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EU Citizenship as a derived status v. a quasi-independent source of rights: an overview of the CJEU's jurisprudence

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Abstract

The institute of the Union citizenship is initially defined as a derived or complementary legal status. At the same time, a sequential analysis of the CJEU's jurisprudence on citizenship law suggests an alternative definition, where it performs the role of a dynamic tool giving rise to a constantly evolving range of rights. Such definition eventually goes beyond the concept of the dependent legal status and starts to impose own complementary rules onto the initially autonomous national idea of citizenship.

Art 20 of the TFEU establishes EU citizenship and defines it as a complementary status to national citizenship of EU Member States. In this way, EU citizens acquire an additional layer of rights that does not substitute their national legal status. The nature of those political, economic and social rights presents a plot for tense discussions since their very creation – although these rights have a derivative character and thus initially depend on the existence of national citizenship, the jurisdiction of the Court of Justice of the European Union (CJEU) has many times proven that EU citizenship can often serve as an independent source of rights not only to EU citizens but also to third-country nationals, thus occasionally fragmenting the idea of an initially autonomous national citizenship law.

This brief aims to analyse the range of CJEU cases outlining the evolution of the application of EU citizenship law, and tries to define its character through traits of both the common idea of the citizenship familiar to nation-states and a novel status in a form of a dynamic tool giving rise to a constantly evolving range of rights that eventually goes beyond the EU borders and competences and becomes a quasi-independent legal status. This phenomenon often leads to situations where third-country nationals are "protected" by EU citizenship even in cases where the national citizenship law of the EU country where they reside states the opposite; similarly, it covers

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those scenarios where third-country nationals with dual citizenship can still benefit from supranational citizenship rights even in cases where they have never exercised their national citizenship from which the EU citizenship has derived from.

The story starts with the *Micheletti* case,[1] where the CJEU's decision initially accentuated the fundamental status of supranational rights even before the establishment of the EU citizenship concept *per se.* Mr Micheletti had dual citizenship – one of Argentina – where he has been residing the whole his life, and one of Italy – which he acquired after his parent following the Italian *jus sanguinis.* However, once Mr Micheletti decided to settle as a dentist in Spain, his application for permanent residency was rejected by Spanish authorities, who refused to recognise his right to freedom of establishment and appealed to the international law principle of *effective nationality.* This principle means that in controversial cases of dual nationality a person is to be considered as having the nationality of that state with which he has a genuine connecting link. Thus, Spanish authorities claimed that Mr Micheletti could not invoke the supranational rights granted to him by the fact of the acquisition of Italian nationality since he had never actively exercised it. The CJEU set aside this argument drawing a bold line between the general international law principle and the EU legal order system, stating that the nature of the supranational rights of the Member States' citizens is fundamental and, thus, these rights cannot be conditional or questionable once they have been granted through the acquisition of the citizenship of one of the Member States. In this way, the concept of fundamental freedoms of the EU Single Market served as a strong protection tool even before the uniform legal status of the EU citizen was established, and precluded the Member States from alienating those freedoms either by national migration law or general international legal principles.

The concept of fundamental rights consolidated by the EU citizenship status was further widened up in the *Ruiz Zambrano* case.[2] Mr Zambrano and his wife were both Columbian nationals and applied for asylum in Belgium. However, their application was rejected, and they were ordered to leave the country. While continuing to reside in Belgium seeking for the legalisation of their stay, the couple had two children, who acquired Belgian citizenship by *jus soli*. Mr and Mrs Zambrano applied for a residence card and work permit on the ground of having ascendants of Belgian nationality. However, those applications were rejected by Belgian authorities that claimed that the parents intentionally failed to obtain Columbian nationality for their children for regulating own migration issues in Belgium. Although in principle the case had a purely internal character, the CJEU unambiguously stated the relevance of the EU citizenship law. Thus, the Court held that the refusal to grant residence and work permit and subsequent deportation of parents would deprive children who were EU citizens from the genuine enjoyment of the substance of the rights conferred by virtue of their status as citizens of the Union.[3] In this way, we can observe a situation where the EU citizenship serves as a source of derived rights for third-country nationals: the act of expelling Columbian parents would mean a forced leave of their

[1] Judgment of the Court of 7 July 1992, *Mario Vicente Micheletti and others v Delegación del Gobierno en Cantabria,* C-369/90, EU:C:1992:295.

[2] Judgment of the Court (Grand Chamber) of 8 March 2011, *Gerardo Ruiz Zambrano v Office national de l'emploi*, C-34/09, EU:C:2011:124.

[3] *Zambrano*, para. 42

children who were EU citizens accordingly. In this sense, the concept of the fundamental status of the Union citizenship creates a semi-independent legal concept resembling Hannah Arendt's definition of citizenship as a right to have rights,[4] which is capable of giving a new layer of rights to third-county nationals even in situations where national migration law does not grant this kind of protection.

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Indeed, the CJEU has often defined EU citizenship as a fundamental status which, in line with the renowned principle of "*effet utile*", has many times stirred national legal and social security systems as, for example, in the *Grzelczyk* case,[5] where a French student studying in Belgium applied for and was later denied the minimum subsistence allowance since it can only be granted to those that exercise the freedom of movement as workers in Belgium as well as to Belgian students. The CJEU found this practice violating the principle of equal treatment and once again underlined that '*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.*'

While the jurisprudence of the CJEU has indeed developed the derivative nature of the Union citizenship occasionally giving it a form of a semi-independent legal status, which creates a range of non-alienable rights and is considered to be a fundamental legal category, the question of the autonomy degree of the supranational rights becomes even more interesting when we start thinking about the concept of the loss of national citizenship, statelessness and the initially derivative character of EU supranational rights.

The judgement in *Tjebbes*[6] is a recent example of how EU citizenship law progressively intervenes into national legal orders in substantial and even more strongly in procedural matters regarding cases of loss of citizenship by operation of law.
The case concerned four applicants – all being nationals of the Netherlands and of a third-country, whose applications for the renewal of passports were rejected on the grounds of Dutch citizenship law, which states that a national gets an automatic loss of citizenship when residing outside of Netherlands for a ten-year period. Fairly, the CJEU admitted that this is the sole competence of the Member States to define the conditions for acquisition and loss of nationality underpinning its previous

[4] Hannah Arendt, *The Origins of Totalitarianism* (by Samantha Power, 2004, originally published: 1st ed. New York: Harcourt, Brace, 1951), p. 379
[5] Judgment of the Court of 20 September 2001, *Rudy Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve,* C-184/99, EU:C:2001:458
[6] Judgment of the Court (Grand Chamber) of 12 March 2019, *M.G. Tjebbes and Others v Minister van Buitenlandse Zaken*, C-221/17, ECLI:EU:C:2019:189

decision in *Rottmann* – in the end, Union citizenship is a derived legal status. Paradoxically, the CJEU also introduced a complementary procedural rule obliging Member States to examine each case of loss of citizenship individually and with due regard to the principle of proportionality including also the assessment of the future consequences of the denaturalization process.

Although the CJEU has finally concluded that the legal provision prescribing an automatic loss of citizenship after a ten-year non-residency in a country is a proportionate measure and can be justified by the intention of a state to have a genuine connecting link with its nationals, the judgement still presents an example of greater evolution of EU citizenship as a special legal status, which is able to render obligations vertically. An obligatory examination of the proportionality test in cases of denaturalisation means that the institute of EU citizenship ceases to exist in an absolute line with the national legal status and creates situations when initially dependent supranational citizenship imposes independent rules onto the originally autonomous level of national law.

The latest example of how EU citizenship law continues to serve as a source of rights providing greater protection to third-country nationals when Member States' law prescribes the opposite is the *Bajratari* case.[7] Similar to Zambrano judgement, the legal issue concerned the right to residence of third-country national parents whose minor children were citizens of Northern Ireland. The EU Citizens' Rights Directive, in this situation, requires the parents to meet two conditions to be eligible for residency: to show that they possess sufficient resources to reside in a country and to have a valid insurance cover. The UK authorities rejected their application for residence after revealing that the resources the father gained resulted from unlawful employment and thus considered the first condition not to be satisfied. After the case reached the CJEU, the Court held that the unlawful nature of the income cannot serve as a valid ground for UK authorities to consider that the requirement of sufficient resources was not met, and added: "*a further requirement relating to the origin of the resources provided by that parent would constitute a disproportionate interference with the exercise of the Union citizen minor's fundamental rights of free movement and of residence*".[8]

The analysis of a range of judgements related to the scope of application of the Union citizenship law enables to trace the evolution of the institute of the supranational citizenship, which occasionally intervenes into the national citizenship and migration law not only creating an additional strong layer of legal protection of free movement and residence rights but also often serving as an independent instrument creating rights for both EU nationals and for third-country citizens when national legal order prescribes lack of those claimable rights.

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[7] Judgment of the Court (First Chamber) of 2 October 2019, *Ermira Bajratari v Secretary of State for the Home*, C-93/18, not published.

[8] Bajratari*, para. 42*

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