



EU Citizenship and Fundamental Rights: A New Role for the Charter?

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Unexplored potential?

- C-617/10, Hans Åkerberg Fransson
- C-206/13, Siragusa
- Opinion AG Bobek, C-298/16, Ispas
- Uncertain guidelines

Is the CJEU avoiding the Charter?

- C-673/16, Coman
- Procedural elements
- How to interpret EU Law
- The different criteria followed by the AG and the CJEU
- ECHR (Vallianatos v. Greece; Orlandi v. Italy)
- National Identity and EU law
- BUT see now C-221/17, Tjebbes where the Charter played an important role in combination with Art. 20 TFEU

Questions

- What is the essence of the EU citizenship?
- Why is AG Sharpston's Opinion on Zambrano so important?
- What does 'genuine enjoyment' of citizenship rights actually mean
- What is the role of the Charter in this case law?

The State of the Art



- «Lottery rather than logic would seem to be governing the exercise of EU citizenship rights»,
AG Sharpston

A necessary premise

“EU citizenship rights are focused on mobile EU citizens, who have exercised rights of free movement and reside in a Member State other than the one of which they are nationals, e.g. as workers, students or retired persons. The legal status of EU citizenship is derived from Member State citizenship” Fauri

economic genesis of the European integration process

Grzelczyk (C-184/99)

«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»

Fight for Rights

Brexit
Opinion

Our rights to EU citizenship are worth fighting for - despite Brexit

Jolyon Maugham

Thu 1 Mar 2018 12:00 GMT

    

6,133 2,070

UK nationals in the Netherlands want to take their case to the European court of justice. They need your help



The role of the CJEU

Over the years the CJEU has used the concept of citizenship to eliminate discriminations based on nationality even in ambits that are not characterized by a EU competence

Charter: Art. 51

Additional

- “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” (art. 20 TFEU).
- Before Lisbon: “shall complement”

An umbrella of concepts

- move and reside freely within the EU;
- vote for and stand as a candidate in European Parliament and municipal elections;
- be protected by the diplomatic and consular authorities of any other EU country;
- petition the European Parliament and complain to the European Ombudsman.

The way in which the CJEU has used the concept

- Proto-citizenship (Shaw, 2010): *Gravier e Cowan*.
- “An incipient Form of European Citizenship”? (Plender, 1976)
- Expansion of the concept *ratione personae* and *materiae*...(Jacobs, 2007)

Burgundy-coloured passports



(Jacobs, 2007)

- Broadening the scope of application of Article 12 ECT (“discrimination on grounds of nationality shall be prohibited”)
- Broadening the scope of application of the non-discrimination principle in the context of market freedoms
- Citizenship as an “independent source of rights”

Art. 12 ECT

- *Bickel and Franz* (language)
- *Martinez Sala* (child-raising allowance)
- *Grzelczyk, Trojani* (minimum subsistence allowance, entitlement to social assistance benefits)
- *Garcia Avello* (name)
- *Gravier, Lair, Brown* (education)

Market freedoms

- *Konstantinidis*, C-168/91 (freedom of establishment, name)
- *Collins*, C-138/02, *Ioannidis*, C-258/04 (employment, tide over allowance)

Sources of rights

- *Chen*, C-200/02
- *Baumbast*, C-413/99
- *Carpenter*, C-60/00
- From an economic dimension to a constitutional dimension

Complementary Citizenship?

“Under international law, it is for each Member State, **having due regard to Community law**, to lay down the conditions for the acquisition and loss of nationality”
(Micheletti, C-369/90)

Rottmann (C-135/08)

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.

Issues at stake

- National competence
- Indirect effect on EU citizenship
- This implies an interest for the EU and the presence of some limitations stemming from EU law

Zambrano, Adv. Gen. Sharpston

- “At a more conceptual level, is the exercise of rights as a Union citizen dependent – like the exercise of the classic economic ‘freedoms’ – on some trans-frontier free movement (however accidental, peripheral or remote) having taken place before the claim is advanced?” (p. 3)
- P. 2 “difficult and important choices to make”
- Right to reside to the citizen who has not exercised the free movement rights under EU? parents?
- Free movement and citizenship p. 3

Confusion rules

- 1. Internal situation? One or Two rights in Art. 21 TFUE? (p. 50)
- 2. reverse discrimination, 3. general principle of EU law (Carpenter), Rule of law (p. 52, 53, right to family life)



- Case law ECJ (p. 57-60)
- ECtHR case law but an autonomous test
- Serious breach (p. 62, 63)
- Irregular situation but integrated (p. 64-66)
- Free movement and citizenship? P. 75, 77

The structure of citizenship

- 79, 80 (free circulation, sequential rights)
- Free circulation and fundamental rights? (p. 83)
- Paradox (p. 84) “as a worker”
- Is it necessary to activate this right? P. 86, 88 [**lottery rather than logic**], 93
- Internal Situation? Rottmann, (p.94, 95)

The consequences on the children (p. 117)

- Chen (analogy), p. 103
- P. 95, 96, 97, 99, 100 (Rottman)
- Proportionality (p. 111)
- Genesis and consequences of the EU citizenship (p.114- 115)
- Children (p. 117)
- Proportionality (p.122)
- Scope of Application of EU Law (p. 152, 156 et seq.)

Scope of application of fundamental rights

- «This raises a very major issue of principle: what is the scope of application of fundamental rights under EU law? Can they be invoked as free-standing rights against a Member State? Or must there be some other link with EU law? It is unnecessary to dwell on the potential significance of the answer to that question», par. 152

Centro Europa 7, C-380/05

- «21. The scenario may seem unlikely at first sight, but I do not discount, offhand, the idea that a serious and persistent breach of fundamental rights might occur in a Member State, making it impossible for that State to comply with many of its EU obligations and effectively limiting the possibility for individuals to benefit fully from the rights granted to them by EU law. For instance, it would be difficult to envisage citizens of the Union exercising their rights of free movement in a Member State where there are systemic shortcomings in the protection of fundamental rights. Such systemic shortcomings would, in effect, amount to a violation of the rules on free movement.
- 22. **My suggestion is not that any violation of fundamental rights within the meaning of Article 6(2) EU constitutes, of itself, an infringement of the rules on free movement. Only serious and persistent violations which highlight a problem of systemic nature in the protection of fundamental rights in the Member State at issue, would, in my view, qualify as violations of the rules on free movement, by virtue of the direct threat they would pose to the transnational dimension of European citizenship and to the integrity of the EU legal order.** However, so long as the protection of fundamental rights in a Member State is not gravely inadequate in that sense, I believe the Court should review national measures for their conformity with fundamental rights only when these measures come within the scope of application of the Court's jurisdiction as defined in its case-law to date. », AG Maduro

Reverse discrimination

- “Nevertheless, the Court continued to draw a distinction between Union citizens who had already exercised rights to freedom of movement and those who had not, recalling laconically that all Member States are signatories to the ECHR and that Article 8 of the ECHR protects the right to family life. **‘Static’ Union citizens were thereby still left to suffer the potential consequences of reverse discrimination even though the rights of ‘mobile’ Union citizens were significantly extended.**” (p. 138)

CJEU

- Short decision
- Obscure legal reasoning
- Right to family life
- “Genuine enjoyment of the substance of the rights conferred by virtue of their status as citizens of the Union” (p. 44)

Conclusion (Zambrano)

- “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.**
- 45 Accordingly, the answer to the questions referred is that 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”. (44-45)

The Max Planck Scholarship

- «reverse Solange»
- Bogdandy, Armin [Visualizza profilo](#); Kottmann, Matthias [Visualizza profilo](#); Antpöhler, Carlino; Dickschen, Johanna; Hentrei, Simon; e altri. *Common Market Law Review* 49.2 (Apr 2012): 489-519
- «We are taking that jurisprudence one step further and propose to basically define this "substance" with reference to the essence of fundamental rights enshrined in Article 2 TEU This standard applies to public authority throughout the European legal space. Consequently, a violation by a Member State, even in purely internal situations, can be considered an infringement of the substance of Union citizenship. In order to preserve constitutional pluralism, which is protected by Article 4(2) TEU, we suggest framing this as a "reverse" Solange doctrine, applied to the Member States from the European level. This can be put briefly as follows: beyond the scope of Article 51(1) CFREU Member States remain autonomous in fundamental rights protection as long as it can be presumed that they ensure the essence of fundamental rights enshrined in Article 2 TEU»

Ibidem

- «However, should it come to the extreme constellation that a violation is to be seen as systemic, this presumption is rebutted. In such a case, individuals can rely on their status as Union citizens to seek redress before national courts»

Ambiguities in Zambrano

- No role for the Charter despite the questions raised by the referring judge
- No mention of the right for a family life
- Azoulai
- Art. 20 and 21 TFEU

Post Zambrano case law

- «Shortly after the delivery of this ground-breaking judgment, the Court of Justice proceeded to interpret Ruiz Zambrano very narrowly in a series of cases (C-434/09 McCarthy, C-256/11 Dereci and Others, C-40/11 Iida, C-356&357/11 O. and S., C-87/12 Ymeraga and Others, C-86/12 Alokpa and Moudoulou and C-115/15 NA) leading many to wonder about the original significance of the Ruiz Zambrano decision. **In contrast to Ruiz Zambrano, these subsequent cases mostly concerned the significance of Article 20 TFEU in a host Member State.** The Court held that the applicants fell outside the scope of Article 20, even if they had never moved to another Member State, i.e. had been born in a Member State other than their Member State of nationality and had never left» (Haag)

MacCarthy (C-434/09)

- “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” (p. 50).
- “It follows that Article 21 TFEU is not applicable to a Union citizen who has never exercised his right of free movement, who has always resided in a Member State of which he is a national and who is also a national of another Member State, provided that the situation of that citizen does not include the application of measures by a Member State that would have the effect of depriving him of the genuine enjoyment of the substance of the rights conferred by virtue of his status as a Union citizen or of impeding the exercise of his right of free movement and residence within the territory of the Member States” (p. 56).

Dereci (256/11)

“As in the circumstances at issue in Ruiz Zambrano, the third-country nationals and their family members who are Union citizens who possess Austrian nationality and who have not exercised their right of free movement wish, primarily, to live together.

- 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.** That criterion is specific in character inasmuch as it relates to situations in which, although subordinate legislation on the right of residence of third country nationals is not applicable, a right of residence may not, exceptionally, be refused to a third country national, who is a family member of a Member State national, as the effectiveness of Union citizenship enjoyed by that national would otherwise be undermined. **Consequently, the mere fact that it might appear desirable to a national of a Member State, for economic reasons or in order to keep his family together in the territory of the Union, for the members of his family who do not have the nationality of a Member State to be able to reside with him in the territory of the Union, is not sufficient in itself to support the view that the Union citizen will be forced to leave Union territory if such a right is not granted.”** p. 66-67-68

Difference

- **“The circumstances of the litigants were somewhat different from those of the Zambrano family. There were a number of litigants whose cases were linked in the referral. All were third-country nationals and had their applications for residence permits in Austria refused. They were all, in one way or another, the ‘family members’ of Austrian nationals. The facts of Mr Dereci’s case are the most relevant: Mr Dereci, a Turkish national, entered Austria illegally and married an Austrian national with whom he had three children who are Austrian nationals and who are still minors. Mr Dereci lived with his family. Crucially, the difference between this case and that of Zambrano was that there was no possibility of the Austrian nationals, of whom the litigants were family members, being deprived of their means of subsistence and having to leave the EU if the rights of residence of the litigants were not recognised”** . <https://eutopialaw.com/2011/11/17/case-summary-and-comment-case-c-25611-dereci-and-others-v-bundesministerium-fur-inneres/>

Conclusion (Dereci, C-256/11)

- “European Union law and, in particular, its provisions on citizenship of the Union, must be interpreted as meaning that it does not preclude a Member State from refusing to allow a third country national to reside on its territory, where that third country national wishes to reside with a member of **his family who is a citizen of the Union residing in the Member State of which he has nationality, who has never exercised his right to freedom of movement, provided that such refusal does not lead, for the Union citizen concerned, to the denial of the genuine enjoyment of the substance of the rights conferred by virtue of his status as a citizen of the Union, which is a matter for the referring court to verify**” (P. 102)

Other cases

- Iida C-40/11
- O.S. vs Maahanmuuttovirasto C 356/11 and Maahanmuuttovirasto v L., C-357/11
- Ymeraga C-87/12
- Alokpa C-86/12

What about Zambrano?

- Zambrano Exception?
- No applicability of the Directive (difference with Alokpa. Not applicable to adults?)
- Territory of the EU
- Economic dependency

Rendón Marín

- AG Opinion (par. 116- 122)
- «These situations fall within the ambit of EU law»
- Compatibility with EU law, substance of rights
- Proportionality (par. 132)
- existence of a criminal record (138)
- Public policy and public security (171-172)
- Risk of inconsistencies (par. 153-154)

Rendón Marín

- “EU law precludes national legislation under which a national of a non-EU country who has the sole care of a minor who is an EU citizen is automatically refused a residence permit, or must be expelled, on the sole ground that that national has a criminal record where the refusal or expulsion obliges the child to leave the territory of the European Union”.
- CS (less complex, UK)

Seq.

- “The Court explains that the status of EU citizen does not affect the possibility for the Member States of justifying a derogation from the right of residence of EU citizens or their family members (whether that right is exercised under the directive or under the Treaty) on grounds, in particular, of public policy or public security. **Such a derogation must observe the Charter of Fundamental Rights and the principle of proportionality** and must be based on the personal conduct of the individual concerned in order to ascertain whether he represents a **genuine, present and sufficiently serious threat** affecting the society of the host Member State”, <https://www.ein.org.uk/news/european-court-justice-zambrano-carer-child-cannot-be-expelled-solely-criminal-record>
- Fundamental rights as part of the explicit legal reasoning

Rendón Marín

- **Par. 40-43 facts matter**
- Par. 74—77 citizenship and right to move and reside
- 80 scope of application of EU law? 78-79 not sure (checks)
- Par. 81 limitation of these rights («in so far as Mr Rendón Marín's situation falls within the scope of EU law»)
- Par. 84 restrictive interpretation
- Par. 87-88 conclusion

C-133/15 CHÁVEZ-VÍLCHEZ AND OTHERS

- Ruiz Zambrano doctrine
- Dereci?
- Best interests of the child
- “In all cases, the applications for social assistance and child benefits were denied on the basis that the mothers did not have a lawful residence status in the Netherlands and thus did not have the right to receive social benefits. The applicants’ challenges of the refusal to pay social assistance failed before the courts of first instance” (Haag)

3 questions

- “1. Must Article 20 TFEU be interpreted as precluding a Member State from depriving a third-country national who is responsible for the day-to-day and primary care of his/her minor child, who is a national of that Member State, of the right of residence in that Member State?
- 2. In answering that question, is it relevant that it is that parent on whom the child is entirely dependent, legally, financial and/or emotionally and, furthermore, that it cannot be excluded that the other parent, who is a national of the Member State, might in fact be able to care for the child?
- 3. In that case, should the parent/third-country national have to make a plausible case that the other parent is not able to assume responsibility for the care of the child, so that the child would be obliged to leave the territory of the European Union if the parent/third-country national is denied a right of residence?”

C-133/15 CHÁVEZ-VÍLCHEZ AND OTHERS

- “There are also a number of differences between the applicants. Five of the families received no financial support from the father. The other three fathers contributed financially to the children’s care, however the mothers were still the primary, day-to-day carers of the children. The relationships with the father varied slightly from case to case: from no contact with the father (see for example, the Chávez-Vílchez, García Pérez, and Uwituze families) to almost daily contact (Guerrero Chávez). Furthermore, **the case of the Chávez-Vílchez family differs from the others, as the family had resided in Germany for a couple of years before returning to the Netherlands. It is thus the only case in which the daughter – the EU citizen – had previously made use of her free movement rights**” (Haag)

C-133/15 CHÁVEZ-VÍLCHEZ AND OTHERS

- Different cases
- Referring Court: Restrictive interpretation of the Zambrano doctrine
- Reaffirmed Zambrano Par. 65
- “one has to assess who the primary carer is. In this respect, it is important to consider who has custody of the child and on whom the child is legally, financially, or emotionally dependent (see also O and S, para. 56).” (Haag)
- Charter relevant Art. 7 and the best interests of the child
- “Even with an EU citizen father present, the child can still be compelled to leave the EU if the TCN mother is denied a right to reside. Here the child’s best interests, age, physical and emotional development and the extent of his or her emotional ties to both parents have to be considered” (Haag).
- Conclusion 78

- “the Court confirms in **Chávez-Vílchez** that, if applicable, the right of residence under Article 21 TFEU first has to be exhausted, before Article 20 TFEU can be applied (**Alokpa and Moudoulou**)” (Haag)
- “64. The situations referred to in the preceding paragraph have the common feature that, although they are governed by legislation which falls, a priori, within the competence of the Member States, namely legislation on the right of entry and residence of third-country nationals outside the scope of provisions of EU secondary legislation, which provide for the grant of such a right under certain conditions, those situations nonetheless have an **intrinsic connection** with the freedom of movement and residence of a Union citizen, which precludes the right of entry and residence from being refused to those nationals in the Member State of residence of that citizen, in order to avoid interference with that freedom (judgments of 13 September 2016, **Rendón Marín**, C-165/14, EU:C:2016:675, paragraph 75, and of 13 September 2016, **CS**, C-304/14, EU:C:2016:674, paragraph 30 and the case-law cited)”.

Scope of Application (Siragusa)

“22. That definition of the scope of the fundamental rights of the European Union is borne out by the explanations relating to Article 51 of the Charter, which, in accordance with the third subparagraph of Article 6(1) TEU and Article 52(7) of the Charter, have to be taken into consideration for the purposes of interpreting the Charter (see, to that effect, Case C-279/09 DEB [2010] ECR I-13849, paragraph 32). According to those explanations, the obligation to respect fundamental rights defined in the context of the European Union is binding upon the Member States only in respect of matters covered by EU law.

23 According to the description provided by the referring court, the main proceedings concern an order requiring Mr Siragusa to dismantle work carried out in breach of a law protecting the cultural heritage and the landscape. There is a connection between such proceedings and EU environmental law since protection of the landscape – the aim of the national legislation in question – is an aspect of protection of the environment. In that regard, the referring court refers to various provisions of EU environmental law.

However, it should be borne in mind that the concept of ‘implementing Union law’, as referred to in Article 51 of the Charter, requires a certain **degree of connection** above and beyond the matters covered being closely related or one of those matters having an indirect impact on the other (see, to that effect, Case C-299/95 Kremzow [1997] ECR I-2629, paragraph 16) ”

Siragusa

- “25. In order to determine whether national legislation involves the implementation of EU law for the purposes of Article 51 of the Charter, some of the points to be determined are whether that legislation is intended to implement a provision of EU law; the nature of that legislation and whether it pursues objectives other than those covered by EU law, even if it is capable of indirectly affecting EU law; and also whether there are specific rules of EU law on the matter or capable of affecting it (see Case C-309/96 Annibaldi [1997] ECR I-7493, paragraphs 21 to 23; Case C-40/11 Iida [2012] ECR, paragraph 79; and Case C-87/12 Ymeraga and Others [2013] ECR, paragraph 41)
- 26. In particular, the Court has found that fundamental EU rights could not be applied in relation to national legislation because the provisions of EU law in the subject area concerned did not impose any obligation on Member States with regard to the situation at issue in the main proceedings (see Case C-144/95 Maurin [1996] ECR I-2909, paragraphs 11 and 12)”.
 - Case law on citizenship

It cites Rendón Marín

- «65. In this case, if it were to be established, that being a matter for the referring court, that a refusal to allow residence to the third-country nationals at issue in the main proceedings would have the effect that the parties concerned would have to leave the territory of the European Union, the consequence might be a restriction on the rights conferred on their children by their status as Union citizens, in particular the right of residence, since those children might be compelled to accompany their mothers and therefore to leave the territory of the European Union, as a whole. In the event that the mothers were obliged to leave the territory of the European Union, their children would thus be deprived of genuine enjoyment of the substance of the rights conferred on them by their status as Union citizens (see, to that effect, judgment of 13 September 2016, Rendón Marín, C-165/14, EU:C:2016:675, paragraph 78 and the case-law cited).»

Fundamental Rights

- Art. 7 Charter
- «Both Dereci and Chávez-Vílchez concern minors with an EU citizen parent and a TCN parent. **There is, however, an obvious difference between the two cases. In Dereci, the EU minors were living together with both their EU citizen mother and their TCN father and were supposedly dependent on both. In Chávez-Vílchez, it is clear that the children are only dependent on their TCN mother. Therefore, Ms Chavez-Vilchez's daughter has no other choice but to leave with her mother.** In Dereci, the CJEU held that the children could be supported solely by their mother, and thus their father's departure would not force them to follow him. However, having lived together as a family, the children are presumably at least legally and emotionally dependent also on their father. Furthermore, it is arguably in the children's best interests to grow up with both their mother and father present. **Surprisingly, there is no mention of considering the child's best interests in the Dereci decision.**» (Haag)

Zambrano in the most recent case law

- Case C-247/17 «Denis Raugevicius,
- 43 In that regard, it must be recalled that, in accordance with settled case-law, citizenship of the Union is intended to be the fundamental status of nationals of the Member States (see, inter alia, judgments of 20 September 2001, Grzelczyk, C-184/99, EU:C:2001:458, paragraph 31; of 8 March 2011, Ruiz Zambrano, C-34/09, EU:C:2011:124, paragraph 41, and of 5 June 2018, Coman and Others, C-673/16, EU:C:2018:385, paragraph 30).»

Opinion AG Sharpston

- C-82/16, K.A. OP
- 40. Identifying when EU citizenship will give rise to derived rights for third-country nationals and the limitations that may be placed upon such rights now forms a rich seam of this Court's case-law. The Court's ruling in RuizZambrano (36) is the landmark decision. That case established that Article 20 TFEU precludes national measures which have the effect of depriving EU citizens of the genuine enjoyment of the substance of the rights conferred by virtue of that status. That criterion was qualified in Dereci and Others, where the Court stated that that criterion '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'. (37) The Court's recent judgment in Chavez-Vilchez and Others (38) sets out how the case-law has evolved.
- 41. **The Court has held that 'there are very specific situations in which, despite the fact that the secondary law on the right of residence of third-country nationals does not apply and the Union citizen concerned has not made use of his freedom of movement, a right of residence cannot, exceptionally, without undermining the effectiveness of the Union citizenship that citizen enjoys, be refused to a third-country national who is a family member of his if, as a consequence of refusal, that citizen would be obliged in practice to leave the territory of the European Union altogether, thus denying him the genuine enjoyment of the substance of the rights conferred by virtue of the status of citizen of the European Union'.** (39) In Ruiz Zambrano, the parent of minor children who were Belgian nationals was subject to an expulsion order and the competent authorities refused his request for a work permit. The Court ruled that such decisions would have the effect of depriving Mr Ruiz Zambrano's children of the genuine enjoyment of the rights flowing from Article 20 TFEU. The decisions at issue in that case would have resulted in the children, EU citizens, being obliged to leave the territory of the European Union. (40)

The judgment of the Court

•«As regards, first, the cases in the main proceedings where the respective applicants are K.A., M. Z. and B.A., it must, at the outset, **be emphasised that, unlike minors and a fortiori minors who are young children, such as the Union citizens concerned in the case that gave rise to the judgment of 8 March 2011, Ruiz Zambrano (C-34/09, EU:C:2011:124), an adult is, as a general rule, capable of living an independent existence apart from the members of his family.** It follows that the identification of a relationship between two adult members of the same family as a relationship of dependency, capable of giving rise to a derived right of residence under Article 20 TFEU, is conceivable only in exceptional cases, where, having regard to all the relevant circumstances, there could be no form of separation of the individual concerned from the member of his family on whom he is dependent.

•66 In this instance, **in none of the three cases in the main proceedings where the family relationship at issue is one between adults does the file submitted to the Court appear to suggest a relationship of dependency of such a nature as to justify granting to the third-country national a derived right of residence under Article 20 TFEU.»**

«Inventing the People»

- The Court is struggling with the uncertain scope of application of the Charter
- The need to go beyond an “either - or” approach: either Zambrano or the scope of application of the Charter
- The virtues of a systematic approach
- A fully federal citizenship (XIV Amend US)