Briefing Paper

European Citizenship: More Than Merely Financial Integration

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Introduction

Is European Citizenship merely a mechanism for a deepening financial integration of the European Union? Or is there a deeper meaning and a deeper reasoning for the development of the concept of European Union Citizenship into an all-encompassing philosophy which gives rights and stretches into all areas of life for member state citizens?

In order to critically discuss this we must look at the concept of citizenship of the Union and its evolution in particular its role in the integration of European Union law with that of member states domestic law. We must also examine whether European Union Citizenship has indeed evolved beyond being merely a mechanism for economic participation in the internal market with a view to discovering its current position in the law of the European Union in particular through the various case law given by the European Court of Justice on the subject.

European Union Citizenship Concepts

Firstly we will examine the concept and the evolution of European Union Citizenship as both a theory and as a reality for the nationals of member states. Although the concept of citizenship within the European Union has been part of the landscape of Europe for many decades as Williams tells us; *'it is still a struggle to obtain a comprehensible outline of what it means and how it is designed to develop'*[1] it was not formally introduced and added to the EC Treaty until the Treaty on European Union in 1992 where under Art. 20(1) TFEU the principle of 'Citizenship of the Union' was established and Art. 21(1) TFEU where it is stated that; *'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 Treaty'*.

[1] A Williams, The Ethos Of Europe – Values, Laws & Justice In The EU (1st edition, Cambridge University Press, 2010) 225

These provisions listed specifically in Art. 20(2) TFEU a number of rights which European Union Citizens can enjoy such as political rights including voting rights and rights to see European Union documentation, rights to free movement and to reside and rights to consular protection outside the country of their nationality. This has as Barnard tells us; '*started a lengthy and on-going debate about the nature of EU citizenship'*[2] which has raged on ever since.

One of the many academic debates on this issue is the idea of whether Union Citizenship should be based on a policy of inclusion or exclusion. The type of thinking that citizens of the European Union should enjoy the benefit of a wide range of political, civil, economic and social rights could be described as 'social citizenship'[3]. It is true in this that due to the introduction of Citizenship of the Union member states are no longer free to exclude others and the power to discriminate is now very limited within a member state to such things as national elections and certain sensitive occupations, as Chalmers, Davies and Monti tell us; *'National citizenship may still exist, but it confers very few special rights. It is, therefore diminished and constrained'*[4]. Furthermore, Kostakopoulou states that; *'the reduction of European citizenship to a transnational citizenship downplays both the resourcefulness of Union citizenship and the supranational character of EU law…Above all, it conceals the extent to which European Union citizenship penetrates and subverts national citizenship'*[5]

As we can see citizenship within the European Union is a convoluted area and is attempting to limit the extent to which a member state can exercise a power to discriminate and exclude other member state nationals. This concept of limiting the power of Member States to discriminate against nationals of other Member States and to further the powers of the EU through citizen's right has formed the bedrock of the case law surrounding Citizenship of the Union.

[2] C Barnard, The Substantive Law Of The EU; The Four Freedoms (3rd edition, OUP, 2010) 418
[3] M Dougan, 'Free Movement: The Work seeker As Citizen' (2001) 4 CYELS 93, 103
[4] D Chalmers, G Davies, G Monti, European Union Law (2nd end, Cambridge University Press, 2010) 446
[5] D Kostakopoulou, 'European Union Citizenship: Writing The Future' (2007) 13(5) European Law Journal 623

European Courts of Justice Case Law Development

We will now consider the development of the principles of European Union Citizenship with regards to the decisions of The European Court of Justice (ECJ) and their evolution over the course of time. Craig and De Burca tell us that; *'The ECJ's rulings on EU Citizenship have been important in several ways'*[6] and as we will discuss the ECJ has established that the Treaty provisions on citizenship create certain autonomous rights which are independent of other Treaty provisions which regulate movement of persons. Also as Craig and De Burca state *'The ECJ has linked the provisions on citizenship with the prohibition on discrimination on grounds of nationality in a way which has strengthened the rights and entitlement of EU nationals and their families – both in host Member States and in their own – on matters such as social benefit, taxation criminal procedures and dual nationality situations'*[7] we will examine these ideas through the development of the ECJ case within the score of Union Citizenship.

The ECJ has continually reiterated their stance on European Union Citizenship which was first stated in the case of *Grzelczyk; 'Union citizenship is destined to be the fundamental status of nationals of the Member States'*[8]. The old rule on European Union Citizenship was set by the case of *Lebon*[9] where it was said that a member state is under no obligation to give social advantages to job seekers. This same principle at the time was thought to apply to all non-economically active persons, and indeed those people only qualified for residence if they did not become a *'burden on the social security system of the host member state'*[10].

[6] P Craig, G De Burca, EU Law; Text, Cases and Materials (5th edition, OUP, 2011) 819
[7] P Craig, G De Burca, EU Law; Text, Cases and Materials (5th edition, OUP, 2011) 819
[8] (Case C-184/99) Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve [2001] ECR I-6193, [31]
[9] (Case 316/85) Centre public d'aide sociale de Courcelles v Marie-Christine Lebon [1987] ECR 2811
[10] Directive 2004/38/EC of the European Parliament and 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

However, the case of *Martinez Sala v Freistaat Bayern*[11] was the first to begin to explore the extent to which a non-economically active person can claim social advantages in a host member state and claim equal treatment in respect of social advantages under Art. 21(1) TFEU. This centred on a Spanish national who had lived in Germany since the age of twelve. In 1993 the German authorities rejected her application for a child-raising allowance on the grounds that she was not a German national and did not have a residency permit. The court considered the case with regards to non-discrimination and citizenship. The ECJ found that a national of a member state lawfully residing in the territory of another member state such as Martinez Sala could come within the personal scope of citizenship provisions. Therefore the rights laid down by Art. 20(2) of TFEU were applicable to the situation including the right not to suffer discrimination on the grounds of nationality as per Art. 18 TFEU.

This type of thinking included a situation where a member state delayed or refused to grant a benefit provided to all persons lawfully resident in the territory of that state on the grounds that the claimant did not have a document in this case a residence permit, which nationals of the state were not obliged to possess. The court found that Martinez Sala was being directly discriminated against because of nationality and this was contrary to Union law under Art. 18 TFEU. A number of issues were left unclear by the ECJ in this case; firstly; the court did not make clear on what basis Martinez Sala was lawfully a resident of Germany.

It would appear that the claimant was not economically active so therefore could not fulfil the conditions of being a worker or an employed person and consequently would not be a lawful resident of Germany under European Union law. It seems that because Martinez Sala had resided in Germany for so long and had not been asked to leave because she was not unlawfully living in the country she was entitled to equal treatment and therefore the social advantage of the child raising allowance. The implications of this case with regards to European Union Citizenship is of great importance; as O'Leary comments the ECJ were willing to *'explode the linkages'*[12] of the previous rules which had been necessary for the principle of non-discrimination to apply.

[11] (Case C-85/96) Martinez Sala v Freistaat Bayern [1998] ECR I-2691
[12] S O'Leary, 'Putting Flesh on the Bones of European Union Citizenship' (1999) 24 ELRev 68, 77

This case if highly important as we can see this as the beginning of European Union Citizenship as being more than just a mechanism for participation in the economic internal market, as Steiner and Woods tells us; *'Martinez Sala therefore starts the process of decoupling the acquisition of rights from the requirement to be economically active. The Union does not require that citizens pursue a professional or trade activity, whether as an employed or self-employed person, in order to enjoy rights provided in Part Two of the EC Treaty, on citizenship of the Union'*[13]

The decision in Martinez Sala has been backed up by the courts position in *Trojani*[14] and subsequently in *Bidar*[15] which will be discussed later, that a national of a member state can rely on Art. 18 TFEU when he has resided in a host member state for a certain period of time or if he possesses a residency permit as in Trojani, whereas Martinez Sala and Bidar concerned lawful residence spent in the host member state.

The case law regarding citizenship in the European Union was developed further by the ECJ's decision in *Grzelczyk*[16] as Barnard tells us in this case the ECJ; *'significantly broadened the scope of the principle of equal treatment'.*[17] This case also demonstrates the idea that citizenship of the Union is far more than purely a means for economic integration which has developed parallel to deepening European integration and as Craig and De Burca state; *the influence of EU citizenship on the outcome of the case was once again crucial'*[18].

In this case a French national had been studying in Belgium and supported himself with a part time employment. Towards the end of his studies he applied for a grant which was freely available to Belgian students. This was rejected as was his further leave to reside in his host state. As the grant was freely available to Belgian nationals who were studying Grzelczyk was being directly discriminated against due to his French nationality which was contrary to Art. 18 TFEU.

[13] J Steiner, L Woods, EU Law (10th edition, OUP, 2009) 547
[14] Case C – 456/02 Trojani v CPAS [2004] ECR I-7573
[15] Case C – 209/03 Bidar (R v London Borough of Ealing and Secretary of State for Education, ex parte Bidar) [2005] ECR I-2 119
[16] (Case C-184/99) Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve [2001] ECR I-6193, [31]
[17] C Barnard, The Substantive Law Of The EU; The Four Freedoms (3rd edition, OUP, 2010) 445
[18] P Craig, G De Burca, EU Law; Text, Cases and Materials (5th edition, OUP, 2011) 837

As he had been residing lawfully in Belgium he was entitled to rely on Art. 18 TFEU with regards to those situations which fell within the material scope of the Treaties which include those situations involving the exercise of the right to move and reside freely in another member state, as conferred by Art. 21(1) TFEU. The fact that Grzelczyk had actually moved from youth hostels to a Salvation Army hostel was pivotal in this case as this broadened the scope in which European Union Citizens could rely on their citizenship of the Union for equal treatment.

In the case of *Collins v Secretary of State for Work and Pensions*[19] the issue of indirect discrimination purely on the basis of nationality and Union Citizens ability to claim job-seeking allowance was further raised when an Irish national attempted to claim job-seeking allowance in the UK which was rejected. It should be noted that this case differs from other ECJ case law in this area as Collins was neither a national nor a resident of the UK and had in fact travelled to the UK in order to seek work.

The Court in this instance decided to depart from prior case law in which job-seeker issues had been ruled upon and looked towards the Treaty for guidance as Craig and De Burca tell us; *'It is precisely the introduction of EU Citizenship in the Treaty which provided the Court with reason to depart from this earlier case law'*[20]. The court found that the rights of job-seekers under Art 45 TFEU should be interpreted in the light of the more general right to equal treatment of citizens. In this the ECJ overruled its previous ruling in *Lebon*[21] and decided that citizens of the Union could rely on Art. 45 of the Treaty to; 'Benefit of a financial nature intended to facilitate access to employment in the labour market of a Member State'.

Therefore, the Court ruled that although it was a legitimate and perfectly legal act for a Member State to require that a job-seeker has genuine link to the job market and employment in the Member State in which he claims job-seeking allowance, it was not permissible under Union law for a residence condition to apply in a disproportionate and discriminatory way. Hence the UK had to justify on objective grounds the rejection of job-seeking allowance to Collins and show that the grounds were proportionate and legitimate and not merely on the grounds of national discrimination.

[19] (Case C – 138/02) Collins v Secretary of State for Work and Pensions [2004] 2 CMLR 8
[20] P Craig, G De Burca, EU Law; Text, Cases and Materials (5th edition, OUP, 2011) 842
[21] (Case 316/85) Centre public d'aide sociale de Courcelles v Marie-Christine Lebon [1987] ECR 2811

This principle was reiterated in the case of *Ioannidis*[22] where it was the same situation but a Greek national claiming job-seeking allowance in Belgium, which we will discuss later.

Further to the decision in *Collins v Secretary of State for Work and Pensions*[23] the case of *Trojani*[24] was brought to the ECJ where a French national had been given a temporary right to reside in Belgium and had this right taken away when he had claimed a 'minimex' payment (Belgium minimum wage guarantee) when entering a 'personalised socio-occupational reintegration programme' which gave him a small amount of money for the completion of odd jobs. The ECJ decided that due to the resident permit given to Trojani he could rely on Art. 18 TFEU. This opinion is the vital area of the case which was subsequently backed up in the case of *Bidar*[25] in that it was shown that a non-economically active person could rely on Art. 18 TFEU when they have resided in a Member State for a certain amount of time or if they possess a resident permit (as in this case). In this case it was shown that Trojani had suffered direct discrimination on the grounds of his nationality with regards to the 'Minimex'.

The case of *Bidar*[26] has subsequently confirmed the principle set in *Trojani*[27] to clarify the position for students studying in other Member States from which they are nationals when applying for student grants. This case concerned a student from France being rejected a student loan in the UK on the grounds that he did not satisfy residency requirements in UK law. In this instance the Court found that the conditions in UK law were indirectly discriminatory as they placed non-UK nationals at a disadvantage as UK nationals would not be rejected from obtaining the loan. The court stated that if a student was lawfully residing in the host Member State then they fell within the scope of Art. 18 TFEU.

[22] (Case C-258/04) Ioannidis [2005] ECR I-8275
[23] (Case C – 138/02) Collins v Secretary of State for Work and Pensions [2004] 2 CMLR 8
[24] Case C – 456/02 Trojani v CPAS [2004] ECR I-7573
[25] Case C – 209/03 Bidar (R v London Borough of Ealing and Secretary of State for Education, ex parte Bidar) [2005] ECR I-2 119
[26] Case C – 209/03 Bidar (R v London Borough of Ealing and Secretary of State for Education, ex parte Bidar) [2005] ECR I-2 119
[27] Case C – 456/02 Trojani v CPAS [2004] ECR I-7573

The ECJ also stated that although there was a need for state institutions which managed such things as student grants to be non-discriminatory with nationals of other Member States it was legitimate for a Member State to grant assistance only to; students who had demonstrated a certain degree of integration into the society of that state and students who had received a large part of their secondary education in the host Member State (as was the case in *D'Hoop*[28] where a Belgian national could rely on the Treaty provisions to claim a grant from Belgium even though she did not complete her secondary education there). Furthermore in *Forster v IB Groep*[29] the ECJ clarified the degree of integration needed for students to claim financial support in that it was decided that a five year period of residence before a student is able to claim grants in a different Member State to which they are a national is unreasonable.

It should also be noted that in the case of *Ioannidis*[30] it was held that it is against Art. 51 TFEU for a Member State to refuse an application of a tide over allowance to a national of another Member State who is seeking his first employment purely on the grounds that they completed their secondary education in another Member State.

A further decision which demonstrates the ECJ's attempt to clarify the rights that EU Citizens enjoy and to promote in Member States a view to non-discriminatory measures is the case of *Gottwald*[31] in which an Austrian law to allow disabled people to enjoy freedom from motorway tolls was brought into question. Gottwald (a German national) was denied the permit which would stop him from being tolled and brought the case to the ECJ. It was held that Gottwald was able to challenge the denial of the permit under Art 18 TFEU as it was said this applies to all cases falling within the scope of EU law.

[28] Case – C – 224/98 D'Hoop v Office national de l'emploi [2002] ER I-6191
[29] Case – C 158/07 Forster v IB Groep (Hoofddirectie vn de Informatie Beheer Groep) [2008] ECR I-8507
[30] (Case C-258/04) Ioannidis [2005] ECR I-8275
[31] C – 103/08 Gottwald v Bezirkshautmannschft Bregenz [2010] 1CMLR 25

A further issue which we will touch upon here to whether Citizenship of the Union has evolved to be far more than just a mechanism to enable economic participation is whether Citizenship of the Union can be invoked in a wholly internal situation. The recent case of *Ruiz Zambrano v ONEM*[32] where third country nationals were the parents of a minor who had been born in an EU Member State concluded that he was therefore a Citizen of the Union. The ECJ held that citizenship was not wholly bound up with movement between Member States. In this case it was said that parents could remain where they are the parents of Union citizens who are minors and have always lived within the Member State of their nationality. As Lansbergen and Miller tell us; *'In* Ruiz Zambrano *the Court recognised a right of residence of the family member of a European citizen by reason of the very nature of that status, thereby expanding the group of European citizens who may benefit from family reunification rights from those who have 'moved' to, in principle at least, all European citizens irrespective of cross-border movement'*[33]

It would seem from this judgement as Craig and De Burca tell us; *'certain factual situations which might otherwise have been considered as purely internal situations, are now considered to have a sufficient connection with EU Law due to the impact on certain rights enjoyed by virtue of the status of EU citizenship even in the circumstances involving a Member State national who has never exercised rights of movement outside that Member State, that situation will no longer be characterized as a wholly internal situation'*[34].

Conclusions

As we have seen through the development of the case law through the ECJ and through the concepts that surround Citizenship of the Union that so far a clear attempted has been made to make a difference to the life of those who come under the umbrella of EU citizenship. It certainly seems from the decisions in the ECJ that there is an attempt to break from the merely financial and economic nature and categories of the EU and that citizenship has developed as a parallel but different area of EU law to those purely economic mechanisms that exist within the EU.

[32] Case C – 34/09 Ruiz Zambrano v ONEM (Office National de l'Emploi) [2009] OJ C90/15
[33] S Lansbergen, N Miller, 'European citizenship rights in internal situations: an ambiguous revolution? Decision of 8 March 2011, Case C-34/09 Gerardo Ruiz Zambrano v Office national de l'emploi (ONEM)' (2011) E. C. L. Rev 304
[34] P Craig, G De Burca, EU Law; Text, Cases and Materials (5th edition, OUP, 2011) 833

However, although large strides have been made to improve the rights of nationals of Member States these rights as Craig and De Burca tell us; *'not superseded or overshadowed the existing status categories under EU law'*[35] leaving the rights citizens enjoy to be thin and still to have a strong economic focus. It can be seen though that the positive growth of rights that are expanding for EU citizens at a steady and regular pace and are moving further and further from purely economic designs.

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[35] P Craig, G De Burca, EU Law; Text, Cases and Materials (5th edition, OUP, 2011) 847