ineligible to vote after 15 years abroad.

The applicant in *Préfet du Gers* contested the refusal to re-register her on the electoral roll as a non-French Union citizen. She argued for the retention of Union citizenship—or at least the benefits thereof—for British nationals who had exercised free movement rights before the end of the transitional period. Failure on the part of the EU to protect the rights she had previously derived from Union citizenship, she argued, also meant the Withdrawal Agreement was invalid. Of course, the Court of Justice might take a different route, but the Opinion of Advocate General Collins gives little hope to British nationals living in the EU that they might retain the status or the benefits of Union citizenship. It also disavows any responsibility on the part of the EU to protect those former Union citizens. In many ways, the Opinion shows the sharp divide between insiders and outsiders of the EU project – Union citizens or not – and rejects the idea of any form of associate Union citizenship.

Brexit and the loss of Union citizenship

The Treaties are silent on the loss of Union citizenship. Similarly, the Withdrawal Agreement makes no explicit provision regarding whether British nationals cease to be Union citizens. What Advocate General Collins’ Opinion makes clear is that this is the effect of a Member State choosing to leave the EU. He notes how following the entry into force of the withdrawal agreement, ‘[p]ursuant to Article 50(3) TEU, the Treaties cease to apply’ (point 28). Given that being a Union citizen ‘depends upon the acquisition and possession of the nationality of a Member State, and the United Kingdom voluntarily abandoned that status in the manner prescribed by Union law, British nationals ceased to be Union citizens’ (point 28). This conclusion would appear to extend to all British nationals, including those who had previously exercised their free movement rights.

In support of his conclusions, Advocate General Collins cites the Court of Justice cases of *Rottmann* ([C-135/08](#)), *Tjebbes* ([C-221/17](#)) and *Wiener Landesregierung* ([C-118/20](#)). In each of those decisions, the Court of Justice accepts the applicant will no longer be a Union citizen upon the loss of nationality of a Member State. It is hard to imagine that the Court of Justice would introduce an exception to its well-established case law on this matter.

Advocate General Collins extends his conclusion to *all* British (and thus former Union) citizens. One of the lines of argumentation adopted by the applicant was that ‘having integrated herself into French society in her capacity as a Union citizen, she cannot now be deprived of that status and of the enjoyment of the rights appurtenant thereto’ (point 34). Short shrift is given to this idea. Not only does the Advocate General underline that there are no exceptions provided for by Article 50 TEU or the Withdrawal Agreement, there is also no ‘legal basis’ for differentiating between British nationals (point 61). *All* British nationals were Union citizens prior to the UK’s departure irrespective of whether they had exercised their free movement rights; and *all* lost that status.

An associate status or voluntary adoption of Union citizenship?

Advocate General Collins denies the prospect of an associate Union citizenship for British nationals as constitutionally impossible. The Member States ‘could have decided to pool their competences and to confer on the European Union the power to determine who is entitled to become a Union citizen’ (point 22). But the Member States did not. Union citizenship remains premised upon also holding the nationality of a Member State. Because of the ‘explicit choice’ to link Member State nationality and Union citizenship, he considers that the EU is ‘powerless to create Union citizenship independently from nationality as conferred by the Member States’ and that there is ‘a constitutional barrier to such a power being implied under Union law’ (point 22). The suggestion here is that the Treaties act as a constitutional barrier to Union citizenship as an autonomous status.

As noted above, the applicant had sought to differentiate herself and other British nationals based on their links to a Member State. Advocate General Collins is resolute that individual commitment alone cannot provide the basis for a form of Union citizenship. He understands Union citizenship as rooted in the ‘mutual commitment [by the Member States] to open their respective bodies politic to other Union citizens ... to construct a new form of civic and political allegiance on a European scale’ (points 36-37). Brexit ‘signalled [the UK’s] clear determination to repudiate that commitment’ (point 37). In his view, the notion of Union citizenship is not premised upon the voluntary alignment of individuals to a supranational body politic, but on reciprocity between Member States.

The validity of the Withdrawal Agreement

The applicant also contended that [Decision 2020/135](#) approving the Withdrawal Agreement was invalid on the grounds that the Withdrawal Agreement infringed ‘certain principles underlying EU identity and is disproportionate since it contains no exception to the rule that British nationals lose the rights attaching to Union citizenship’ (point 75). Advocate General Collins squarely rejects this claim: ‘[t]he loss of those rights is one of the consequences of the sovereign decision of the United Kingdom to withdraw from the European Union’ (point 70). Drawing again on the reciprocal nature of Union citizen, he considers that it would have been legally possible for the EU ‘to ensure that British nationals residing in the European Union enjoyed political rights after its withdrawal in exchange for the conferral of reciprocal rights upon Union citizens residing in the United Kingdom’ (point 73). However, the UK did not seek such an agreement.

Responsibility for former Union citizens

The impression one is left with after reading the Opinion is of a stark divide between being inside and outside of the EU. Advocate General Collins emphasises that Brexit was a voluntary and sovereign decision; responsibility for those impacted British nationals lies with the UK. Brexit was ‘a rejection of the principles underlying the European Union’ meaning that EU could—or perhaps should—not ‘secure rights that ... it was not bound to assert on behalf of persons who are nationals of a State that has left the European Union and who are therefore no longer Union citizens’ (point 75). British nationals in the EU are thus now outsiders in a system that does not aim towards the integration of ‘third-country nationals into the societies of the Member States’ (point 34). Advocate General Collins points the applicant in the direction of the UK authorities as the appropriate forum for any complaints (see points 43, 45). If she wants the EU’s support, he is clear, she should acquire French nationality.

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