JUDGMENT OF THE COURT (Eighth Chamber)

15 June 2023 (*)

(Appeal – Action for annulment – Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community – Decision (EU) 2020/135 – Nationals of the United Kingdom of Great Britain and Northern Ireland – Consequences of that agreement on the status of citizen of the European Union and the rights attaching to that status for those nationals – Fourth paragraph of Article 263 TFEU – Locus standi – Conditions – Interest in bringing proceedings)

In Case C-499/21 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 13 August 2021,

Joshua David Silver, residing in Bicester (United Kingdom),

Leona Catherine Bashow, residing in Cheadle (United Kingdom),

Charles Nicholas Hilary Marquand, residing in London (United Kingdom),

JY,

JZ,

Anthony Styles Clayton, residing in Kent (United Kingdom),

Gillian Margaret Clayton, residing in Kent,

represented by P. Tridimas, dikigoros, D. Harrison and A. von Westernhagen, Solicitors,

appellants,

the other party to the proceedings being:

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

defendant at first instance,

THE COURT (Eighth Chamber),

composed of M. Safjan, President of the Chamber, N. Jääskinen (Rapporteur) and M. Gavalec, Judges,

Advocate General: N. Emiliou,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 By their appeal, Mr Joshua David Silver, Ms Leona Catherine Bashow, Mr Charles Nicholas Hilary Marquand, JY, JZ, Mr Anthony Styles Clayton and Ms Gillian Margaret Clayton seek to have set aside the order of the General Court of the European Union of 8 June 2021, *Silver and Others* v *Council* (T-252/20, EU:T:2021:347; 'the order under appeal'), by which the General Court dismissed as inadmissible their action for the partial annulment of Council Decision (EU) 2020/135 of 30 January 2020 on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ 2020 L 29, p. 1; 'the decision at issue').

The background to the dispute and the decision at issue

2 The appellants are nationals of the United Kingdom of Great Britain and Northern Ireland who reside in in France and in the United Kingdom.

3 On 23 June 2016, the citizens of the United Kingdom determined by referendum that their country should withdraw from the European Union.

4 On 29 March 2017, the United Kingdom notified the European Council of its intention to withdraw from the European Union pursuant to Article 50(2) TEU.

5 On 24 January 2020, the representatives of the European Union and the United Kingdom signed the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ 2020 L 29, p. 7; 'the Withdrawal Agreement').

6 On 30 January 2020, the Council of the European Union adopted the decision at issue. Under Article 1 of that decision, the Withdrawal Agreement was approved on behalf of the European Union and the European Atomic Energy Community.

7 On 31 January 2020, the United Kingdom withdrew from the European Union and the European Atomic Energy Community. On 1 February 2020, the Withdrawal Agreement entered into force.

The procedure before the General Court and the order under appeal

8 By application lodged at the Registry of the General Court on 23 April 2020, the appellants brought an action for annulment of the decision at issue, in so far as it 'deprives them … of their status as Union citizens and their rights arising therefrom'.

9 By separate document lodged at the Registry of the General Court on 16 June 2020, two of the applicants applied for anonymity. By decision of 24 June 2020, the General Court granted that request.

10 By separate document lodged at the Registry of the General Court on 27 July 2020, the Council raised a plea of inadmissibility in respect of the action.

11 On 8 September 2020, the appellants presented their observations on that plea of inadmissibility.

12 By the order under appeal, the General Court found, in the first place, in paragraphs 23 to 26 thereof, that, contrary to what had been suggested by the Council, it could not 'decline jurisdiction', in accordance with the third paragraph of Article 54 of the Statute of the Court of Justice of the European Union, so as to allow for the Court of Justice to rule on the action together with the requests for a preliminary ruling in Cases C-673/20 and C-32/21.

13 In the second place, the General Court held, in paragraphs 27 to 29 of the order under appeal, that, although it had previously decided to reserve its decision on the plea of inadmissibility raised by the Council until it ruled on the substance of the case, it had sufficient information from the documents in the file to give a decision by way of an order, in accordance with Article 130 of its Rules of Procedure.

14 In the third place, as regards the merits of that plea of inadmissibility, the General Court held that the appellants did not satisfy any of the conditions that must be fulfilled in order to have standing to bring proceedings, for the purposes of the fourth paragraph of Article 263 TFEU.

15 In that regard, the General Court noted, in paragraph 33 of the order under appeal, that, for the purposes of assessing the appellants' standing to bring proceedings, it was necessary to take into account not only the decision at issue, but also the nature and content of the withdrawal agreement.

16 In that context, the General Court found, first, in paragraph 34 of the order under appeal, that neither the decision at issue nor the Withdrawal Agreement was addressed to the appellants and that, consequently, they did not have a right of action on the basis of the first limb of the fourth paragraph of Article 263 TFEU.

17 Secondly, as regards the appellants' standing to bring proceedings under the second limb of the fourth paragraph of Article 263 TFEU, the General Court noted, in paragraph 54 of the order under appeal, that it was for the appellants to substantiate that the decision at issue, in so far as it allegedly deprived them of their status as EU citizens and of the rights attaching to that status, affected them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and, by virtue of those factors, distinguishes them individually just as in the case of the addressees of such a decision.

18 The General Court held, in paragraph 67 of the order under appeal, that the appellants were not individually concerned by the decision at issue and that, therefore, they did not have standing to bring proceedings under the second limb of the fourth paragraph of Article 263 TFEU, without it being necessary to examine whether they were directly concerned by that decision.

19 Thirdly, as regards the appellants' standing to bring proceedings under the third limb of the fourth paragraph of Article 263 TFEU, the General Court noted, in paragraphs 72 to 74 of the order under appeal, that the decision at issue was a 'non-legislative act of general application'.

20 The General Court held, in paragraphs 90 and 91 of the order under appeal, that the concept of 'regulatory act', within the meaning of the third limb of the fourth paragraph of Article 263 TFEU, had to be interpreted as not including decisions approving the conclusion of an international agreement, such as the decision at issue, which approves the conclusion of an agreement setting out the arrangements for the withdrawal of a Member State from the European Union. The General Court held, in paragraphs 92 and 96 of the order under appeal, that the appellants' arguments could not call that assessment into question.

21 In those circumstances, the General Court held, in paragraph 97 of the order under appeal, that the appellants did not have standing to bring proceedings under the fourth paragraph of Article 263 TFEU, that the plea of inadmissibility raised by the Council had to be upheld and that, accordingly, the action had to be dismissed as inadmissible.

The procedure before the Court of Justice and the forms of order sought

22 By document lodged at the Registry of the Court of Justice on 13 August 2021, the appellants lodged an appeal against the order under appeal.

23 By their appeal, the appellants claim that the Court should:

– set aside the order under appeal;

– declare the action admissible;

– grant the form of order sought by them in the proceedings before the General Court;

– order the Council to pay the costs of the appeal proceedings and of the proceedings before the General Court.

24 The Council claims that the Court should:

– dismiss the appeal, and

– order the appellants to pay the costs.

25 By documents lodged at the Court Registry on 6 and 9 January 2023, the parties replied to the question put by the Court to be answered in writing, on the basis of Article 61 of its Rules of Procedure, concerning the possible inferences to be drawn from the judgment of 9 June 2022, *Préfet du Gers and Institut national de la statistique et des études économiques* (C-673/20, EU:C:2022:449), as regards the assessment of the admissibility of the action brought before the General Court.

The appeal

26 In support of their appeal, the appellants put forward two grounds of appeal, alleging, first, an error of law in the assessment of the condition that the appellant must be individually concerned and, secondly, an error of law in the assessment of the regulatory nature of the decision at issue.

Arguments of the parties

27 By the first ground of appeal, the appellants challenge, first, the General Court's finding, in paragraphs 58 and 59 of the order under appeal, that the appellants are not part of a 'limited class of persons', since the 'closed group' to which they belong results precisely from the system established by the decision at issue. The appellants submit, in that regard, that the General Court failed to state reasons for that assessment and that the case-law relied on in support of that assessment in the order under appeal pertains to factual situations different from that at issue in the present case.

28 In particular, the appellants claim that the decision at issue deprived them of the status of EU citizen and of the rights attaching to that status. Those rights are 'acquired rights' which have been granted 'on a definitive basis' and are 'indefeasible'. Since such deprivation is not provided for in the Treaties and does not follow from Article 50 TEU, it is contrary to EU law. Moreover, those rights do not depend on the system established by the Withdrawal Agreement, within the meaning of the case-law referred to in the order under appeal, and pre-exist it.

29 The appellants consider themselves to be part of a 'closed group of persons', within the meaning of the judgment of 26 June 1990, *Sofrimport* v *Commission* (C-152/88, EU:C:1990:259, paragraph 11), since no new members can be added to the group of persons made up of United Kingdom nationals who lost EU citizen status and the rights attaching to that status after the entry into force of the decision at issue. The specific criterion by reason of which they are individually affected by the decision at issue is therefore the fact that they held EU citizenship before the entry into force of the Withdrawal Agreement, since they were United Kingdom nationals.

30 In the second place, the appellants dispute the General Court's assessment, in paragraphs 60 and 61 of the order under appeal, that the status of EU citizen and the rights attaching to that status cannot be classified as 'specific' or 'exclusive' rights.

31 The applicants claim that that status is specific and distinct. In their view, the General Court misinterpreted the judgment of 18 May 1994, *Codorniu* v *Council* (C-309/89, EU:C:1994:197, paragraphs 21 and 22), in finding that the situation of the members of the 'closed group' relied on by the appellants could not be compared to that of the applicant in the case which gave rise to that judgment, which was prevented from using a registered trade mark, which constituted an individual and exclusive property right by nature. Furthermore, the General Court also misinterpreted the order of 23 November 2015, *Beul* v *Parliament and Council* (T-640/14, EU:T:2015:907, paragraph 48), and the judgment of 16 December 2011, *Enviro Tech Europe and Enviro Tech International* v *Commission* (T-291/04, EU:T:2011:760, paragraph 116), in so far as the factual and legal situations in the cases giving rise to that order and that judgment were also different from that at issue in the case concerning the action at first instance.

32 In the third place, the appellants dispute the General Court's assessment, in paragraph 62 of the order under appeal, that the appellants have not demonstrated that the loss of EU citizen status and of the rights attaching to that status affects them more than all other EU citizens who are United Kingdom nationals. In their view, such proof is not necessary since the decision at issue had specific and important adverse effects on their legal situation by depriving them of that status and of the rights attaching thereto.

33 In the fourth place, the appellants claim that the General Court erred in law, in paragraphs 63 and 64 of the order under appeal, in holding that the right to effective judicial protection cannot lead to a broad interpretation of the condition that the applicant must be individually concerned and that the 'principle of democracy' is irrelevant for the purposes of assessing an applicant's standing to bring proceedings.

34 The appellants submit, in that regard, that the General Court should have interpreted that condition by reference to the nature of the right whose violation is asserted, in accordance with the case-law resulting from the judgment of 18 May 1994, *Codorniu* v *Council* (C-309/89, EU:C:1994:197). The right to effective judicial protection cannot be respected since most of the appellants are not resident in the European Union and therefore cannot challenge the validity of the decision at issue by bringing proceedings 'indirectly' before the national courts of a Member State.

35 In the fifth place, the applicants dispute the finding that the assessment of the condition that the applicant must be individually concerned does not require an examination of the substance of the case. In their view, the General Court should have examined, for the purposes of that assessment, whether the status of EU citizen is permanent and non-defeasible.

36 The Council disputes the appellants' arguments and contends that the first ground of appeal must be rejected as unfounded.

Findings of the Court

37 As a preliminary point, it should be noted that the General Court held that the appellants were not entitled to bring proceedings under the fourth paragraph of Article 263 TFEU, by finding, in paragraphs 67 and 96 of the order under appeal respectively, that they were not individually concerned by the decision at issue, within the meaning of the second limb of that provision, and that that decision could not be classified as a regulatory act within the meaning of the third limb of that provision. In the interests of procedural economy, the General Court started from the premiss that the 'loss' or 'deprivation' of EU citizenship and of the rights attaching to that status is a consequence of the adoption of that decision.

38 Without it being necessary to assess whether, in so ruling, the General Court erred in law, the Court of Justice notes that, according to settled case-law, any fact which relates to the admissibility of the action for annulment brought before the General Court is likely to constitute a question of public policy which the Court of Justice, hearing an appeal, is required to raise of its own motion (orders of 5 September 2013, *ClientEarth* v *Council*, C-573/11 P, not published, EU:C:2013:564, paragraph 20, and of 4 February 2021, *Pilatus Bank* v *ECB*, C-701/19 P, not published, EU:C:2021:99, paragraph 23).

39 It is settled case-law, in the first place, that the admissibility of an action brought by a natural or legal person against an act which is not addressed to them, in accordance with the fourth paragraph of Article 263 TFEU, is subject to the condition that they be accorded standing to bring proceedings, which arises in two situations. First, such proceedings may be instituted if the act is of direct and individual concern to them. Secondly, such persons may bring proceedings against a regulatory act not entailing implementing measures if that act is of direct concern to them (see, to that effect, inter alia, judgments of 19 December 2013, *Telefónica* v *Commission*, C-274/12 P, EU:C:2013:852, paragraph 19, and of 17 September 2015, *Mory and Others* v *Commission*, C-33/14 P, EU:C:2015:609, paragraph 59).

40 In the second place, an action for annulment brought by a natural or legal person is admissible only in so far as that person has an interest in the annulment of the contested act. Such an interest presupposes that the annulment of the act is likely, in itself, to have legal consequences and that the action may thus, by its result, procure a benefit for the party that brought it. The interest in bringing proceedings is an essential and fundamental prerequisite for any legal proceedings (see, to that effect, judgments of 19 October 1995, *Rendo and Others* v *Commission*, C-19/93 P, EU:C:1995:339, paragraph 13, and of 17 September 2015, *Mory and Others* v *Commission*, C-33/14 P, EU:C:2015:609, paragraphs 55 and 58). By contrast, there is no interest in bringing proceedings when the favourable outcome of an action could not, in any event, give the applicant satisfaction (see, to that effect, judgment of 9 June 2011, *Evropaïki Dynamiki* v *ECB*, C-401/09 P, EU:C:2011:370, paragraph 49, and of 23 November 2017, *Bionorica and Diapharm* v *Commission*, C-596/15 P and C-597/15 P, EU:C:2017:886, paragraph 85).

41 In the third place, an interest in bringing proceedings and *locus standi* are distinct conditions for admissibility which must be satisfied by a natural or legal person cumulatively in order to be admissible to bring an action for annulment under the fourth paragraph of Article 263 TFEU (judgment of 17 September 2015, *Mory and Others* v *Commission*, C-33/14 P, EU:C:2015:609, paragraph 62 and the case-law cited).

42 Having regard to the circumstances of the case and without there being any need to assess whether the General Court erred in law in ruling as it did in paragraphs 50 to 67 and 73 to 95 of the order under appeal, the Court considers that it must raise of its own motion the question whether the appellants have an interest in bringing proceedings.

43 In that regard, it should be borne in mind that Article 50(1) TEU provides that any Member State may decide to withdraw from the European Union in accordance with its own constitutional requirements. The decision to withdraw is for that Member State alone to take, in accordance with its constitutional requirements, and therefore depends solely on its sovereign choice (see, to that effect, judgments of 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, paragraph 50, and of 9 June 2022, *Préfet du Gers and Institut national de la statistique et des études économiques*, C-673/20, EU:C:2022:449, paragraph 53).

44 Furthermore, since possession of the nationality of a Member State constitutes, in accordance with Article 9 TEU and Article 20(1) TFEU, an essential condition for a person to be able to acquire and retain the status of citizen of the European Union and to benefit fully from the rights attaching to that status, the loss of that nationality therefore entails, for the person concerned, the loss of that status and of those rights (judgment of 9 June 2022, *Préfet du Gers and Institut national de la statistique et des études économiques*, C-673/20, EU:C:2022:449, paragraph 57).

45 Accordingly, for the appellants, the loss of the status of citizen of the European Union, and consequently the loss of the rights attached to that status, is an automatic consequence of the sole sovereign decision taken by the United Kingdom to withdraw from the European Union, by virtue of Article 50(1) TEU (see, to that effect, judgment of 9 June 2022, *Préfet du Gers et Institut national de la statistique et des études économiques*, C-673/20, EU:C:2022:449, paragraph 59), and not of the Withdrawal Agreement or the decision at issue.

46 It follows that the action must be dismissed as inadmissible, since it is directed against the Withdrawal Agreement or the decision at issue on the ground that those acts allegedly entailed the loss for the appellants of the status of EU citizen and of the rights attaching to that status, whereas that loss results solely from the United Kingdom's sovereign decision to withdraw from the European Union, pursuant to Article 50(1) TEU.

47 The annulment of the decision at issue could not procure an advantage for the appellants capable of justifying an interest in bringing proceedings, since that loss would not, in any event, be called into question by that annulment.

48 Since the appellants do not have an interest in bringing proceedings against the decision at issue, there is no need to examine their arguments alleging an incorrect assessment of their standing to bring proceedings under the second and third limbs of the fourth paragraph of Article 263 TFEU. Any such error of law would have no bearing on the outcome of the dispute and would not affect the operative part of the order under appeal in so far as that action was dismissed as inadmissible (see, to that effect, judgment of 24 March 2022, *Wagenknecht* v *Commission*, C-130/21 P, EU:C:2022:226, paragraph 43 and the case-law cited).

49 It follows that, for the reasons set out in paragraphs 69 and 70 of the present judgment, the General Court did not err in law in concluding, in paragraph 97 of the order under appeal, that the action had to be dismissed as inadmissible.

50 The first ground of appeal must therefore be rejected.

51 In the light of all the foregoing considerations, the appeal must be dismissed, without it being necessary to examine the second ground of appeal.

Costs

52 In accordance with Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court is to make a decision as to the costs.

53 In accordance with Article 138(1) of those Rules of Procedure, which applies to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

54 As the appellants have been unsuccessful, they must be ordered to pay their own costs and those incurred by the Council, in accordance with the form of order sought by the Council.

On those grounds, the Court (Eighth Chamber) hereby:

1. **Dismisses the appeal;**

2. **Orders Mr Joshua David Silver, Ms Leona Catherine Bashow, Mr Charles Nicholas Hilary Marquand, JY, JZ, Mr Anthony Styles Clayton and Ms Gillian Margaret Clayton to pay the costs.**

Safjan Jääskinen Gavalec

Delivered in open court in Luxembourg on 15 June 2023.

A. Calot Escobar
Registrar

M. Safjan
President of the Chamber

* Language of the case: English.