



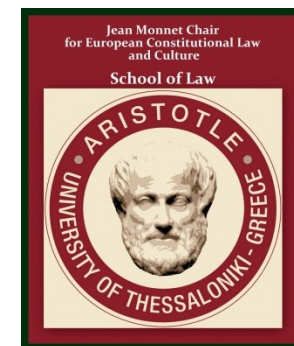
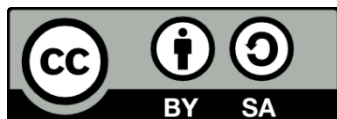
European Constitutional Law

Unit 08: The European Citizenship

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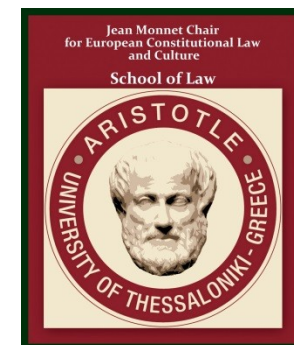
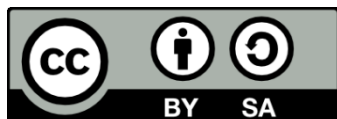


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Multiple Dimensions of European citizenship



Περιεχόμενα ενότητας

1. Article 20 TFEU.
2. Micheletti Judgement (1992).
3. Rotmann Case (2010).
4. The 'Zambrano' criterion.



Σκοποί ενότητας

- Presentation and analysis of European citizenship, legal and juridical aspects. Emphasis on cases of the ‘Zambrano’ criterion.



Article 20 of TFEU

- EU citizenship directly descends from the status of citizen of one of the Member States.
- “Nationality and EU citizenship are inseparable and superimposed”.
- Each Member State:
 - is free to regulate its own national citizenship,
 - shall use this power in compliance with the EU law.



The concept of citizenship

- “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.” [Case C-184/99].
- The door for the enjoyment of all the rights.



Micheletti Judgement (1992): cases of double (or multiple) citizenship

- Micheletti (claimant): both Italian and Argentinian citizen.
- Request for residency in Spain, based on his right of free establishment within the EEC as a dentist (art 43 TEC → art 49 TFEU).
- Spanish Civil Code: the nationality corresponding to the habitual residence takes precedence
↓
- Request rejected by Spanish Authorities.
- ECJ Judgment:
 - “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. However, it is not permissible for the legislation of a Member State to restrict the effects of the grant of the nationality of another Member State by imposing an additional condition for recognition of that nationality with a view to the exercise of the fundamental freedoms provided for in the Treaty.”



Limitations and conditions: Rottman Case (2010)

- EU citizenship without any Member State citizenship: is it possible?
 - Facts: Rottman = Austrian national by birth and German citizen by naturalization. German Authorities: naturalization withdrawal (due to deception).
 - Austrian Law: German naturalization implies the loss of his Austrian nationality + Austrian nationality not automatically recovered with the withdrawal of German naturalization.
- Stateless.

ECJ Judgment

- Deception violates:
 - The relationship of solidarity and good faith between a Member State and its nationals.
 - The reciprocity of rights and values.
- Withdrawal decision is irreproachable regarding legitimacy (public interest).
- Criterion of proportionality: Consequences of citizenship withdrawal:
 - in this case, loss of EU citizenship.



EU citizenship implications: Freedom of movement

- Art. 21 TFEU: “Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect”.
- EU has the power to adopt measures in order to ensure the effectiveness of this freedom. This can happen through:
 - Ordinary legislative procedure,
 - Special legislative procedure.
- Art. 21 TFEU allows restrictions to the freedom of movement but they must be interpreted in a restrictive way.
 - Only due to public policy, public security or public health reasons.

Who holds this right?

- ❖ Freedom of movement belongs to any EU citizen as such (Baumbast Judgement, 2002).
- ❖ “[...] the Treaty on European Union does not require that citizens of the Union pursue a professional or trade activity, whether as an employed or self-employed person, in order to enjoy the rights provided in Part Two of the EC Treaty, on citizenship of the Union”.
- ❖ Art.18 TFEU: Any discrimination on grounds of nationality is prohibited.

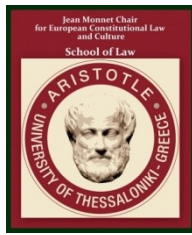


The principle of “effet utile”

- Chen Judgment (2004): “It is clear that enjoyment by a young child of a right of residence necessarily implies that the child is entitled to be accompanied by the person who is his or her primary carer and accordingly that the carer must be in a position to reside with the child in the host Member State for the duration of such residence”.
- Concept of ‘dependent’ member of the family, Conditions:
 - appropriate sickness insurance,
 - Sufficient parental resources (no burden on public finances of the host Member State).



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The 'Zambrano' criterion

“Genuine enjoyment” of the rights attaching to EU citizenship

- Facts:
 - Mr and Mrs Zambrano (columbian citizens): humanitarian protection in Belgium.
 - Request to reside in Belgium on account of the Belgian nationality of their two children.
- Decision:
 - The two children are static citizens (Dir. 2004/38 is not applicable).
 - Notion of dependency: if their parents were not allowed to reside with the children, they would have been forced to leave Belgium (EU rights denial).

The Citizenship Directive 2004/38

- Sets out the rights of freedom of movement.
- Applies to all EU citizens and their families.
- Establishes citizenship of the EU as the “fundamental status” of those exercising their right of free movement (Preamble, par. 3).

Scope and limitations

1. McCarthy Case (2011).
2. Dereci Case (2011).

McCarthy Case

- Facts:
- Mrs McCarthy: UK national + Irish passport. She sought a right of residence in the UK as a EU citizen. Mr McCarthy (her Jamaican husband) sought a right of residence as the spouse of an EU national.
- Decision:
- Dir. 2004/38 is not applicable. It only applies to dynamic citizens (Mrs McCarthy had never moved to another Member State). She is still an UK national (no restriction for her residence).
- Art. 20-21 TFEU: Mrs McCarthy is not obliged to leave the UK (unconditional right of residence in the UK).



Dereci Case

- Facts:
- Joint case of five applicants: all third country nationals wishing to reside in Austria with an Austrian family member. None of the applicants' family members had exercised his/her own right of free movement within the EU (Static Citizens).
- Decision:
- Exceptional nature of the 'genuine enjoyment' criterion: “[...] 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”.
- Negative clarification: Broad scope of discretion for national courts to apply the 'Zambrano' criterion.



Bibliography

- Hermann-Josef Blanke, Stelio Mangiameli (eds), The European Union after Lisbon - Constitutional Basis, Economic Order and External Action, 2012.

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