



EU CITIZENSHIP

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AIMS

Master the basics of concept of the EU citizenship

Became familiar with the main streams of CJEU case law on EU citizenship

Understand the problems linked to CJEU case law

Practice reading CJEU case law

AG COLLINS —
OPINION C-181/23
COMMISSION V
MALTA



🕒 This article is more than 3 years old

Revealed: residency loophole in Malta's cash- for-passports scheme

📹 'Golden passport' schemes grant citizenship to wealthy foreigners willing to pay.

Composite: Jeffrey Coolidge/Getty Images, Getty images, Guardian Design Team

IMAGINE YOU WERE A LEGAL COUNSEL TO





EU CITIZENSHIP BASICS



CONCEPTUAL UNDERPINNINGS

Identity, belongingness

Exclusive status?

Creating citizens

Habermas – constitutional patriotism

CONCEPTUAL UNDERPINNINGS

Three views of co-existing **multiple demoi** (decoupling of nationality from citizenship – membership in civil and political rather than ethno-cultural terms, i.e. the Union composed of citizens not sharing the same nationality ([Weiler](#)))

- 1) Concentric circles
- 2) Simultaneous belonging
- 3) Variable geometry: MS nationality and EU citizenship totally interdependent

HISTORICAL OVERVIEW

1970s: a European identity needed to deepen integration

Mainly European Parliament activities

Maastricht: especially Spain pushed for the inclusion of citizenship

Denmark opt-out ([Edinburgh Agreement 1992](#))

‘Citizenship

The provisions of Part Two of the Treaty establishing the European Community relating to citizenship of the Union give nationals of the Member States additional rights and protection as specified in that Part. They do not in any way take the place of national citizenship. The question whether an individual possesses the nationality of a Member State will be settled solely by reference to the national law of the Member State concerned.’

(See **Amsterdam:** ‘Citizenship of the Union shall complement and not replace national citizenship.’)

(Denmark back)

DETERMINED BY MS NATIONALITY

Article 20

(ex Article 17 TEC)

1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.

EU CITIZENSHIP RIGHTS (ART. 20 ET SEQ.)

PART TWO

NON-DISCRIMINATION AND CITIZENSHIP OF THE UNION

2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have, inter alia:

- (a) the right to move and reside freely within the territory of the Member States;
- (b) the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;
- (c) the right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State;
- (d) the right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language.

These rights shall be exercised in accordance with the conditions and limits defined by the Treaties and by the measures adopted thereunder

EU CITIZENSHIP AS A FUNDAMENTAL STATUS

CJEU: *Grzelczyk*

31 Union citizenship is destined to be the fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for.

DETERMINED BY MS NATIONALITY

Article 20

(ex Article 17 TEC)

1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.

DETERMINED BY MS NATIONALITY

C-135/08 *Rottman*

- Gave up Austrian citizenship to take up German citizenship. Fraud discovered, stripped of German citizenship, left Mr Rottman stateless.
- CJEU - 'due regard' to EU law in situations that it applies to.
- Could justify on grounds of solidarity and good faith, but must be compatible with proportionality.

DETERMINED BY MS NATIONALITY

C-135/08 **Rottman**

42 *It is clear that the situation of a citizen of the Union who, like the applicant in the main proceedings, is faced with a decision withdrawing his naturalisation, adopted by the authorities of one Member State, and placing him, after he has lost the nationality of another Member State that he originally possessed, in a position capable of causing him to lose the status conferred by Article 17 EC and the rights attaching thereto falls, by reason of its nature and its consequences, within the ambit of European Union law. (+ proportionality test by national courts)*

C/118-20 *JY V WIENER LANDESREGIERUNG*

1. The situation of a person who, having the nationality of one Member State only, renounces that nationality and loses, as a result, his or her status of citizen of the Union, with a view to obtaining the nationality of another Member State, following the assurance given by the authorities of the latter Member State that he or she will be granted that nationality, falls, by reason of its nature and its consequences, within the scope of EU law where that assurance is revoked with the effect of preventing that person from recovering the status of citizen of the Union.
2. Article 20 TFEU must be interpreted as meaning that the competent national authorities and, as the case may be, the national courts of the host Member State are required to ascertain whether the decision to revoke the assurance as to the grant of the nationality of that Member State, which makes the loss of the status of citizen of the Union permanent for the person concerned, is compatible with the principle of proportionality in the light of the consequences it entails for that person's situation. That requirement of compatibility with the principle of proportionality is not satisfied where such a decision is based on administrative traffic offences which, under the applicable provisions of national law, give rise to a mere pecuniary penalty.

LOSING EU CITIZENSHIP

Opinion AG Collins C-673/20 EP v Préfet du Gers and Institut national de la statistique et des études économiques (24 Feb 2022)

23. Given the lucidity of those provisions, it is no surprise that the case-law of the Court, notably the judgments in *Rottmann*, (4) in *Tjebbes* (5) and, most recently, in *Wiener Landesregierung*, (6) explicitly recognises that Member **States retain the power to determine who is a national and, in consequence, who is a Union citizen.** That division of competence is unaltered by the case-law of the Court, to the effect that, in situations covered by Union law, Member **States must have due regard to Union law when they exercise powers such as those governing the acquisition and the loss of nationality.** (7)

LOSING EU CITIZENSHIP

Opinion AG Collins C-673/20 EP v Préfet du Gers and Institut national de la statistique et des études économiques (24 Feb 2022)

42. To my mind, EP cannot rely upon the judgments in *Rottmann* (36) and in *Tjebbes* (37) by asserting that, had account been taken of her personal circumstances, such an assessment might have led to a different outcome in her case. The principle of proportionality requires that a competent authority balance conflicting rights and norms before taking a decision affecting an individual. The circumstances of this case require no balancing by the deciding authority that would take account of EP's personal circumstances. As a direct result of the sovereign decision of the United Kingdom to withdraw from the European Union, a person in EP's position lost the right to vote and to stand as a candidate in municipal elections in France, her Member State of residence. It is that sovereign decision, not that of a Member State or any authority thereof, that caused EP to lose the benefit of those rights. In contrast to the situations that arose for consideration in both of the judgments in *Rottmann* (38) and in *Tjebbes*, (39) neither the decision-maker nor the referring court had or have any power to accede to EP's demands. No consideration of EP's individual circumstances could have led to another outcome consonant with Union law. For the same reasons, the recent judgment of the Court in *Wiener Landesregierung* (40) is of no avail to EP.

43. I would add that, in so far as EP seeks to assimilate her position to that of stateless persons, which formed part of the background to the judgments in *Rottmann* (41) and in *Wiener Landesregierung*, (42) it may be observed that she is a British national. She can address any issue that she may have concerning her status or rights as a British national to the United Kingdom authorities. France or the European Union are incapable of playing any role in such a dispute.

LOSING EU CITIZENSHIP

Opinion AG Collins C-673/20 EP v Préfet du Gers and Institut national de la statistique et des études économiques (24 Feb 2022)

55. For the reasons set out in detail in points 19 to 52 above, by virtue of the United Kingdom's decision to invoke the process under Article 50 TEU and of the Withdrawal Agreement made between the European Union and the United Kingdom as a consequence thereof, British nationals ceased to be nationals of a Member State of the European Union. They accordingly ceased to be Union citizens. Any legal consequences arising from EP's residence outside of the United Kingdom for the exercise of voting rights in that State's elections are a matter between her and the United Kingdom, a third State, and thus fall outside of the jurisdiction of this Court.

56. Accordingly, I propose that the Court respond to the referring court's first question that Article 50 TEU and the Withdrawal Agreement have the effect of terminating, as of midnight (CET) on 31 January 2020, the Union citizenship of British nationals, including those who had, before the end of the transition period, exercised their rights to freedom of movement and to settle freely in the territory of another Member State.

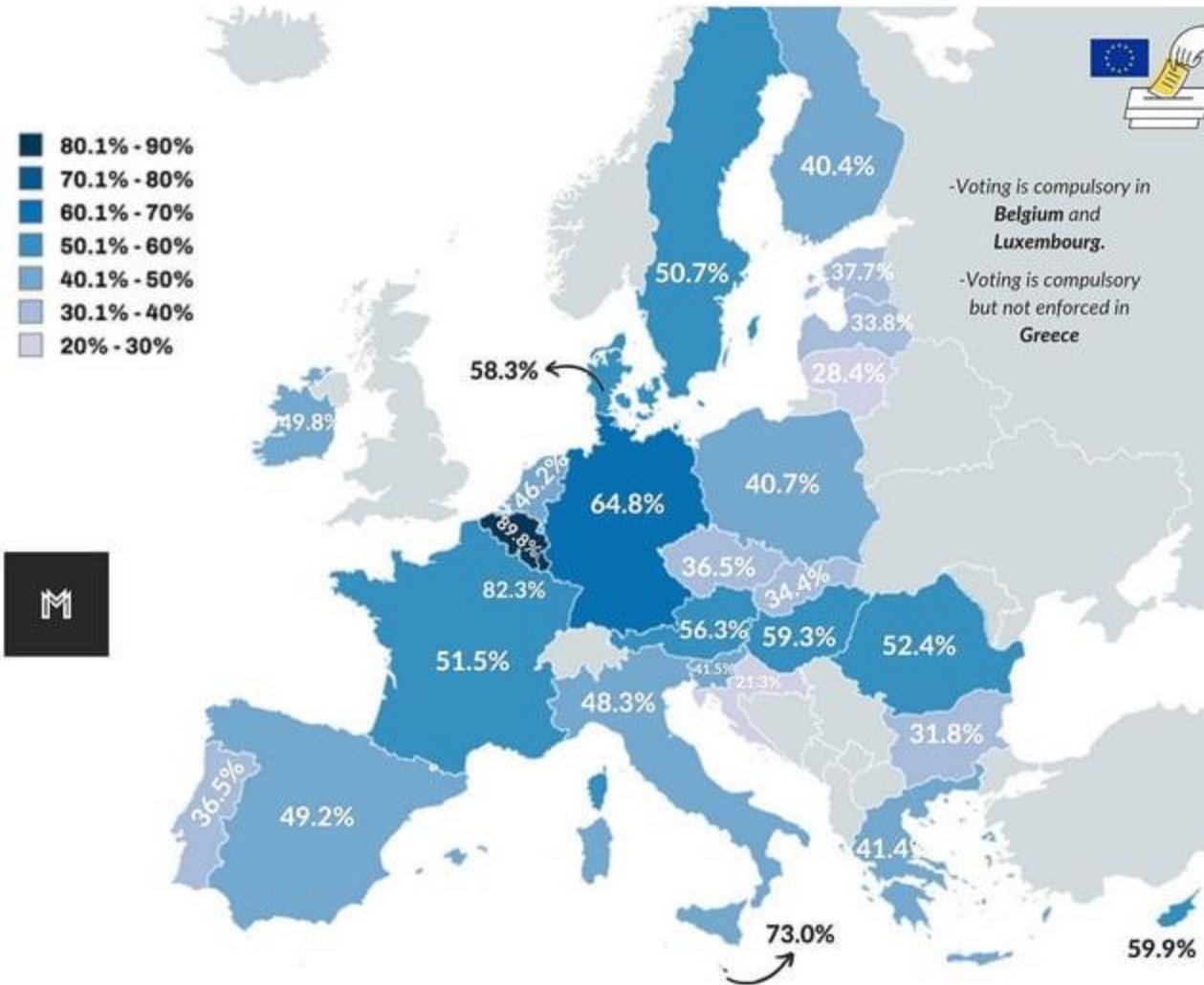


EU CITIZENSHIP RIGHTS



2024 European election turnout

Percentage, by country



EUROPEAN CITIZENS' INITIATIVE (LISBON TREATY)

11(4) TEU

4. Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.

See [Ecomm website](#)

AMBITIOUS PATHS NOT TRAVELLED

Opinion of **AG Jacobs** C-168/91 *Konstantinidis*

"Christos Konstantinidis" or "Hrestos Konstantinides"?

46. In my opinion, a Community national who goes to another Member State as a worker or self-employed person under Articles 48, 52 or 59 of the Treaty is entitled not just to pursue his trade or profession and to enjoy the same living and working conditions as nationals of the host State; he is in addition entitled to assume that, wherever he goes to earn his living in the European Community, he will be treated in accordance with a common code of fundamental values, in particular those laid down in the European Convention on Human Rights. In other words, he is entitled to say "civis europeus sum" and to invoke that status in order to oppose any violation of his fundamental rights.

AMBITIOUS PATHS NOT TRAVELLED

C-168/91 **KONSTANTINIDIS**

14 There is nothing in the Treaty to preclude the transcription of a Greek name in Roman characters in the registers of civil status of a Member State which uses the Roman alphabet. It is therefore for the Member State in question to adopt legislative or administrative measures laying down the detailed rules for such transcription, in accordance with the prescriptions of any international conventions relating to civil status to which it is a party.

15 Rules of that kind are to be regarded as incompatible with Article 52 of the Treaty only in so far as their application causes a Greek national such a degree of inconvenience as in fact to interfere with his freedom to exercise the right of establishment enshrined in that article.

16 Such interference occurs if a Greek national is obliged by the legislation of the State in which he is established to use, in the pursuit of his occupation, a spelling of his name derived from the transliteration used in the registers of civil status if that spelling is such as to modify its pronunciation and if the resulting distortion exposes him to the risk that potential clients may confuse him with other persons.

RIGHT TO MOVE AND RESIDE (ART. 21 TFEU)

Article 21

1. Every 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.

C-413/99 *Baumbast* (breaking the FM and economic activity link)

83 Moreover, the Treaty on European Union does not require that citizens of the Union pursue a professional or trade activity, whether as an employed or self-employed person, in order to enjoy the rights provided in Part Two of the EC Treaty, on citizenship of the Union. Furthermore, there is nothing in the text of that Treaty to permit the conclusion that citizens of the Union who have established themselves in another Member State in order to carry on an activity as an employed person there are deprived, where that activity comes to an end, of the rights which are conferred on them by the EC Treaty by virtue of that citizenship.

ART 21(1) TFEU RIGHTS (BASED ON CJEU CASE LAW)

Right to leave the home state

The initial right of entry

The right of residence

The right to enjoy social advantages without discrimination when lawfully resident in a host state

The right to regular review of decisions



FAMOUS EU CITIZENSHIP JUDGMENTS

RIGHT TO MOVE AND RESIDE + NON-DISCRIMINATION

PART TWO NON-DISCRIMINATION AND CITIZENSHIP OF THE UNION

Article 18 (ex Article 12 TEC)

Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

Article 20 (ex Article 17 TEC)

1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.

2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have, inter alia:

(a) the right to move and reside freely within the territory of the Member States;

(...)

Article 21

(ex Article 18 TEC)

1. Every 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.

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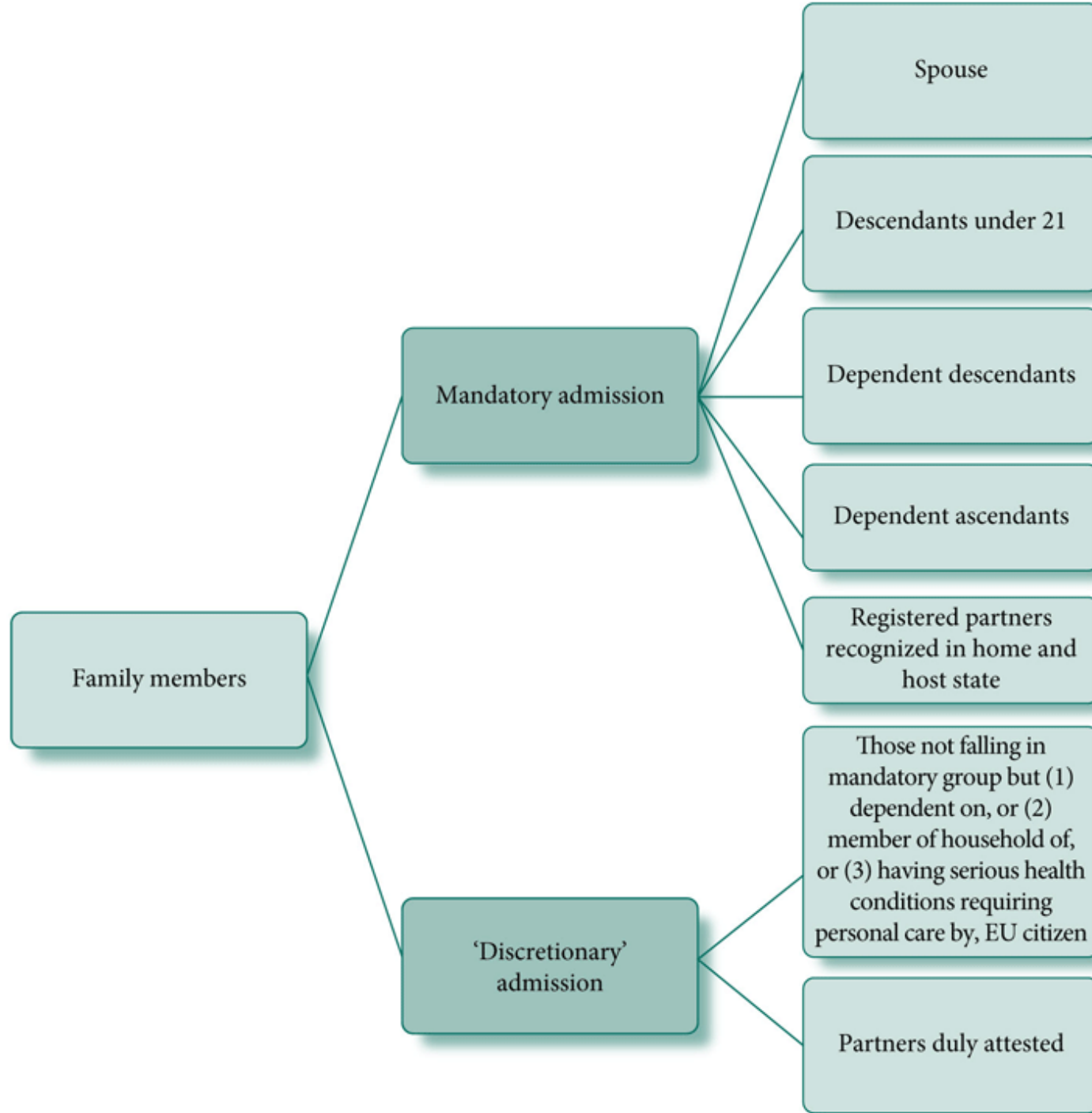
Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance)


OJ L 158, 30.4.2004, p. 77–123 (ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV)

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EARLY CITIZENSHIP CASE LAW

DIRECT EFFECT OF ART 21

EARLY CITIZENSHIP CASE LAW

C-85/96 *Martinez Sala*

- A Spanish mother living in Germany, but didn't possess residence permit – hence, refused child allowance
- **German govt:** yes, it is discrimination (Germans do not need to produce a residence permit in order to receive a child allowance), but the case does not fall within the scope of EU law because the person is not a worker
- **Martinez Sala:** (After Maastricht) – I am an EU citizen, thus the case falls within the scope of the EU law. And therefore the principle of non-discrimination applies.

61 As a national of a Member State lawfully residing in the territory of another Member State, the appellant in the main proceedings comes within the scope ratione personae of the provisions of the Treaty on European citizenship.

62 Article 8(2) of the Treaty attaches to the status of citizen of the Union the rights and duties laid down by the Treaty, including the right, laid down in Article 6 of the Treaty, not to suffer discrimination on grounds of nationality within the scope of application ratione materiae of the Treaty.

63 It follows that a citizen of the European Union, such as the appellant in the main proceedings, lawfully resident in the territory of the host Member State, can rely on Article 6 of the Treaty in all situations which fall within the scope ratione materiae of Community law, including the situation where that Member State delays or refuses to grant to that claimant a benefit that is provided to all persons lawfully resident in the territory of that State on the ground that the claimant is not in possession of a document which nationals of that same State are not required to have and the issue of which may be delayed or refused by the authorities of that State.

64 Since the unequal treatment in question thus comes within the scope of the Treaty, it cannot be considered to be justified: it is discrimination directly based on the appellant's nationality and, in any event, nothing to justify such unequal treatment has been put before the Court.

EARLY CITIZENSHIP CASE LAW

C-184/99 *Grzelczyk*

- French student applied for a student grant in Belgium, refused because not Belgian.
- Only bar to grant was nationality, treatment prohibited by Art 18.
- Union citizenship as the fundamental status, ‘(...) the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for’
- Lawfully resident EU citizens can rely on Art 18 against all treatment falling within material scope of the Treaty.
- ‘The fact that a Union citizen pursues university studies in a Member State other than the State of which he is a national cannot, of itself, deprive him of the possibility of relying on the prohibition of all discrimination on grounds of nationality’.

EARLY CITIZENSHIP CASE LAW

C-413/99 *Baumbast*

A German married with a Colombian wife and two children.

Baumbast worked in the UK and stayed there with his family for three years

Then, he worked in Asia and Africa. His family stayed in the UK.

He financially supported the family, travelled to Germany to get German health insurance

The Home Office refused to renew his family's permits.

The **UK court**: Baumbast neither a worker nor a person covered by the Citizenship Directive 2004/38. Sickness insurance did not cover emergency treatment in the UK. Did he have an independent right of residence as an EU citizen under Art 21 TFEU?

83 Moreover, the Treaty on European Union does not require that citizens of the Union pursue a professional or trade activity, whether as an employed or self-employed person, in order to enjoy the rights provided in Part Two of the EC Treaty, on citizenship of the Union. Furthermore, there is nothing in the text of that Treaty to permit the conclusion that citizens of the Union who have established themselves in another Member State in order to carry on an activity as an employed person there are deprived, where that activity comes to an end, of the rights which are conferred on them by the EC Treaty by virtue of that citizenship.

84 As regards, in particular, the right to reside within the territory of the Member States under Article 18(1) EC, that right is conferred directly on every citizen of the Union by a clear and precise provision of the EC Treaty. Purely as a national of a Member State, and consequently a citizen of the Union, Mr Baumbast therefore has the right to rely on Article 18(1) EC.

C-523/11 *Prinz*

- German student lived with family in Tunisia for a decade, returned to Germany to undertake last two years of school. Then took up a university place in Netherlands, supported by German grant. Applied to extend grant, but refused on basis that needed minimum of three years continuous residence in Germany.
- CJEU – disproportionate restriction. Although applied without distinction, condition of uninterrupted residence was a restriction on right to movement of citizens that was ‘likely to dissuade nationals ... from exercising their right to freedom of movement and residence in another Member State, given the impact that exercising that freedom is likely to have on the right to the education or training grant’.



RIGHT TO MOVE *AND (OR?)* RESIDE

BRINGING TCN FAMILY MEMBERS INTO YOUR HOME STATE IF YOU DON'T MOVE?

If denied this, surely you would be in a worse position overall compared to an EU migrant living in your state, who would be allowed to bring their family to live with them. Conflicts with the ideals of EU citizenship?

But CJEU has legally distinguished this situation – it would be wholly internal, and thus fall outside the scope of the Treaty.

But the CJEU still wants to see the citizenship provisions used to facilitate better lives for all EU citizens – so finds creative cross border connections in these situations.

WHAT ABOUT A WHOLLY INTERNAL SITUATION?

C-34/09 *Ruiz Zambrano*

- Columbians living in Belgium – children gained Belgian citizenship.
- Parents threatened with deportation to South America. Claimed that children would be forced to go with them, this would violate their citizenship rights.
- Although the children had never moved, and had no other cross border connections, if the parents were deported then this would cause the children to have to leave the EU, thus violating the substance of their citizenship rights.
- CJEU - substance of EU citizenship includes a right to live in the EU.
- Therefore, parents must be able to derive a right to reside from their children.
- **Deprivation effect**

- 42 In those circumstances, Article 20 TFEU precludes national measures which have the effect of depriving citizens of the Union of the genuine enjoyment of the substance of the rights conferred by virtue of their status as citizens of the Union (see, to that effect, *Rottmann*, paragraph 42).
- 43 A refusal to grant a right of residence to a third country national with dependent minor children in the Member State where those children are nationals and reside, and also a refusal to grant such a person a work permit, has such an effect.
- 44 It must be assumed that such a refusal would lead to a situation where those children, citizens of the Union, would have to leave the territory of the Union in order to accompany their parents. Similarly, if a work permit were not granted to such a person, he would risk not having sufficient resources to provide for himself and his family, which would also result in the children, citizens of the Union, having to leave the territory of the Union. In those circumstances, those citizens of the Union would, in fact, be unable to exercise the substance of the rights conferred on them by virtue of their status as citizens of the Union.

C-34/09 *RUIZ ZAMBRANO*

Article 20 TFEU is to be interpreted as meaning that it precludes a Member State from refusing a third country national upon whom his minor children, who are European Union citizens, are dependent, a right of residence in the Member State of residence and nationality of those children, and from refusing to grant a work permit to that third country national, in so far as such decisions deprive those children of the genuine enjoyment of the substance of the rights attaching to the status of European Union citizen.

DEPRIVATION OR IMPEDING EFFECT?

C-434/09 *McCarthy*

A national of both the UK and Ireland, has never used free movement

After marrying a Jamaican man, used her Irish passport to apply for an UK residence permit. Her husband applied as a spouse of an EU citizen.

49 However, no element of the situation of Mrs McCarthy, as described by the national court, indicates that the national measure at issue in the main proceedings has the effect of depriving her of the genuine enjoyment of the substance of the rights associated with her status as a Union citizen, or of impeding the exercise of her right to move and reside freely within the territory of the Member States, in accordance with Article 21 TFEU. Indeed, the failure by the authorities of the United Kingdom to take into account the Irish nationality of Mrs McCarthy for the purposes of granting her a right of residence in the United Kingdom in no way affects her in her right to move and reside freely within the territory of the Member States, or any other right conferred on her by virtue of her status as a Union citizen.

50 In that regard, by contrast with the case of *Ruiz Zambrano*, the national measure at issue in the main proceedings in the present case does not have the effect of obliging Mrs McCarthy to leave the territory of the European Union. Indeed, as is clear from paragraph 29 of the present judgment, Mrs McCarthy enjoys, under a principle of international law, an unconditional right of residence in the United Kingdom since she is a national of the United Kingdom.

- 52 As the Court noted in Case C-353/06 *Grunkin and Paul* [2008] ECR I-7639, in circumstances such as those examined in *García Avello*, what mattered was not whether the discrepancy in surnames was the result of the dual nationality of the persons concerned, but the fact that that discrepancy was liable to cause serious inconvenience for the Union citizens concerned that constituted an obstacle to freedom of movement that could be justified only if it was based on objective considerations and was proportionate to the legitimate aim pursued (see, to that effect, *Grunkin et Paul*, paragraphs 23, 24 and 29).
- 53 Thus, in *Ruiz Zambrano* and *García Avello*, the national measure at issue had the effect of depriving Union citizens of the genuine enjoyment of the substance of the rights conferred by virtue of that status or of impeding the exercise of their right of free movement and residence within the territory of the Member States.

DEPRIVATION OR IMPEDING EFFECT?

C-434/09 Dereci

A Turkish national residing illegally in Austria, with his Austrian kids

Kids are minors, never exercised right to free movement

What about right to family life?

64 On this basis, the Court has held that Article 20 TFEU precludes national measures which have the effect of depriving Union citizens of the genuine enjoyment of the substance of the rights conferred by virtue of that status (see *Ruiz Zambrano*, paragraph 42).

65 Indeed, in the case leading to that judgment, the question arose as to whether a refusal to grant a right of residence to a third country national with dependent minor children in the Member State where those children are nationals and reside and a refusal to grant such a person a work permit have such an effect. The Court considered in particular that such a refusal would lead to a situation where those children, who are citizens of the Union, would have to leave the territory of the Union in order to accompany their parents. In those circumstances, those citizens of the Union would, in fact, be unable to exercise the substance of the rights conferred on them by virtue of their status as citizens of the Union (see *Ruiz Zambrano*, paragraphs 43 and 44).

66 It follows that the criterion relating to the denial of the genuine enjoyment of the substance of the rights conferred by virtue of European Union citizen status refers to situations in which the Union citizen has, in fact, to leave not only the territory of the Member State of which he is a national but also the territory of the Union as a whole.

ANY FURTHER CATEGORIES OF FAMILY MEMBER? CREATIVE CROSS BORDER CONNECTIONS?

Chen

- Mrs Chen living and working for a Chinese firm in Wales, with her partner, as temporary migrants.
- Had child in Northern Ireland – gained Irish citizenship.
- Mrs Chen claimed that her baby's status as an EU citizen entitled her to reside permanently in the UK as the carer of the child.
- CJEU - 'a young child can take advantage of the rights of free movement and residence guaranteed by EU law' just as much as an adult.
- Refusing to allow the parent, whatever their nationality, who is the 'carer of a child' to whom EU law rights are granted, to reside with that child in a host MS would 'deprive the child's right of residence of any useful effect',
- 'Enjoyment by a young child of a right of residence necessarily implies that the child is entitled to be accompanied by the person who is his or her primary carer and accordingly that the carer must be in a position to reside with the child in the host Member State'.



PROBLEM

Reverse discrimination



SOMETHING INTERESTING TO FINISH WITH



EU CITIZENSHIP AND NAMES

A taster:

C-186/91 *Konstantinidis* (Christos Konstantinidis OR Hréstos Kónstantinidés?)

C-148/02 *Garcia Avello* (OR Garcia Weber?)

C-208/09 *Ilonka Sayn-Wittgenstein* (OR Fürstin von Sayn-Wittgenstein?)