

No 505689

FRENCH REPUBLIC

ON BEHALF OF THE FRENCH PEOPLE

Mr B.

Mr François-Xavier Bréchet
Reporting Judge (Rapporteur)

The Conseil d'État, ruling as the Supreme Administrative
Court
(Litigation Section, 7th and 2nd Chambers combined)

M. Nicolas Labrune
Consultant Judge (Rapporteur public)

Based on the report of the 7th Chamber
of the Litigation Section

Session of 24 September 2025
Decision of 17 October 2025

Having regard to the following proceedings:

By an application and two new statements of case, registered on 1st July and on 4 and 16 September 2025 with the Litigation Secretariat of the Conseil d'État, Mr E. B. requested that the Conseil d'État:

1°) quash the implicit decision by which the French Prime Minister refused to issue a decree declaring that the ineligibility of Mr D. A. and Ms F. C. had brought their terms of office as representatives in the European Parliament to an end;

2°) order the Prime Minister to issue that decree within fifteen days.

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Having regard to the other evidence adduced;

Having regard to:

- the French Constitution;
- the Treaty on European Union;
- the European Convention for the Protection of Human Rights and Fundamental Freedoms;
- the Protocol of 8 April 1965 on the Privileges and Immunities of the European Communities;
- the Act concerning the election of representatives to the European Parliament by direct universal suffrage, annexed to the decision of the Council of 20 September 1976;
- the French Electoral Code;
- the French Criminal Code;
- the French Code of Criminal Procedure;
- French Law no 77-729 of 07 July 1977;
- the French Code of Administrative Justice;

Having heard, in open court:

- the report of Mr François-Xavier Bréchet, Master of Petitions,
- the legal opinions of Mr Nicolas Labrune, Consultant Judge;
- Having regard to the post-hearing memorandum, registered on 9 October 2025, submitted by Mr B.;

Whereas:

1. Firstly, under Article 13 of the Act of 20 September 1976 concerning the election of members of the European Parliament by direct universal suffrage “1. A seat shall fall vacant when the mandate of a member of the European Parliament ends as a result of resignation, death or withdrawal of the mandate. / (...) / 3. Where the law of a Member State makes explicit provision for the withdrawal of the mandate of a member of the European Parliament, that mandate shall end pursuant to those legal provisions. The competent national authorities shall inform the European Parliament thereof. / (...)” The second paragraph of Article 5 of the French Law of 7 July 1977 on the election of representatives to the European Parliament provides as follows: “Ineligibility shall terminate the mandate of the representative where it occurs during the mandate. (...). Termination of the mandate shall be formally established by decree.”

2. Secondly, Articles 131-10 and 131-26 of the French Criminal Code provide that deprivation of some or all of a person's civil rights, including the right to stand for election, may be imposed as an additional penalty where provided for by law. The first paragraph of Article 708 of the French Code of Criminal Procedure provides as follows: *"The execution of the sentence or sentences pronounced at the request of the public prosecutor shall take place once the decision has become final."* The fourth paragraph of Article 471 of the French Code of Criminal Procedure provides as follows: *"The criminal penalties imposed pursuant to Articles 131-4-1 to 131-11 and 132-25 to 132-70 of the French Criminal Code may be declared provisionally enforceable"*.

3. The preparatory stages show that, by a judgment of 31 March 2025, Paris Court of Justice, under the provisions cited in the previous point, first sentenced Mr A., a Member of the European Parliament, to a penalty including, as an additional penalty, a three-year period of ineligibility with provisional enforcement and, secondly, sentenced Ms C., also a Member of the European Parliament, to a penalty including, as an additional penalty, a two-year period of ineligibility with provisional enforcement. Mr B., in his capacity as an elector and on the basis of Article 25 of the Law of 7 July 1977 on the election of representatives to the European Parliament, has sought the quashing of the implicit refusal decision arising from the Prime Minister's silence in response to his request that a decree be issued declaring that the ineligibility of Mr A. and Ms C. had brought their mandates as representatives in the European Parliament to an end.

4. First, under Article 14 of the Treaty on European Union, Members of the European Parliament, who represent citizens of the European Union residing in France, participate in the legislative process of the European Union by adopting acts falling within the legal system of the Union, which is integrated into the French domestic legal system pursuant to Article 88-1 of the Constitution. Under Article 17 of the Treaty on European Union, they also possess significant powers of oversight over the European Commission, especially at the time of its confirmation or when adopting a motion of censure. Finally, by virtue of their mandate, they enjoy specific privileges and immunities under the Protocol of 8 April 1965 on the Privileges and Immunities of the European Communities. In particular, on national territory and during the sessions of the European Parliament, they enjoy the immunities accorded to members of the National Assembly and the Senate. Likewise, they may not be investigated, detained or prosecuted on account of opinions expressed or votes cast in the exercise of their functions.

5. Second, it follows from the provisions of Article 5 of the Law of 7 July 1977 on the election of representatives to the European Parliament, informed by its preparatory works, that the legislator intended to apply to those representatives the same regime of ineligibility as that applicable, under Articles LO 136 and LO 296 of the French Electoral Code, to members of the National Assembly and the Senate, in respect of whom the Constitutional Council has consistently held that the provisional enforcement of a penalty of ineligibility has no effect in itself on their current mandate. The forfeiture of their mandate can only result from a final conviction imposing such a penalty.

6. Accordingly, although representatives to the European Parliament do not participate in the exercise of national sovereignty, their situation calls for, and nothing in Article 6 of the European Convention on Human Rights relied upon by Mr B. precludes, an interpretation of the above-mentioned provisions of Article 5 of the Law of 7 July 1977 requiring that forfeiture of their mandate following a conviction imposing a penalty of ineligibility may

result only from a conviction that has become final. The Prime Minister, therefore, cannot lawfully issue a decree declaring a representative to the European Parliament ineligible following a conviction that has not become final, even if that conviction is provisionally enforceable.

7. The preparatory stages show that Mr A. and Ms C. have appealed against their convictions and that the judgment of Paris Court of Justice of 31 March 2025 has therefore not become final. Accordingly, Mr B. cannot claim that the Prime Minister was obliged to declare the end of their mandates as representatives to the European Parliament. His application must therefore be dismissed.

8. Under the circumstances of this case, there are no grounds for awarding Mr A. and Ms C. a sum to cover the costs of their legal representatives under the provisions of Article L. 761-1 of the French Code of Administrative Justice.

OPERATIVE PROVISIONS:

Article 1: The application of Mr B.'s is dismissed.

Article 2: The requests for relief submitted by Mr A. and Ms C. under Article L. 761-1 of the French Code of Administrative Justice are dismissed.

Article 3: This decision shall be notified to Mr Matthieu B., the French Prime Minister, the Minister for Europe and Foreign Affairs, Mr D. A., -and Ms F. C.