



Political Rights and EU Identity: The Limits and Potential of a Value-oriented Approach

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1. *Introduction: setting the constitutional framework*

The present contribution seeks to address the simple but fundamental questions whether there is any relationship between the political rights of Union citizens and the identity of the European Union

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and, if so, what the nature of that relationship is. To that effect, one should begin by identifying the relevant “building blocks” of the constitutional framework within which those questions may be answered.

The first of these building blocks is the value of democracy enshrined in Article 2 TEU. Its significance lies in the fact that, much like the other values listed in this provision, the value of democracy has not only an axiological dimension but also constitutive and normative dimensions.¹ Indeed, in its twin judgments on the Rule of Law Conditionality Regulation, the Court of Justice of the European Union (the “Court”), sitting as a Full Court, forcefully held 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».² Moreover, in the recent judgment in *Commission/Hungary*, the Court, again sitting as a Full Court, further clarified that the «values enshrined in Article 2 TEU are, *per se*, legally binding, as a result of which there is an obligation, for the Member States and institutions of the Union, to respect, maintain and promote those values».³

The second building block of the constitutional framework is the principle of democracy.⁴ Since the judgments rendered in the so-called

¹ On EU values and their legal value, see further L. S. ROSSI, *La valeur juridique des valeurs. L'article 2 TUE: relations avec d'autres dispositions de droit primaire de l'UE et remèdes juridictionnels*, in *RTDE*, 2020, p. 639; L. D. SPIEKER, *EU values before the Court of Justice: Foundations, Potential, Risk*, Oxford, 2023; L. S. ROSSI, “Concretised”, “Flanked” or “Standalone”: Some Reflections on the Application of Article 2 TEU, in *EP*, No 1, 2025, p. 1 ff.

² Court of Justice, Judgment of 16 February 2022, Case C-156/21, *Hungary/Parliament and Council*, para. 232; Judgment of 16 February 2022, Case C-157/21, *Poland/Parliament and Council*, para. 264. Since the two judgments are substantially identical, save for the specificities of the cases concerned, only the first will be cited hereafter.

³ Court of Justice, Judgment of 21 April 2026, Case C-769/22, *Commission/Hungary*, para. 536 (emphasis added).

⁴ On the principle of democracy in EU law, see further, among others, K. LENAERTS, *The Principle of Democracy in the Case Law of the European Court of Justice*, in *ICLQ*, No. 2, 2013, p. 271 ff.; P. CRAIG, *Integration, Democracy and Legitimacy*, in P. CRAIG, G. DE BÚRCA (eds), *The Evolution of EU Law*, Oxford, 2021, p. 12 ff., D. CURTIN, *Challenging Executive Dominance in European Democracy*, in *MLR*, No. 1,

Isoglucose cases, the Court has consistently held that the (effective) participation of the European Parliament in the legislative process «reflects at Community level the fundamental democratic principle that the people should take part in the exercise of power through the intermediary of a representative assembly».⁵ With the entry into force of the Lisbon Treaty, the principle of democracy has been codified in Articles 10 and 11 TEU. Rather than speaking of a single principle of democracy, one should speak of «democratic principles»,⁶ given that, in addition to representative democracy, these provisions also contain elements of participatory and direct democracy.⁷ Representative democracy, however, occupies a privileged position among those principles, insofar as, pursuant to Article 10(1) TEU, «the functioning of the Union shall be founded on representative democracy». According to Article 10(2) TEU, the Union's representative democracy is, in turn, based on two pillars, namely, on the one hand, the European Parliament, in which «citizens are directly represented at the Union level», and, on the other, the Council and the European Council, where Member States are represented by their governments, «themselves democratically accountable either to their national parliaments or to their citizens». Insofar as the first of these pillars is concerned, the principle of representative democracy is further implemented by the principle of direct universal suffrage in a free and secret ballot governing European Parliament elections pursuant to Article 14(3) TEU.⁸

2014, p. 1 ff.; J. MENDES, *Participation and the Role of Law after Lisbon: A Legal View on Article 11 TEU*, in *CMLRev.*, No.6, 2011, p. 1849 ff.

⁵ See e.g. Court of Justice, Judgment of 29 October 1980, Case 138/79, *Roquette/Council*, para. 33; Judgment of 29 October 1980, Case 139/79, *Maizena/Council*, para. 34; see also Judgment of 10 June 1997, Case C-392/95, *Parliament/Council*, para. 14; Judgments of 4 October 2024, Joined Cases C-541/20 to C-555/20, *Lithuania and Others/Parliament*, para. 903.

⁶ See to that effect, Title II of the TEU, which comprises Articles 9 to 12 TEU and is headed «Provisions on democratic principles».

⁷ See, to that effect, Court of Justice, Judgment of 19 December 2019, Case C-418/18 P, *Puppink and Others/Commission*, para. 65.

⁸ See, to that effect, Court of Justice, Judgment of 19 December 2019, Case C-502/19, *Junqueras Vies*, para. 64; Judgment of 5 February 2026, Case C-572/23 P, *Puigdemont i Casamajó and Others/Parliament* (Levée de l'immunité parlementaire), para. 76.

The third and final constitutional “building block” is that of political rights.⁹ Pursuant to Article 10(3) TEU, Union citizens have a «right to participate in the democratic life of the Union». This translates into a series of political rights listed in Articles 20, 22 and 24 TFEU, among which the right to vote and to stand as a candidate in European and municipal elections is of particular significance.¹⁰ Pursuant to Articles 20(2)(b) and 22 TFEU, this right is conferred on «every citizen of the Union residing in a Member State of which he is not a national», «under the same conditions as nationals of that State», and shall be exercised «subject to the detailed arrangements adopted by the Council». A corresponding right to vote and stand as a candidate in European and municipal elections is also recognised in Articles 39(1) and 40 of the Charter of Fundamental Rights of the European Union (CFR, or the “Charter”).¹¹ However, as regards European elections, Article 39(2) CFR also refers to the principle of direct universal suffrage in a free and secret ballot enshrined in Article 14(3) TEU. Notably, this has prompted the Court, in *Delvigne* and *Junqueras Vies*, to consider that Article 39(2) CFR guarantees a right to vote and stand as a candidate in European elections that extends to “non-mobile” Union citizens and can therefore be invoked against the Member State of which they are nationals.¹²

It follows from this brief overview that democracy emerges as a constitutive element of the Union’s common legal order: as a value,

⁹ On the political rights of European citizens, see further J. SHAW, *The Transformation of Citizenship in the European Union: Electoral Rights and the Restructuring of Political Space*, Cambridge, 2007, D. KOCHENOV, *The Political Side of EU Citizenship in the Context of EU Federalism*, in D. KOCHENOV (ed), *EU Citizenship and Federalism: The Role of Rights*, Cambridge, 2017, and J. NOWAG, R. ZIEGLER, *Political Equality of EU Citizens and Their Right to Vote beyond Delvigne*, in *Yearbook of European Law*, 2025, p. 1 ff.

¹⁰ Other political rights of European citizens listed under Articles 20(2)(d) and 24 TFEU include the right to submit a citizens’ initiative, the right to petition the European Parliament, the right to apply to the Ombudsman, and the right to address the institutions and advisory bodies of the Union in one of the official languages of the EU and to obtain a reply in the same language.

¹¹ Despite some wording discrepancies, the Explanations clarify that the right to vote and stand as a candidate guaranteed under Article 39(1) and 40 CFR correspond to that enshrined in Articles 20(2) and 22 TFEU, so that, in accordance with Article 52(2) CFR, they are to be exercised under the conditions and within the limits defined by the Treaty and are thus applicable only to “mobile” citizens; see, to that effect, Court of Justice, Judgment of 6 October 2015, Case C-650/13, *Delvigne*, paras 40-43.

¹² *Ivi*, para. 44; *Junqueras Vies*, cit., para. 86.

democracy contributes to defining the Union's identity, while, as a principle, representative democracy governs the Union's functioning, thereby underpinning the legitimacy of the Union's acts and actions. It also emerges from the foregoing that the democratic life of the Union is grounded in the participation of citizens, in particular through the right to vote and to stand as a candidate in European elections.

It remains, however, to be clarified what relationship, if any, exists between the constitutive (or structural) dimension of representative democracy and its practical (or operative) function as expressed through the political rights of Union citizens. In other words, the question is whether and how the three aforementioned "building blocks" forming the constitutional framework of the present contribution interact and to what extent this interaction sheds light on the relationship between the identity of the European Union as a common legal order and the political rights of Union citizens.

2. *The relationship between (representative) democracy and political rights after judgments Commission/Czech Republic and Commission/Poland*

The nexus between the value of democracy and the principle of representative democracy has been acknowledged by the Court since the Grand Chamber judgments delivered in December 2019 in the *Junqueras Vies* and *Puppinck* cases. In these judgments, the Court clarified that the principle of representative democracy, enshrined in Article 10(1) TEU, «gives concrete expression» to the value of democracy referred to in Article 2 TEU.¹³

The Court has thus essentially applied to democracy the same analytical framework employed in its case-law on the rule of law, starting with the *ASJP* judgment.¹⁴ However, until recently, the Court had not clarified whether the principle of democracy contained legally

¹³ *Puppinck and Others/Commission*, cit., para. 64 and *Junqueras Vies*, cit., para. 63.

¹⁴ See e.g. Court of Justice, Judgment of 27 February 2018, Case C-64/16, *Associação Sindical dos Juízes Portugueses*, para. 32, according to which: «Article 19 TEU ... gives concrete expression to the value of the rule of law stated in Article 2 TEU»; for a recent reaffirmation of that principle, see Court of Justice, Judgment of 18 December 2025, Case C-448/23, *Commission/Poland* (Ultra vires review of the Court's case-law – Primacy of EU law), para. 105.

binding obligations, or whether the political rights conferred by the Treaties were to be regarded as implementing the principle of representative democracy, thereby indirectly giving concrete expression to the value of democracy.

It was only with the twin Grand Chamber judgments delivered in November 2024 in *Commission/Czech Republic* and *Commission/Poland*¹⁵ that the Court took a clear position on this issue. In essence, the Court held, on the basis of a literal, systematic, and teleological interpretation of Article 22 TFEU, that this provision confers on “mobile” citizens a «right to participate in the democratic electoral process» of the host Member State that goes beyond the mere right to vote and stand as a candidate.¹⁶ Article 22 TFEU accordingly obliges Member States to guarantee “mobile” Union citizens residing in their territory equal treatment with their own nationals not only in the exercise of the right to vote and stand as a candidate, but more generally with regard to access to any means available to those nationals for the purpose of effectively exercising their right to stand as a candidate in municipal and European elections, including, in particular, membership of political parties or movements.¹⁷ The Court then held that the Czech Republic and Poland had breached that obligation, inasmuch as the difference in treatment on grounds of nationality as regards the possibility of becoming a member of a political party or movement established by their legislation placed non-nationals in a less favourable position as regards the possibility of standing as a candidate in municipal and European elections.¹⁸ Lastly, the Court considered that that difference in treatment could not be justified on the basis of the national identity clause under Article 4(2) TEU.¹⁹

¹⁵ Court of Justice, Judgment of 19 November 2024, Case C-808/21, *Commission/Czech Republic* (Ability to stand for election and membership of a political party), and Judgment of 19 November 2024, Case C-814/21, *Commission/Poland* (Ability to stand for election and membership of a political party). Since the two judgments are substantially identical, save for the specificities of the cases concerned, only the first will be cited hereafter.

¹⁶ *Commission/Czech Republic* (Ability to stand for election and membership of a political party), cit.

¹⁷ *Ivi*, paras 92-127.

¹⁸ *Ivi*, paras 128-152.

¹⁹ *Ivi*, paras 153-163.

To reach this conclusion, the Court shed some light on the relationship between the value of democracy, the principle of representative democracy, and political rights of Union citizens, and therefore between those rights and other relevant primary law provisions. Three points in the Court's reasoning deserve particular emphasis in this regard.

First, the Court clarified that Article 22 TFEU must be read in conjunction with the rules on citizenship set out in Articles 20 and 21 TFEU. More specifically, the Court held that the right to vote and to stand as a candidate in municipal and European Parliament elections is «conferred by citizenship of the Union» and is linked to the right to move and reside freely within the territory of the Member States.²⁰ It cannot therefore be «construed as an exception to a purported rule that only nationals of a Member State may participate in the political life of that State», because this would be «at odds with the fact that citizenship of the Union is intended to constitute the fundamental status of those nationals» and that the right to vote is intended to «promote the gradual integration of [Union citizens] in the society of the host Member State».²¹

Second, and more significantly, the Court held that the scope of Article 22 TFEU must also be defined in the light of the principle of representative democracy enshrined in Article 10(1) TEU, which in turn «gives concrete expression to democracy as a value».²² This is so because, in conferring, in paragraphs 2 and 3, on EU citizens the «right to be directly represented in the European Parliament and to participate in the democratic life of the European Union», Article 10 TEU «underscores, as regards elections to the European Parliament, the connection between the principle of representative democracy within the European Union and the right to vote and to stand as a candidate in European Parliament elections attached to citizenship of the Union, guaranteed by Article 22(2) TFEU».²³ The connection between representative democracy and the right to vote and stand as a candidate also emerges in the context of membership of political parties, in that

²⁰ *Ivi*, paras 111 and 113.

²¹ *Ivi*, paras 109-111 and 125-126.

²² *Ivi*, para. 114.

²³ *Ivi*, paras 115-116.

political parties, one of whose functions is to field candidates in elections, «fulfil an essential function in the system of representative democracy», a function which is also recognised, as regards European political parties, in Article 10(4) TEU and Article 12(2) CFR.²⁴

Third and finally, insofar as the national identity clause under Article 4(2) TEU is concerned,²⁵ the Court recognised that the organisation of national political life, to which political parties and movements contribute, is part of national identity within the meaning of that provision.²⁶ However, the Court reaffirmed that Article 4(2) TEU must be read in the light of Articles 2 and 10 TEU.²⁷ The political right of mobile Union citizens to vote and stand as a candidate under the same conditions as nationals of the host Member State enshrines the principles of representative democracy and equal treatment, which in turn, give concrete expression to the values of democracy and equality.²⁸ Those values «are an integral part of the very identity of the European Union as a common legal order», «to which the Member States adhere and whose observance they must ensure in their territories».²⁹ Thus, complying with the requirements stemming from Article 22 TFEU, by allowing «EU citizens to become members of a political party or political movement in their Member State of residence so as to implement in full the principles of democracy and equal treatment, cannot be regarded as undermining the national identity of

²⁴ *Ivi*, paras 117-122. These considerations are drawn from the case law of the European Court of Human Rights relating to the right to freedom of association guaranteed by Article 11(1) ECHR, to which the right enshrined in Article 12(1) CFR corresponds and must therefore be regarded as having the same meaning and scope, pursuant to Article 52(3) CFR.

²⁵ On the national identity clause see further, among others, G. DI FEDERICO, *L'identità nazionale degli stati membri nel diritto dell'Unione europea. Natura e portata dell'art. 4 par. 2 TUE*, Naples, 2017, F.-X. MILLET, *L'Union européenne et l'identité constitutionnelle des États membres*, Paris, 2012, E. CLOOTS, *National Identity in EU Law*, Oxford, 2015; S. W. SCHILL, A. VON BOGDANDY, *Overcoming Absolute Primacy: Respect for National Identity under the Lisbon Treaty*, in *CMLR*, n. 5, 2011, p. 1417. On the relevance of the national identity clause in the context of the recent CJEU case law on European citizenship, see further G. DI FEDERICO in this *Special issue*.

²⁶ *Commission/Czech Republic* (Ability to stand for election and membership of a political party), cit., para. 154.

²⁷ *Ivi*, para. 158.

²⁸ *Ivi*, paras 159-162.

²⁹ *Ivi*, paras 160 and 162.

that Member State».³⁰ Member States cannot therefore invoke Article 4(2) TEU to derogate from those requirements.

The relationship between the value of democracy under Article 2 TEU, the principle of representative democracy in Article 10 TEU, and the political right to vote and stand as a candidate in European and municipal elections guaranteed in Article 22 TFEU emerging from these twin judgments can therefore be depicted in the form of a pyramid of norms,³¹ or, rather, as a cascade of norms.³² The apex of this pyramid or cascade is constituted by values, which find concrete expression in principles, which in turn are embodied in rights. More specifically, in the present case, the value of democracy is given concrete expression by the principle of representative democracy, which is in turn operationalised by the right to vote and stand as a candidate in European (and municipal) elections.

It is worth noting that this value-oriented approach to primary law has not only a descriptive/analytical value but also a prescriptive/hermeneutic one. To be sure, the relationship between values, principles and rights forming part of this cascade of norms is not, nor it can be, a hierarchical relationship of validity, insofar as all these provisions have the «same rank», as the Court has itself repeatedly stressed.³³ However, the existence of functional relationships between these layers of norms, which connect individuals' rights and corresponding Member States' obligations to the founding and identity-defining values, affects the way these norms are interpreted by the Court. More specifically, provisions located higher up inform the consistent – rather than merely harmonious – interpretation of those located lower down, while provisions located at the same level of the cascade of norms operate in a relationship of complementarity and

³⁰ *Ivi*, para. 163.

³¹ See L. D. SPIEKER, *Primary Law as Pyramid: The Case for Substantive Hierarchies in EU Primary Law*, in L. ALEZINI, L. LONARDO (eds.), *The Legal Reasoning of the Court of Justice of the EU: A Normative Assessment*, Oxford, 2026, pp. 105-134.

³² See K. LENAERTS, *Democrazia, Stato di diritto e solidarietà: sostenere i valori europei*, in *EJ*, No. 1, 2025, p. 279.

³³ See e.g. Court of Justice, Judgment of 5 June 2023, Case C-204/21, *Commission/Poland* (Independence and private life of judges), para. 72; *Commission/Czech Republic* (Ability to stand for election and membership of a political party), cit., para. 123.

mutual reinforcement. This is why the scope of the political right to vote and stand as a candidate must be defined on the basis of a joint reading with citizens' rights under Articles 20 and 21 TFEU and in the light of the value and principle of democracy. This also explains why the principle of respect for national identity under Article 4(2) TEU cannot exempt Member States from complying with obligations stemming from Article 22 TFEU, inasmuch as the latter gives concrete expression to the value of democracy to which all national identities must align.³⁴

3. *The legal consequences of a value-oriented approach to political rights: from negative obligations...*

The value-oriented approach adopted by the Court in its twin judgments of November 2024 follows well-established case law. Indeed, while extending it to values other than the rule of law, thus anticipating the subsequent judgments in *Commission/Malta*³⁵ and *Commission/Hungary*,³⁶ the twin judgments maintain the same interpretative framework defined in that case law.

³⁴ See further K. LENAERTS, *Celebrating 20 Years Together, Opening Speech of the Conference "20 Years since the Accession of 10 States to the European Union: A New Constitutional Moment for Europe"*, Court of Justice of the European Union, Luxembourg, 3 May 2024, in *EJ*, 2024, p. 16; see also F. CASOLARI, *Il processo di europeizzazione delle identità nazionali degli Stati membri: riflessioni sulle traiettorie del costituzionalismo europeo*, in this *Journal*, No. 1, 2024, pp. 1-37.

³⁵ Court of Justice, Judgment of 29 April 2025, Case C-181/23, *Commission/Malta*, paras 88-89. On this judgment, see further, among others, M. INGLESE, *L'acquisizione e la perdita della cittadinanza dell'Unione europea: dai limiti alle competenze degli Stati membri all'incidenza sui diritti politici dei cittadini*, in *DUE*, No. 1, 2025, p. 1 ff.; E. SPAVENTA, *A very valuable citizenship? European values and citizenship after Commission v Malta*, in *CMLRev.*, No. 6, 2025, p. 1791 ff.; L. D. SPIEKER, F. WEBER, *Commission v Malta (C-181/23): a "miracle" of Union citizenship?*, in *ELRev.*, No. 4, 2025, p. 487 ff.; M. CHAMON, *Commission v Malta (C-181/23) and the trilemma of EU citizenship*, in *ELRev.*, No. 4 2025, p. 475 ff.; D. KOCHENOV, G. ÍÑIGUEZ, *EU citizenship's new essentialism*, in *ELRev.*, No. 4, 2025, p. 455 ff.; R. O'NEILL, *A Stitch in Time? Mutual Trust as the EU's Fix-All in Case C-183/23 Commission v Malta*, in *EP*, No. 2, 2025, p. 463 ff.; J. LEPOUTRE, *La citoyenneté n'a pas de prix*, in *RTDEur.*, No. 3, 2025, p. 395 ff.

³⁶ *Commission/Hungary*, cit., para. 536. On this specific aspect of the judgment, see, inter alia, the EU Law Live Symposium on 'Enforcing Article 2 TEU: The CJEU's Judgment in *Commission v. Hungary (C-769/22)*', available at www.eulawlive.com/symposia/enforcing-article-2-teu-the-cjeus-judgment-in-commission-v-hungary-c-769-22/; P. DE PASQUALE, *Protezione dei minori e*

Nonetheless, the particularly broad reading of the scope of Article 22 TFEU adopted by the Court in those twin judgments on the basis of this value-oriented approach, as encompassing a «right of political participation»³⁷ extending beyond the right to vote and stand as a candidate, lends itself to some criticism,³⁸ which concerns not so much the general considerations underlying this approach as its application to citizens' political rights in the present case.

To begin with, the application of the value-oriented approach to the present case for the purpose of excluding the applicability of Article 4(2) TEU raises some doubts. Indeed, the national legislation at issue does not appear to fundamentally deny the founding values of the Union, especially democracy, and the Court had already recognised the possibility of protecting national identity by means of discriminatory rules on access to essential public institutions and services.³⁹ Moreover, given that the Court recognised that the organisation of political parties falls within the notion of national identity, the fact that it is virtually impossible to distinguish membership rights in national political parties and movements according to the different electoral contest concerned – national, European and municipal – is a circumstance that support, rather than undermines, the suitability and necessity of the national legislation at issue for the protection of such national identity.

A problem of consistency also arises with the case-law regarding the economic and social rights of Union citizens. Just as the right to move and reside freely in other Member States under Article 21(1) TFEU is recognised subject to the limitations and conditions set out in directive

stigmatizzazione delle identità LGBTI+: brevi riflessioni a margine della sentenza Commissione/Ungheria (Valeurs de l'Union), in *Quaderni AISDUE*, No. 2, 2026, p. 1 ff.; P. MORI, *La giustiziabilità dell'art. 2 TUE e la funzione costituzionale dei valori nella sentenza Commissione/Ungheria (Valeurs de l'Union)*, in *Unione Europea e Diritti*, No. 2, 2026, p. 1 ff.; and L.S. ROSSI, *The autonomous role of Article 2 TEU – Constitutionalising the EU Values*, in *SIEPS - EPA*, No. 11, 2026, p. 1 ff.

³⁷ See S. COUTTS, *Union Citizenship as a Status of Political Integration*, in *ECLR*, No. 1, 2026, pp. 122-123.

³⁸ See also M. PIGNATARO, *Per la Corte di giustizia il diritto di eleggibilità include anche il diritto di iscriversi a un partito politico*, in *QC*, No. 1, 2025, p. 245 ff.

³⁹ See Court of Justice, Judgment of 7 September 2022, Case C-391/20, *Boriss Cilevičs and Others*, paras 68 ff.

2004/38,⁴⁰ the right to vote and stand for election is subject to the «detailed arrangements» defined by the Council, which make no provision regarding the conditions for mobile citizens to join national political parties or movements. In both cases, secondary legislation does not limit the abstract scope of application of primary law provisions, but rather circumscribe their legal effects to the situations covered by such legislation. This therefore raises an issue of consistency with the Court's interpretation of the limits on equal treatment set forth in directive 2004/38,⁴¹ which, at least until now, has not been guided by the need to protect and promote Union values, such as those of human dignity, equality, and solidarity.⁴² A broader issue of consistency – and legal certainty – also arises with the recent case-law concerning these latter values. While, in *Commission/Hungary*, primary and secondary law clearly defined the scope of Member States' obligations giving concrete expression to the values of human dignity, equality, and respect for human rights, including the rights of persons belonging to minorities, in the present case the scope of the right to vote and stand as a candidate is broadly defined in the light of the very principles and values it is supposed to concretise, thus running the risk of creating a circular argument based on a *petitio principii*.

That said, regardless of how it was applied in the twin judgments under review, what is of interest here is rather the legal consequences of the value-oriented approach to citizens' political rights adopted by the Court. Given that, as noted above, the Court has used the same

⁴⁰ Pursuant to Article 21(1) TFEU, «[e]very citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect». Those limitations and conditions are essentially laid down in directive 2004/38/EC of the European Parliament and of the Council, of 29 April 2004, on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending regulation (EEC) No. 1612/68 and repealing directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

⁴¹ More specifically, under Article 24(2) of directive 2004/38, read in conjunction with Articles 7(1)(b) and 14.

⁴² See, among others, Court of Justice, Judgment of 11 November 2014, Case C-333/13, *Dano*, paras 57-80; Judgment of 15 September 2015, Case C-67/14, *Alimanovic*, paras 49-63; Judgment of 6 October 2020, Case C-181/19, *Jobcenter Krefeld*, paras 57-70.

analytical framework in its rule of law case law, the latter provides a useful point of reference for determining such consequences.

As is widely known, in the abovementioned twin judgments on the Rule of Law Conditionality regulation, the Court has forcefully held that «the European Union must be able to defend the values» set out in Article 2 TEU, «within the limits of its powers as laid down by the Treaties».⁴³ In the recent judgment *Commission/Hungary* judgment, the Court further clarified that Member States and EU institutions are under an obligation to respect, maintain and promote the values enshrined in Article 2 TEU,⁴⁴ along with the provisions which, directly or indirectly, gives concrete expression to those values. From this case law, it therefore emerges that the value-oriented approach to primary law has a dual legal function or consequence, “positive” and “negative”, which will be analysed in turn.

As for the negative function, it essentially consists of ensuring compliance with values by Member States and EU institutions. In its case law on the rule of law, the Court held that the obligation to respect and maintain the values listed in Article 2 TEU and the requirements stemming from the provisions giving concrete expression to them is an «obligation as to the result to be achieved», compliance with which may be reviewed by the Court, both directly (i.e. in infringement proceedings) and indirectly (i.e. by means of preliminary rulings on interpretation), regardless of whether conflicting national rules and practice fall within the competences of Member States.⁴⁵ By analogy, the same can arguably be said of the normative cascade of primary law norms on democracy outlined above.

This implies that, on the one hand, these norms can be used as a yardstick to assess the compatibility with EU law of national legislation and practices falling within the scope of Article 22 TFEU. This applies to national legislation transposing the Council directives laying down the «detailed arrangements» for the exercise of the right to vote and

⁴³ *Hungary/Parliament and Council*, cit., para. 127.

⁴⁴ *Commission/Hungary*, cit., para. 536.

⁴⁵ See, to that effect, *Commission/Poland* (Independence and private life of judges), cit., paras 62 to 80; Court of Justice, Judgment of 11 July 2024, Case C-554/21, *Hann-Invest*, paras 34-38 and 44-48.

stand as a candidate under Article 22 TFEU,⁴⁶ but also to national legislation implementing the common principles for European Parliament elections laid down in 1976 European electoral Act.⁴⁷ Following the twin rulings of November 2024, this also appears to apply, more generally, to national rules governing access to the means necessary for the effective exercise of the right to vote and stand as a candidate under Article 22 TFEU, including rules on party membership and on the organisation or financing of electoral campaigns.

On the other hand, and more interestingly and controversially, the legally binding obligations stemming from such a normative cascade appear to be enforceable also against national legislations and practices falling outside the broad scope of Article 22 TFEU. As the Court itself has acknowledged, albeit in a rather contradictory way,⁴⁸ in the aforementioned twin judgments of November 2024, this would be yet another manifestation of the so-called limitation theory, according to

⁴⁶ Council directive 93/109/EC, of 6 December 1993, 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 and 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.

⁴⁷ Act concerning the election of the representatives of the Assembly by direct universal suffrage.

⁴⁸ In carrying out a literal interpretation of Article 22 TFEU (paras 100-106), the Court observed that the right to vote and stand for election must be exercised subject to the detailed arrangements adopted by the Council. It further emphasised that directives 93/109 and 94/80, which lay down those detailed arrangements, do not contain specific provisions governing the conditions for acquiring membership of political parties or movements. However, the Court considered that those directives could not limit the scope of the obligations arising under Article 22 TFEU. Indeed, in the absence of such specific provisions, the determination of those conditions fell within the competence of the Member States, which must nevertheless exercise that competence in compliance with their obligations under EU law. Although the Court cites its case-law on the loss of national and Union citizenship, it effectively applies the analytical framework governing national procedural autonomy. Indeed, the Court's overall reasoning shows that national rules and practices falling outside the scope of the aforementioned directives nevertheless fall within the scope of Article 22 TFEU. Accordingly, this does not appear to be a case of residual national competence in the strict sense but rather one in which, in the absence of specific rules in those directives, it is for the Member States to determine the applicable conditions, provided that they comply with the principles of equivalence and effectiveness, thereby ensuring equal access to the means available to nationals of the host Member State for the effective exercise of the rights to vote and stand as a candidate.

which, where Member States exercise their retained competences, they must do so having due regard to obligations stemming from EU (primary) law. Essentially, these are all those rules and practices that, while not governing access to the means necessary for the effective exercise of the right to vote and stand as a candidate under Article 22 TFEU, are nevertheless liable, by virtue of their consequences, to undermine the effectiveness of that right and of the principle and value of representative democracy to which it gives expression. These could include, for example, national rules relating to the formalities required to acquire the status of a Member of the European Parliament, such as those at issue in the first *Junqueras Vies* Case,⁴⁹ or national legislation on party bans. Arguably, the same can be said of national legislation or practices breaching the obligation, laid down in Article 14(3) TEU, to ensure that elections to the European Parliament are held by direct universal suffrage in a free and secret ballot, such as rules or practices that undermine, or seriously risk undermining, the integrity of European elections.

What is more, both the right to political participation under Article 22 TFEU and the obligation under Article 14(3) TEU appear to be sufficiently precise and unconditional to have direct effect.⁵⁰ It follows that, again by analogy with the case law on the value of the rule of law, these provisions could be invoked before national courts, which would then be under an obligation to give them full effect by interpreting national legislation consistently with Article 22 TFEU and Article 14(3) TEU or, failing that, by disapplying national legislation and practices incompatible with these directly effective provisions.⁵¹

⁴⁹ *Junqueras Vies*, cit.

⁵⁰ See, along these lines, S. PEERS, *EU Citizens' Right to Join Political Parties*, in *VBlog*, 16 December 2024; S. MONTALDO, *L'art. 22 TFUE e i diritti elettorali dei cittadini europei: dal minimalismo interpretativo ad una rinnovata centralità nella tutela dei processi democratici a livello nazionale ed europeo*, in *EP*, No. 1, 2026, p. 21 ff.; J. COTTER, *The right of mobile EU citizens to become a member of a political party or political movement after Commission v Czech Republic and Commission v Poland*, in *CMLR*, No. 2, 2026, p. 571 ff., pp. 585 and 588, arguing in favour of the horizontal direct effect of Article 22 TFUE, which would impose obligations on national political parties.

⁵¹ See, by analogy, *Commission/Poland* (Ultra vires review of the Court's case-law – Primacy of EU law), cit., paras 113-115 and the cited case law.

4. ...to positive obligations: recent EU initiatives in the field of political rights

As noted in the previous paragraph, the value-oriented approach to primary law has a dual legal function or consequence. While the “negative” function, namely its use as a benchmark for assessing compliance with obligations arising from the Union’s values, is more obvious and readily understandable, the “positive” function is less easily discernible but, if anything, even more relevant.

This positive function is essentially aimed at ensuring compliance with the obligation to promote the Union’s values, as well as to respect and maintain them. From the twin judgments on the Rule of Law Conditionality regulation, it can be deduced that this essentially translates into an interpretation of the existing Treaty legal bases in light of the values and the principles and rights giving concrete expression to them, so as to allow the Union institutions to establish instruments directly or indirectly aimed at ensuring respect for and/or the promotion of the Union’s values.⁵²

When this interpretative framework is applied by analogy to the context of the political rights of Union citizens, taking into account the twin judgments of November 2024, this implies, first and foremost, that, in defining the «detailed arrangements» for the exercise of the right to vote and stand as a candidate enshrined in Article 22 TFEU, the Council could legitimately include rules aimed at ensuring equal access for mobile citizens to the means necessary to effectively exercise their right to political participation, such as rules requiring non-discriminatory access to national political parties or movements. More broadly, this could also mean that the other relevant legal bases provided by the Treaties – namely, Articles 25(2), 223, and 224 TFEU – might be construed so as to permit the adoption of mechanisms that address or prevent breaches of the value of democracy liable to undermine, or seriously risk undermining, the principle of representative democracy and the right to political participation that give concrete expression to that value.

⁵² *Hungary/Parliament and Council*, paras 127-133, 153 and 171.

It is significant to note that, in parallel with the judicial developments presented above, the EU institutions have effectively taken action in that respect. Since the presentation of the 2020 European Democracy Action Plan,⁵³ the Union has witnessed what some scholars have termed a «democratic turn»⁵⁴ by the EU “political” institutions, through a series of actions and acts aimed at protecting representative democracy and the rights and obligations attached thereto at both the national and European levels.

This turn materialised first and foremost in the presentation of a package of legislative proposals on representative democracy put forward in November 2021 and May 2022, the majority of which were finally adopted over the past two years. Among the acts adopted are the Council directives revising the detailed arrangements for the exercise of the right to vote and stand as a candidate for mobile Union citizens under Article 22 TFEU,⁵⁵ and the new regulation on the Statute of the European political parties and foundations.⁵⁶

These acts are complemented by a regulation on political advertising and the so-called European Media Freedom Act,⁵⁷ both adopted in 2024, which address some of the preconditions for the effective exercise of the right to participate in the political life of the Member States identified by the Court and the correlative obligation to

⁵³ COM(2020) 790final.

⁵⁴ M. BONELLI, *The European Union's Democratic Turn*, in *Working Papers, Forum Transregionale Studien*, 2025, p. 1 ff.

⁵⁵ Council directive (EU) 2025/1788, of 24 June 2025, laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in elections to the European Parliament for Union citizens residing in a Member State of which they are not nationals and Council directive (EU) 2026/1194, of 26 May 2026, laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections for Union citizens residing in a Member State of which they are not nationals.

⁵⁶ Regulation (EU, Euratom) 2025/2445 of the European Parliament and of the Council, of 26 November 2025, on the statute and funding of European political parties and European political foundations.

⁵⁷ Regulation (EU) 2024/900 of the European Parliament and of the Council, of 13 March 2024, on the transparency and targeting of political advertising, and regulation (EU) 2024/1083 of the European Parliament and of the Council, of 11 April 2024, establishing a common framework for media services in the internal market and amending directive 2010/13/EU (European Media Freedom Act). The legality of the latter act is however currently challenged before the CJEU in the pending case C-486/24, *Hungary/Parliament*.

ensure that European elections are held by a free ballot.⁵⁸ In November 2025, a fifth relevant non-binding act was also adopted, in the form of a joint communication from the European Commission and the High Representative on the «European Democratic Shield».⁵⁹

An in-depth analysis of these acts is beyond the scope of this contribution. However, even without delving into the merits of these acts, some general considerations can nevertheless be made regarding some common features emerging from them.

First, it is significant to note that some of these acts adopt a value-oriented language that somewhat recalls the Court's approach. While the emphasis on EU values is not new, it is interesting to note that it also characterises acts, such as the Regulation on Political Advertising and the Media Freedom Act, which were adopted on the basis of the internal market harmonization clause in Article 114 TFEU.⁶⁰

Second, it is interesting to note that some of these instruments are aimed, directly or indirectly, at protecting the Union's founding values, especially the value of democracy. In particular, the aforementioned Regulation on Political Advertising and the Media Freedom Act, as well as the so-called European Democratic Shield, are designed, among other things, to protect the European democratic space and political participation against external interference, particularly in the form of disinformation or electoral interference.⁶¹

⁵⁸ See further, for an analysis of the relevance of these acts for the protection of the value of democracy, M. COLI, *The Role of the European Union in Protecting Democracy through Legislation: The Case of Disinformation*, in *EP*, No. 1, 2026, p. 81 ff.

⁵⁹ Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, of 12 November 2025, *European Democracy Shield: Empowering Strong and Resilient Democracies*, JOIN/2025/791 final; see further S. VILLANI, *Facing the Unsustainable Fragility of EU Democracy: Highlights on the European Democracy Shield*, in this *Journal*, No. 1, 2026, p. 1 ff.

⁶⁰ See Recitals No. 14 and 19 of regulation 2024/900 on political advertising and Recitals No. 2 and 17 of regulation 2024/1083 on the Media Freedom Act.

⁶¹ As for regulation 2025/2445 on the Statute of the European political parties and foundations, it established new rules for preventing foreign interference, by limiting the participatory rights of associated members from candidate countries and by increasing transparency, through the collection and publication of data for donations and contributions in an online repository. As regards the regulation 2024/900 on political advertising, it lays down a specific obligation of transparency through labelling and restrictions on targeting techniques, complemented by cross-border

This is further complemented by a prescriptive mechanism aimed at ensuring respect for the Union's values provided for in the Regulation on the Statute and funding of European political parties and foundations. This Regulation makes their recognition, and thus access to Union funds, conditional upon a formal commitment, by the European political parties and their respective members, to respect the values enshrined in Article 2 TEU, and provides for a mechanism whereby the Authority for European political parties and foundations may decide to remove a European political party or foundation from the Register, and therefore deprive it of Union funding, in the event of a manifest and serious breach of those values.⁶²

Thirdly, it should however be noted that this sensitivity to democratic values and principles is lacking precisely in the legislative acts most directly related to the exercise of citizens' right to vote and stand as a candidate in European and municipal elections. On the one hand, the Council directives defining the «detailed arrangements» – that is, the specific conditions and modalities – for exercising these rights have been considerably scaled back compared with the original Commission proposals during the long negotiations that led to their adoption.⁶³ On the other hand, and more significantly, the ambitious legislative proposal, put forward by the European Parliament in May

cooperation and sanctioning mechanisms, with a view to support a free fair and informed public debate, but also to counter foreign electoral interference. Lastly, the European Media Freedom Act (regulation 2024/1083) essentially provides for a negative obligation for the Member States not to interfere or influence the editorial decisions, along with a positive obligation to put in place procedural safeguards to ensure the independence of media service providers.

⁶² See Recitals No. 14, 16, 17, 20 and 31 and Articles 3, 13, 21(1)(b) of regulation 2025/2445. This is all the more relevant given that the new regulation provides for a higher EU co-financing rate (which can now amount to 95%, with the possibility of self-financing through conference fees and publication sales up to 3% for parties, and 5% for foundations).

⁶³ It is worth noting that, inter alia, the Council has not taken up the European Parliament's proposal to insert a new Recital No. 11a in the forthcoming directive, encouraging national political parties «not to make membership conditional on having the nationality of that Member State»; see European Parliament legislative resolution, of 14 February 2023, on the proposal for a Council directive laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for Union citizens residing in a Member State of which they are not nationals (recast), P9_TA(2023)0037.

2022,⁶⁴ to replace the common principles laid down by the 1976 European Act, as well as the 27 distinct national electoral regimes implementing them, with harmonised rules governing European Parliament elections remains pending before the Council and its prospects for adoption remain uncertain.⁶⁵

The resistance on the part of the Member States to laying down a uniform electoral procedure for European Parliament elections is difficult to reconcile with their obligation not only to respect but also to promote the values of the Union and thus the principles, such as representative democracy, that give concrete expression to them. However, this resistance is hardly surprising if one considers that the previous, and far more limited, amendment to the 1976 Electoral Act, adopted in 2018 by the Council,⁶⁶ has still not entered into force, due to

⁶⁴ Among the most significant changes put forward by the European Parliament in its legislative proposal are: the creation of a Union-wide constituency of 28 Members of European Parliament, with a uniform electoral system; the introduction of a minimum common age of 16 years for voting (except where constitutional requirements provide otherwise) and 18 years for standing as a candidate (which is now comprised between 18 and 25); the establishment of an obligation to observe democratic procedures for selecting the candidates, including ensuring gender equality (by alternation of candidates or quotas); the provision of a compulsory electoral threshold – now comprised between 1.8 and 5%, with 14 Member States having no threshold – between btw 3.5 and 5%, although only for constituencies comprising more than 60 seats (i.e. Germany and France); the creation of a European electoral authority, that is, an independent body composed of 27 Members, in charge of conducting the election in the EU-wide constituency and coordinating exchange of information among national electoral authorities; and, lastly, the introduction of a fixed day for holding European election (9 May), with official projection announced simultaneously in all MSs and a common electoral campaign period. Other main features of the applicable electoral system would instead remain the same, in particular the proportional representation and the division in national constituencies.

⁶⁵ The Swedish, Danish and Dutch Parliaments have in fact issued negative opinions on the Parliament's proposal, and the Council's Legal Service has expressed doubts as to whether its most significant innovation – that is, the creation of a Union-wide constituency – is compatible with the principle of degressive proportionality under Article 14(2) TEU.

⁶⁶ Council decision (EU, Euratom) 2018/994, of 13 July 2018, amending the Act concerning the election of the members of the European Parliament by direct universal suffrage, annexed to Council decision 76/787/ECSC, EEC, Euratom of 20 September 1976. This decision provides for a mandatory electoral threshold of between 2 and 5 % (in addition to the optional threshold already provided for), for constituencies comprising more than 35 seats; the possibility of introducing advance, postal, or electronic voting, and the possibility of including the name or logo of the European political party to which the national political party or individual candidate is affiliated.

the lack of approval by three Member States, including Germany and Spain.⁶⁷ Moreover, even when read in conjunction with the duty of sincere cooperation, the obligation as to the result to be achieved, stemming from a joint reading of Article 22 TFEU and Articles 2 and 10 TEU, to ensure the effectiveness of citizens' right to participate in the democratic electoral process cannot, in itself, give rise to an obligation on Member States to adopt Parliament's proposal, let alone to approve it in accordance with their respective constitutional requirements. In this context, any legislative initiative aimed at broadening citizens' political rights under Article 20(2) TFEU, for example by providing for a right to vote and stand as a candidate in national elections,⁶⁸ appears highly unlikely to succeed.

5. Concluding remarks: the limits and potential of a value-oriented approach to political rights

In attempting to sketch some provisional conclusions regarding the relationship between citizens' political rights and the Union's identity, three points seem to emerge with sufficient clarity from the foregoing. Each of them reveals a limitation of the value-oriented approach adopted by the Court in this regard, while at the same time highlighting its potential.

⁶⁷ Under Article 223(1) TFEU, the proposal shall be adopted by the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament. Moreover, the legislative act shall enter into force following their approval by the Member States in accordance with their respective constitutional requirements.

⁶⁸ See, among others, F. FABBRINI, *The Political Side of EU Citizenship in the Context of EU Federalism*, in D. KOCHENOV (ed.), *EU Citizenship and Federalism. The Role of Rights*, Cambridge, 2017. It is worth noting, in that respect, that, in *Commission/Czech Republic (Ability to stand for election and membership of a political party)*, cit., para. 155, the Court clarified that Article 22 TFEU «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, rules which would preclude members of the party or movement who are not nationals of that State from taking part in such decision-making». Such a right cannot therefore be derived from Article 22 TFEU but could instead be added by the Council to the catalogue set out in Article 20(2) TFEU by a means of the special legislative procedure provided for in Article 25(2) TFEU.

First, there appears to be a structural gap between the grand constitutional design of political rights as a component of the Union's identity, which somehow completes the circle opened with *Roquette Frères*,⁶⁹ and the continued absence of meaningful harmonisation of the applicable rules for European elections, largely due to the unanimity requirement in the Council. EU citizenship is therefore increasingly conceived as supranational, but it is still experienced as merely transnational, including by mobile citizens.⁷⁰

Second, it remains to be seen how far the logic underpinning the Court's reasoning can be stretched to safeguard the effectiveness of citizens' political rights. The Court is careful to clarify that Article 22 TFEU does not require Member States to grant mobile citizens the right to vote and stand as a candidate in national elections, nor a broader right to political participation in connection with such elections. Yet, beyond the core right to vote, the dividing line becomes far more difficult to draw with respect to other forms of political participation. The case of political party membership illustrates this ambiguity.⁷¹

Third, and more generally, as judicial review of national legislation and practice under the so-called limitation theory progressively expands, the Court of Justice is required to shoulder an increasing share of the burden of safeguarding democratic participation and political rights. This is not the result of judicial activism but rather reflects the fact that citizens and the Commission are turning to the judiciary as a substitute for political inaction at the Union legislative level. Yet, precisely in the field of political rights, this development is troubling, in that it places the least democratically representative of the Union institutions (rightly so, given its judicial function) at the forefront of

⁶⁹ *Roquette/Council*, cit.; see further above, §1.

⁷⁰ See further A. ILIOPOULOU-PENOT, *The Transnational Character of Union Citizenship*, in M. DOUGAN, N. NIC SHUIBHNE (eds.), *Empowerment and Disempowerment of the European Citizen*, Oxford, 2012, p. 15 ff.; J. SHAW, *Citizenship: Contrasting Dynamics at the Interface of Integration and Constitutionalism*, in P. CRAIG, G. DE BÚRCA (eds.), *The Evolution of EU Law*, Oxford, 2021, p. 206 ff., highlighting the structural difficulties of identifying a distinct political dimension of Union citizenship.

⁷¹ See further S. COUTTS, *op. cit.*, p. 125 ff.; 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*, in *MJECL*, 2025, p. 624, who speaks of «spill-over effect» in this respect.

politically sensitive disputes, often in tension with choices made by national legislatures.

While the protection of the Union's values is a fundamental mission of all institutions under Article 13(1) TEU, including the Court when interpreting EU primary law, it must ultimately be those institutions that embody democratic representation within the Union – and, in particular, the national governments within the Council – that assume primary responsibility for ensuring their effective protection.

However, the value-oriented approach adopted by the Court also represents an opportunity in this regard. By anchoring political rights in the value of democracy and the resulting obligations of Member States and the EU institutions to respect, maintain, and promote that value, this approach may support the development of a set of instruments and mechanisms to promote respect for the value of democracy, the principle of representative democracy, and the political rights through which that value finds concrete expression, similar to the existing rule of law toolbox.

Whether that potential will be realised ultimately depends on the political will of the Member States. Nevertheless, the growing threats to the integrity of democratic and electoral processes may provide the necessary impetus for further action. The European Media Freedom Act, the Regulation on political advertising, the European Democracy Shield, as well as the new Statute for European political parties, should therefore be welcomed as encouraging first steps in this direction.

ABSTRACT (ITA)

Il contributo analizza il rapporto tra diritti politici dei cittadini europei e identità dell'Unione alla luce della recente giurisprudenza della Corte di giustizia. Esso rileva come le sentenze sull'appartenenza ai partiti politici nazionali abbiano esteso al campo dei diritti politici l'approccio orientato ai valori sviluppato dalla Corte in materia di Stato di diritto. Ne emerge una relazione funzionale tra il valore della democrazia, il principio della democrazia rappresentativa e i diritti politici dei cittadini europei, ricostruita come una "cascata normativa", nella quale valori, principi e diritti si concretizzano progressivamente e si rafforzano reciprocamente sul piano interpretativo, con l'effetto di riconoscere un più ampio diritto di partecipazione politica dei cittadini dell'Unione, opponibile anche a norme adottate a tutela dell'identità nazionale. Il contributo mette poi in luce le due principali conseguenze giuridiche derivanti da tale impostazione. La prima riguarda l'utilizzo di tale "cascata normativa" quale parametro di controllo delle legislazioni nazionali suscettibili di compromettere l'effettività del suddetto diritto di partecipazione politica. La seconda concerne un'interpretazione estensiva delle basi giuridiche di diritto primario, volta a consentire alle istituzioni dell'Unione di elaborare strumenti di promozione e tutela della democrazia rappresentativa, europea e nazionale. A quest'ultimo proposito, il contributo sottolinea come un pacchetto di atti legislativi e non legislativi dell'Unione recentemente adottati in materia di democrazia testimoni la crescente ricettività delle istituzioni politiche a tale approccio. Il contributo conclude evidenziando come tale evoluzione riveli, da un lato, il persistente divario tra la costituzionalizzazione dei diritti politici e la limitata armonizzazione del diritto elettorale europeo, con la conseguente crescente centralità della Corte nella tutela dei processi democratici, e, dall'altro, fornisca il fondamento costituzionale per il progressivo sviluppo di un *democracy toolbox*, sul modello di quello ormai consolidato in materia di Stato di diritto.

ABSTRACT (ENG)

This contribution examines the relationship between the political rights of Union citizens and the identity of the European Union in the light of the recent case law of the Court of Justice. It argues that the twin grand chamber judgments concerning membership of national political parties have extended to the field of political rights the value-oriented approach developed by the Court in the field of the rule of law. This reveals a functional relationship between the value of democracy, the principle of representative democracy, and the political rights of Union citizens, reconstructed as a “normative cascade” in which values, principles, and rights are progressively concretised and mutually reinforce one another, with the effect of recognising a broader right to political participation for Union citizens, which may also be relied upon against national rules protecting national identity. The contribution then highlights the two main legal consequences stemming from this approach. The first concerns the use of this “normative cascade” as a standard for reviewing national legislation liable to undermine the effectiveness of the abovementioned right to political participation. The second concerns an expansive interpretation of the relevant Treaty legal bases, aimed at enabling the Union institutions to develop instruments for the promotion and protection of representative democracy at both the European and national levels. In this respect, the contribution argues that a package of recently adopted Union legislative and non-legislative acts in the field of representative democracy demonstrates the growing receptiveness of the political institutions to this approach. The contribution concludes by showing that this development reveals, on the one hand, the persistent gap between the constitutionalisation of political rights and the limited harmonisation of European electoral law, with the consequent growing centrality of the Court in safeguarding democratic processes, and, on the other hand, provides the constitutional foundation for the gradual development of a democracy toolbox, modelled on the one now firmly established in the field of the Rule of law.