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Introduction

In *Grzelczyk*, the Court of Justice of the European Union (CJEU) affirmed that Union citizenship, as enshrined in Article 8 EC (now Article 20 TFEU), constitutes the fundamental status of nationals of Member States. This status guarantees equal treatment, except where explicitly restricted.¹ The CJEU ruled that Articles 6 and 8 EC (now Articles 18 and 20 TFEU) prohibit the denial of non-contributory benefits, such as minimum subsistence allowances, to legally resident Union citizens solely on the basis of nationality, where such conditions are not imposed on host state nationals. This ruling reinforced residence rights under Article 8a EC (now Article 21 TFEU).² However, Directive 2004/38/EC and subsequent case law have imposed stricter self-sufficiency requirements on economically inactive citizens to protect host states' welfare systems. This essay critically examines the scope, application, and limitations of Union citizenship, assessing whether it truly functions as a fundamental status for EU nationals.

I. Equal Treatment Irrespective of Nationality

1. Directive 2004/38/EC

Directive 2004/38/EC facilitates free movement and residence while balancing public interest concerns, particularly by restricting benefits for economically inactive citizens.

1

Scope of the Directive

1. Individuals with Union Citizenship

Article 20(1) TFEU confers Union citizenship as supplementary to national citizenship, granting individuals the right to move and reside freely subject to EU law. Article 21 TFEU reinforces this right, preventing undue national restrictions.

In *Baumbast*, the CJEU determined that a German national who had been residing in the UK since 1990, possessed sufficient resources, and had comprehensive health insurance in

1 Case C-184/99 *Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve* [2001] ECR I-6193, EU:C:2001:458, para 31.

2 Ibid, paras 33, 46.

Germany, retained the right of residence under Article 18(1) EC (now Article 21(1) TFEU). This right is conditional upon ensuring that his children receive an education in the UK and that he does not become an unreasonable burden on the welfare system of the host state.³ This case exemplifies the Court's method of balancing individual rights with the economic interests of Member States.

 2

2. Family Members

Article 2(2) of Directive 2004/38/EC grants residence rights to core family members—spouses, registered partners, dependent children under 21, and dependent ascendants—emphasising family unity within Union citizenship. In *Metock*, the CJEU ruled that third-country nationals (TCNs) who married Union citizens exercising free movement rights did not require prior lawful residence to reside in the host state, reinforcing the principle that family reunification is not conditional on pre-existing legal status.⁴

 3

3. Other Family Members (OFMs)

Article 3(2) of Directive 2004/38/EC grants Member States discretion in permitting residence for non-core family members, such as long-term dependents and partners in stable relationships. In *Reed*, the CJEU held that a British national cohabiting with a British worker in the Netherlands, was entitled to residence as a “social advantage” under Article 7(2) of Regulation 1612/68/EEC. This ruling extended equal treatment beyond the limited scope of Article 10(1) of Regulation 1612/68/EEC, which explicitly applied only to legally married spouses.⁵ However, such an expansive interpretation may encroach upon Member States’

³ Case C-413/99 *Baumbast and R v Secretary of State for the Home Department* [2002] ECR I-7091, EU:C:2002:493, paras 18-20, 52, 84, 87-88, 92-93, operative part 3.

⁴ Case C-127/08 *Metock and Others v Minister for Justice, Equality and Law Reform* [2008] ECR I-6241, EU:C:2008:449, paras 19-36, 49-54, 80.

⁵ Case 59/85 *State of the Netherlands v Reed* [1986] ECR I-283, EU:C:1986:157, paras 15-16, 28-30.

regulatory autonomy, potentially leading to disparities in enforcement and inconsistency in the application of EU rights.

Situation 1: Right to Temporary Residence

Article 6 of Directive 2004/38/EC grants Union citizens and their family members an unconditional right of residence for up to three months in another Member State, provided they possess valid identification as required under Article 5.⁴ However, as Article 3(1) specified, this right applies exclusively to cross-border situations and does not extend to purely internal cases.

Furthermore, Article 24(2) permits Member States to withhold social assistance from economically inactive citizens during the first three months, ensuring that short-term mobility does not strain host welfare systems while maintaining equal treatment for long-term residents.

Situation 2: Entitlement to Extended Stay

Directive 2004/38/EC governs residence rights for more than three months, distinguishing between categories based on economic activity.

i. General Citizens

Article 7(1)(a) of Directive 2004/38/EC grants workers and self-employed individuals unconditional residence rights, recognising their economic contributions. In contrast, Article 7(1)(b) imposes self-sufficiency and health insurance requirements on economically inactive citizens.

In *Brey*, the CJEU ruled that Austria's refusal to grant compensatory support to a German pensioner required a proportionality assessment.⁶ The Court held that temporary financial hardship alone did not necessarily burden the welfare system excessively.⁷ In *Trojani*, the

⁶ Case C-140/12 *Pensionsversicherungsanstalt v Brey* [2013] EU:C:2013:565, paras 64-80.

⁷ Ibid, para 72.

Court determined that a legally resident French national in Belgium performing 30 weekly hours of tasks for benefits in kind, but without sufficient resources, could still claim a subsistence allowance under Article 12 EC (now Article 18 TFEU). This suggests that legal residence alone could, in some cases, justify access to social assistance.⁸

However, in *Dano*, the Court adopted a stricter approach, ruling that Union citizens lacking employment or sufficient resources were ineligible for subsistence benefits under Article 7(1)(b)⁹, reinforcing economic self-sufficiency as a prerequisite. This shift from *Trojani* and *Brey* to *Dano* reflects a narrowing of welfare entitlements, prioritising Member States' control over social security costs. 

ii. Students

Article 7(1)(c) grants residence rights to students enrolled in recognised institutions, provided they possess sufficient resources and sickness insurance to avoid reliance on public funds.

In *R(Bidar)*, the CJEU ruled that a French national residing in the UK since 1998 was eligible for maintenance loans, as his three years of secondary education demonstrated sufficient integration into UK society.¹⁰ This reinforced educational mobility as part of Union citizenship, while maintaining economic self-sufficiency requirements to limit financial burdens on host states.

iii. Family Members and Rights Derived

Article 7 of Directive 2004/38/EC extends residence rights to family members but restricts students' family reunification to spouses, registered partners, and dependent children under Article 7(4). Article 12 allows third-country national (TCN) family members to retain their residence rights following the death of the Union citizen, provided they have resided in the host state for at least one year before the citizen's passing. Article 13 ensures that TCN

8 Case C-456/02 *Michel Trojani v Centre public d'aide sociale de Bruxelles* [2004] ECR I-7573, EU:C:2004:488, paras 9-10, 37, 42-46.

9 Case C-333/13 *Dano v Jobcenter Leipzig* [2014] EU:C:2014:2358, paras 76-78, 81.

10 Case C-209/03 *R (Bidar) v London Borough of Ealing* [2005] ECR I-2119, EU:C:2005:169, para 57.

family members can retain their residence rights post-divorce if the marriage lasted at least three years, including one year of residence in the host state, or cases involving custody disputes or domestic violence.

In *Baumbast*, the CJEU held that the children of a former migrant worker retain residence rights in the host state to continue their education, irrespective of their parent's worker status or their own Union citizenship¹¹. It further ruled that regardless of nationality, their primary carer must be granted derivative residence to facilitate this right, given that the carer does not burden the state unreasonably.¹² Similarly, in *Zhu and Chen*, an Irish-born minor was granted UK residence under Article 18 EC and Directive 90/364/EEC, while her TCN mother was permitted to reside, provided she had sufficient resources to avoid becoming a financial burden on the host state.¹³

However, in *García-Nieto*, the CJEU ruled that a Spanish national's TCN family members were ineligible for social assistance during their first three months in Germany under Article 24(2) of Directive 2004/38/EC. The Court upheld Germany's decision, emphasising that Peña Cuevas, the TCN parent, lacked worker status despite her daughter, Jovanna García-Nieto, being employed.¹⁴

Together, these cases illustrate the ongoing tension between protecting family rights and the economic safeguards imposed by Member States in managing social assistance and residence entitlements.

iv. Administrative Requirements

Article 8 of Directive 2004/38/EC requires Union citizens who have resided in another EU member state for more than three months to register with the appropriate authorities. Non-

11 *Baumbast* (n 3), para 63, operative part 1.

12 Ibid, paras 75, 94, operative part 2-3.

13 Case C-200/02 *Kunqian Catherine Zhu and Man Lavette Chen v Secretary of State for the Home Department* [2004] ECR I-9925,

EU:C:2004:639, paras 41, 47.

14 Case C-299/14 *Vestische Arbeit Jobcenter Kreis Recklinghausen v Jovanna García-Nieto and Others* [2016] EU:C:2016:114, para 50.

compliance with this requirement may result in proportionate penalties, but it does not justify expulsion.

Article 9 specifies that family members of TCNs can apply for a residence card, which can only be denied on the grounds of public policy, security, or health.

Article 11 guarantees continuity of residence for Union citizens absent for up to six months per year.

Situation 3: Entitlement to Long-Term Residence

i. Acquisition of Permanent Status

Article 16 of Directive 2004/38/EC grants Union citizens and their family members the right to permanent residence after five years of continuous lawful residence, without economic conditions. In *Lassal*, the CJEU ruled that a French national who had lived in the UK since 1999 and was absent for ten months between 2005 and 2006 could still count her prior residence toward the five-year requirement, provided her absence did not exceed two consecutive years.¹⁵

ii. Limitations on Deportation

Article 28(2) of Directive 2004/38/EC restricts the expulsion of permanent residents, permitting removal only on serious public policy or security grounds. Article 28(3) imposes a higher threshold for expelling Union citizens who have resided in a host state for over ten years or are minors, requiring “imperative grounds” of public security.

In *Land Baden-Württemberg*, the CJEU held that a Greek national who had lived in Germany for over ten years could only be expelled for drug trafficking if his conduct posed a serious and genuine threat to public security under Article 28(3)(a).¹⁶ Similarly, in *PI*, the Court held that the expulsion of an Italian resident convicted of serious criminal offenses was

¹⁵ Case C-162/09 *Secretary of State for Work and Pensions v Lassal* [2010] EU:C:2010:592, para 56.

¹⁶ Case C-145/09 *Land Baden-Württemberg v Panagiotis Tsakouridis* [2010] ECR I-11979, EU:C:2010:708, paras 41, 50-51, 56.

permissible only if his actions posed a continuing and significant threat to public security, considering his level of integration.¹⁷

iii. Special Provisions for Retirees

Article 17 of Directive 2004/38/EC eases residence requirements for retirees by waiving the full five-year residency condition if they have previously worked in the host state or resided there continuously for a substantial period. In *Brey*, the CJEU held that a German retiree in Austria, receiving a pension and care allowance, qualified for residence under Article 7(1)(b) without the five-year requirement, provided he did not impose an excessive burden on the host state's welfare system.¹⁸

iv. Documentation Requirements

Article 19 of Directive 2004/38/EC mandates a prompt issuance of permanent residence documentation once a Union citizen has lawfully resided in a host Member State for five years.

Situation 4: Freedom of Movement

Article 22 of Directive 2004/38/EC guarantees Union citizens the right to move freely within the host Member State, subject only to restrictions that also apply to nationals and that are justified on public policy, security, or health grounds. The Directive upholds the principles of equality and proportionality when imposing such limitations.

Situation 5: Equal Access to Rights

¹⁷ Case C-348/09 *PI v Oberbürgermeisterin der Stadt Remscheid* [2012] EU:C:2012:300, paras 28, 30-31, 33-34.

¹⁸ *Brey* (n 6), paras 47, 64-72.

Article 24(1) of Directive 2004/38/EC guarantees equal treatment for Union citizens lawfully residing in another Member State. However, Article 24(2) allows Member States to restrict social assistance for economically inactive citizens during their first three months of residence and for jobseekers without permanent residence to ensure financial sustainability. This is exemplified in the case of *Brey*, where the Court emphasised that any refusal of benefits must be proportionate and subject to individual assessment rather than automatic exclusion.¹⁹

Regarding expulsion, in *Adoui and Cornuaille*, the CJEU ruled that Member States cannot expel Union citizens for conduct that is tolerated among nationals, ensuring non-discriminatory enforcement of public policy exceptions.²⁰

For jobseekers, Article 45 TFEU ensures equal access to employment. In *Collins*, the CJEU ruled that an Irish-American jobseeker in the UK could claim jobseeker's allowance under Article 45(2) TFEU if he demonstrated a genuine connection to the UK labor market, despite national rules imposing a residence condition.²¹

Finally, Article 24(2) prohibits non-economically active residents from accessing student grants or loans until they obtain permanent residence, preventing undue reliance on host state resources.

II. Exceptions

Articles 27 and 29 of Directive 2004/38/EC set out exceptions to free movement based on public policy, security, and health. Article 27(2) requires that any restrictions be proportionate, necessary, and based on personal conduct, prohibiting general deterrence or economic considerations as justifications.

1. Public Policy and National Security

19 Ibid, paras 47, 80.

20 Joined Cases 115 and 116/81 *Adoui and Cornuaille v Belgian State* [1982] ECR 1665, EU:C:1982:183, para 8.

21 Case C-138/02 *Collins v Secretary of State for Work and Pensions* [2004] ECR I-2703, EU:C:2004:172, paras 63, 73.

1.1 Basis for Deportation: Personal Conduct

Articles 27(2) and 28 permit the expulsion of Union citizens only if their personal conduct poses a genuine, present, and sufficiently serious threat to public security.

In *Bouchereau*, the CJEU ruled that a French worker in the UK could not be expelled solely for past drug offenses committed as deportation must be based on an actual and current threat.²² Similarly, in *Bonsignore*, the CJEU ruled that an Italian resident in Germany could not be expelled following a 1971 firearms offense that accidentally resulted in his brother's death.²³ The Court held that under Article 3(1) and (2) of Directive 64/221/EEC, expulsion must be based exclusively on the individual's personal conduct, and general preventive measures aimed at deterring other foreign nationals from committing similar offenses are prohibited.²⁴ These cases reflect that expulsions require specific and present threat directly linked to the individual's actions rather than past behaviour or general deterrence.

1.2 Criminal Records

Article 28(3) of Directive 2004/38/EC imposes stricter criteria for expelling Union citizens who have resided for over ten years or are minors. Expulsion is permissible only on imperative grounds of public security, requiring an ongoing and serious threat, assessed proportionately to the individual's integration and personal circumstances.²⁵

2. Personal Circumstances and Imperative Reasons

Article 28(3) limits the expulsion of Union citizens who have been residents for over ten years or are minors to situations where the threat to public security is severe and persistent.²⁶

22 Case 30/77 *R v Bouchereau* [1977] ECR 1999, EU:C:1977:172, paras 26-30.

23 Case 67/74 *Bonsignore v Oberstadtdirektor der Stadt Köln* [1975] ECR 297, EU:C:1975:34, paras 5-7.

24 Ibid, paras 6-7, operative part.

25 *Bouchereau* (n 22), paras 26-28.

26 *Land Baden-Württemberg* (n 16), paras 41-42.

3. Health Concerns

Article 29(1) of Directive 2004/38/EC restricts health-related expulsions to diseases recognised by the World Health Organization as having epidemic potential and posing a significant public health threat.

4. Legal Procedures

Articles 30 and 31(1)-(3) mandate that expulsion decisions be reasoned, provided in writing, and clearly communicated to the individual, ensuring they are subject to judicial review. These safeguards uphold due process in expulsion proceedings.

5. Misuse of Rights

Article 35 allows Member States to restrict free movement rights in cases of fraud or abuse, such as fraudulent acquisition of residence rights. However, such measures must be proportionate and based on concrete evidence of intentional misconduct, rather than mere suspicion.

III. Union Citizenship as a Core Identity

In *Grzelczyk*, the CJEU recognised Union citizenship as a fundamental status for Member State nationals, guaranteeing equal treatment for EU citizens, subject to specific exceptions. However, *Dano* significantly curtailed this principle by holding that economically inactive Union citizens without sufficient resources could be denied social assistance.²⁷ This transformation has prompted scholarly discourse regarding whether Union citizenship

²⁷ *Dano* (n 9), paras 74-78.

genuinely fulfils its foundational promise or predominantly concentrates on economic aspects.

The CJEU case law illustrates a careful effort to balance equal treatment with the necessity of financial self-sufficiency. In *Baumbast*,²⁸ the Court ruled that a Union citizen who is economically inactive can still assert residence rights under Article 21 TFEU, provided they possess sufficient financial resources and comprehensive health insurance, thereby ensuring they do not impose an unreasonable financial burden on that member state. More recently, in *Brey*, the CJEU clarified that evaluations of economic self-sufficiency under Article 7(1)(b) of Directive 2004/38 must adhere to the principle of proportionality.²⁹ These cases illustrate the CJEU's efforts to reconcile the right to free movement with the economic interests of Member States, while also signalling that national governments may favour financial stability over full equal treatment.

Moreover, the evolving nature of judicial rulings on Union citizenship has sparked worries about their internal consistency. Niamh Nic Shuibhne notes that the CJEU's incremental strategy has gone beyond a simple "gradual system" of rights, leading to a lack of stability in its decisions on Union citizenship.³⁰ In contrast, Eleanor Spaventa argues that the Court's adaptive interpretation has strengthened the legal framework, further solidifying the fundamental status of Union citizenship.³¹

Conclusion

The *Grzelczyk* ruling underscored the principle of equal treatment, while *Dano* and *Baumbast* clarified the limitations necessary to prevent undue burdens on Member States' welfare



28 *Baumbast* (n 3).

29 *Brey* (n 6), paras 64-80.

30 Niamh Nic Shuibhne, 'Limits Rising, Duties Ascending: The Changing Legal Shape of Union Citizenship' (2015) 52 Common Market Law Review 889, pages 891, 920-922, 926-930.

31 Eleanor Spaventa, 'Seeing the Wood despite the Trees? On the Scope of Union Citizenship and Its Constitutional Effects' (2008) 45 Common Market Law Review 13, pages 39-42.

systems.³² Despite ongoing tensions between public policy considerations and non-discrimination principles, the evolution of case law establishes a dynamic framework that balances individual rights with economic realities. This evolving approach, driven by the principles of equality and proportionality, should not be viewed as a framework of inconsistencies but as a means to facilitate free movement within the EU, contributing to a unified legal identity for EU nationals.

Bibliography

Legislation

Charter of Fundamental Rights of the European Union [2012] OJ C326/391, art 24

Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/47, arts 18, 20, 21, 45

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 [2004] OJ L158/77, arts 2-3, 5-9, 11-13, 16-17, 19, 22, 24, 27-31, 35

Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems [2004] OJ L200/1

Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community [1968] OJ L257/2, arts 7, 10

Cases

Case 30/77 *R v Bouchereau* [1977] ECR 1999, EU:C:1977:172

Case 59/85 *State of the Netherlands v Reed* [1986] ECR 1283, EU:C:1986:157, para 15-16, 28-30.

³² *Grzelczyk* (n 1), para 46; *Dano* (n 9), para 74; *Baumbast* (n 3), paras 91-93.

Case 67/74 *Bonsignore v Oberstadtdirektor der Stadt Köln* [1975] ECR 297, EU:C:1975:34

Case C-127/08 *Metock and Others v Minister for Justice, Equality and Law Reform* [2008]
ECR I-6241, EU:C:2008:449

Case C-138/02 *Collins v Secretary of State for Work and Pensions* [2004] ECR I-2703,
EU:C:2004:172

Case C-140/12 *Pensionsversicherungsanstalt v Brey* [2013] EU:C:2013:565

Case C-145/09 *Land Baden-Württemberg v Panagiotis Tsakouridis* [2010] ECR I-11979,
EU:C:2010:708

Case C-162/09 *Secretary of State for Work and Pensions v Lassal* [2010] EU:C:2010:592

Case C-184/99 *Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve*
[2001] ECR I-6193, EU:C:2001:458

Case C-200/02 *Kunqian Catherine Zhu and Man Lavette Chen v Secretary of State for the Home Department* [2004] ECR I-9925, EU:C:2004:639

Case C-209/03 *R (Bidar) v London Borough of Ealing* [2005] ECR I-2119, EU:C:2005:169

Case C-299/14 *Vestische Arbeit Jobcenter Kreis Recklinghausen v Jovanna García-Nieto and Others* [2016] EU:C:2016:114

Case C-333/13 *Dano v Jobcenter Leipzig* [2014] EU:C:2014:2358

Case C-348/09 *PI v Oberbürgermeisterin der Stadt Remscheid* [2012] EU:C:2012:300

Case C-413/99 *Baumbast and R v Secretary of State for the Home Department* [2002] ECR I-7091, EU:C:2002:493

Case C-456/02 *Michel Trojani v Centre public d'aide sociale de Bruxelles* [2004] ECR I-7573, EU:C:2004:488, paras 9-10, 37, 42-46.

Joined Cases 115 and 116/81 *Adoui and Cornuaille v Belgian State* [1982] ECR 1665,
EU:C:1982:183

Journals

O'brien C, 'Civis Capitalist Sum: Class as the New Guiding Principle of EU Free Movement Rights' (2016) 53 Common Market Law Review 937

Shuibhne NN, 'Limits Rising, Duties Ascending: The Changing Legal Shape of Union Citizenship' (2015) 52 Common Market Law Review 889

Spaventa E, 'Mice or Horses? British Citizens in the EU 27 after Brexit as "Former EU Citizens"' (2019) 44 European Law Review 589

Spaventa E, 'Seeing the Wood despite the Trees? On the Scope of Union Citizenship and Its Constitutional Effects' (2008) 45 Common Market Law Review 13

Thym D, 'The Elusive Limits of Solidarity: Residence Rights of and Social Benefits for Economically Inactive Union Citizens' (2015) 52 Common Market Law Review 17

GRADEMARK REPORT

FINAL GRADE

GENERAL COMMENTS

51 /100

PAGE 1



Comment 1

I'm not sure it makes sense to start with the directive given that this is really about how the Court has interpreted citizenship

PAGE 2



Comment 2

that's just a broad statement. You need to embed the assessment of the case law in a analysis of the quote.



Comment 3

but how does that relate to the quote above?

PAGE 3



Comment 4

Ok, but why does this matter?

PAGE 4



Comment 5

You need to develop this more in light of G.

PAGE 5

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PAGE 11



Comment 6

The exploration of the relationship between individual cases such as those needs to be much more central to your essay.

PAGE 12

PAGE 13

PAGE 14

GRADING FORM: DLS COURSEWORK RUBRIC

HOI TSANG

KNOWLEDGE

- You show knowledge of the case law on Union citizenship and beyond. You also show knowledge of secondary legislation. However, especially on the case law, your analysis remains mostly superficial and you do not really engage with it.

ANALYSIS

- Unfortunately, your essay does not really engage with the essay title. This was an essay about the Court's use of citizenship in its case law. You needed to make the evolution of the Court's reasoning on citizenship a central part of your essay. For this, you needed to engage at a more meaningful level with the case law, and also with secondary sources such as journal articles and books. But you largely didn't do that. Your essay remains very descriptive and has little to say about the quote that represented the title of this essay. You could have put less emphasis on secondary legislation.

COMMUNICATION

- Your essay is easy to read and overall well presented. Your headings however could have been more meaningful. Use them to convey your argument.

RESEARCH

- ✍ You looked up case law, but there was more key case law on citizenship that was relevant, and you did not really engage with secondary sources.

FEEDFORWARD

- ✍ Unfortunately, this was not quite good enough. For the future, think more carefully about what your essay intends to convey. You also need to engage more with the case law and secondary sources.