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INTRODUCTION

If one is to take the stat that at least half a billion of the nationals of European Union (EU) Member States (MS) are EU citizens then the issue of whether EU citizenship is the primary legal status of nationals or only supplemental to EU Member States nationals is not a trivial matter but one that matters. EU citizenship is one that has come a long way, considering that there was once a time it was believed that EU citizenship was an impossibility, but today it is not only in existence, it is also here to stay. Not only is EU Citizenship here for the long haul, its significance to the EU cannot be understated. Some of the areas are: its position as the crux in the construction of the Court of Justice of the EU (ECJ); its significance in the moulding of individuals legal position; government of a wide scope of Member States' nationalities (and some instances third country nationals); also shifts the jurisdictional boundary between EU law and national law; the capability to influence nationals perceptions of identity and culture; changes the nature of Member States politics and policies as well as the nature of the EU, because of its worth it has been sold to gain money by MS. Indeed this paper is dealing with an important issue and therefore important in itself.

Structure

This paper will set about discussing the present issue at hand by providing the history of EU citizenship; its development and current trend; cases of the ECJ and the legislation (including Treaties); and lastly a conclusion will be offered. This structure is followed to ensure that the reader (whether it be a beginner or advanced learner of EU law) gets maximum results from reading this piece.

History – Unsure Beginnings

Concerning the history of EU citizenship some have suggested that its foundation was laid in the Maastricht Treaty (Treaty on European Union (TEU) – that it was

here that EU citizenship was introduced into the Union. However, the other school of thought argued that EU citizenship's beginnings can be traced back to the 1970s. This paper finds itself leaning towards the second school of thought. Upon research, it was discovered that the issue of European citizenship was the subject of much discussion during the 1970s. Particularly the former Belgian Prime Minister who submitted a report had a chapter solely discussing European citizenship. Further, the ECJ case law pre-Maastricht Treaty has recorded cases of discussing EU citizenship in some sort of form; some of the cases are van Gend en Loos [1963] and Costa v ENEL [1964]. So about half a century ago the concept of EU citizenship was amongst EU issues; it may have not been officially called EU citizenship but all the same it was clearly in place. In the end what may be clearly said is that the Maastricht Treaty was where the pre-existing EU citizenship was formally introduced and codified.

Development & Current Trend

At this point this paper shall develop the definition of four words that will be used interchangeably: complement and addition; and primary and fundamental. Complement is defined as something that completes something else or makes it better while supplemental is defined as something added to something else to make it complete. From the definitions provided, it can be clearly seen that both words are very similar if not the same and as such this paper is allowed to use the words interchangeably. Primary is also defined as most important, most basic or essential while fundamental is described as forming a necessary base or core; of central importance. Again it can be seen that these are words that can be used interchangeably.

As this paper has already stated the Treaty of Maastricht codified the pre-existing law on EU citizenship and it also granted a set of rights to all EU citizens whether economically active or not. This element economically active or not proved to be a success as pre-existing rules on EU citizenship suggested that rights were only granted to economic active people (find an article). Building on its success, the Treaty of Amsterdam added another right to the rights of all EU citizens, that is, EU citizens could write to any of the institution of bodies and in one of the prescribed languages and have an answer in the same language (provided in Article 21 TEC). It is important to note that Article 17 TEC stated that EU citizenship was to complement, and not replace the national citizenship (we shall see how important the emphasised word is below). However, in the latest Treaty – the Treaty on the Functioning of the European Union (TFEU) known as Lisbon Treaty; by virtue of Article 20 TFEU (previously Article 17 TEC) it is **provided that '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.'**

It is this paper's belief that when Art 17 TEC stated EU citizenship was to 'complement' it implied that it was supplemental to the MS nationals and thus prima facie as such not the primary (fundamental) legal status of EU citizens. But now it appears that has changed if the wording of the Lisbon Treaty is to be taken for what it says; as Art 20 TFEU wording that EU citizenship shall be 'additional' suggests that EU Member States now enjoy fundamental legal status. Again another definition that is needed is additional - additional is the act or process of joining something to something else, the act or process of adding something. Thus an addition can however hold its own, with or without the thing it adds to and therefore EU citizenship enjoys a primary legal status. Scrutinising Article 20 TFEU further, it says that EU citizenship is additional to national citizenship it does not replace it. It is common sense that national citizenship of any individual is his primary legal status, if this is so a question arises, if the drafters stated unequivocally that EU citizenship was not a replacement of national citizenship (which is primary legal status) then it means that EU citizenship is something considered of equal status that it neither to be stated that it was not a replacement thus the reading of a primary legal status into EU citizenship. Furthermore, it would be incredulous to suggest that the deliberate substitution of complementary with in addition was accidental, or sloppy editing; this is a Union with great power for this to be the case. If not fully convinced the reader is invited to now look at the case law and legislation that show that EU citizenship is the primary legal status of Member States' nationals.

Case Law, Legislation and Treaty

The ECJ has always treated the status of EU citizenship with caution. However, with the advent of the case of Martinez Sala the ECJ put its cautious attitude aside and donned a liberal one. In Martinez the Court conferred the claimant (a **non-economically active Spanish national**), **with an entitlement to a German child-raising allowance reserved for Community workers. The implication of this judgement** was that all EU citizens lawfully resident in the territory of another MS could **rely on the principle of non-discrimination (now Article 18 TFEU) in all situations which fall within the scope of EU law. The ECJ followed this new line of judgement in D'Hoop. In this case a Belgian national was allowed to challenge the rejection of her claim to a tideover allowance. The ECJ held [supported her claim] confirmed that EU citizens were conferred with the rights to be treated equally, that they also had the right to freely move and reside within the territory of Member States. Since the ECJ conferred rights upon the individuals and by extension on all EU citizens, it is clear that EU citizenship is a primary (fundamental) legal status. Another fundamental case is Grzelczyk, here the claimant, a French national enrolled at an academic institution in Belgium and was awarded a[the] disputed minimum subsistence allowance, though the Belgian secondary law restricted such an award. In the obiter of the ECJ lies the finery, the Court stated that EU 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' (emphasis added). This line of the Court's argument was ground-breaking as it showed that the ECJ for once had started to pay great attention to the importance of EU citizenship.**

The statement that EU citizenship is destined to be the fundamental status of nationals was also followed by the Court in Baumbast. Baumbast is viewed as fundamental because it **confirmed that Article 21 created directly effective rights enforceable in Member States' national courts "by a clear and precise provision of the Treaty."** It also stated that these rights must be protected by national courts. Another vital case to the understanding of the issue in question is Zambrano. In this case Luiz Zambrano was a Columbian national who moved to Belgium with his wife and child, after a few years in Belgium with the addition of two more children (the two children became Belgian nationals because of their birth in Belgium), he applied for social benefits and was refused by the Belgian authorities. The ECJ was asked: could the status of Union citizenship be autonomously relied upon (primary legal status) and whether this status implied a right to residency for a third-country national (conferring of rights). The Court's answer to the questions was unequivocally positive as it held that, "citizenship of the Union is intended to be the fundamental status of nationals of the Member States.....Article 20 TFEU precludes national measures which have the effect of depriving citizens of the Union of the genuine enjoyment of the substance of the rights conferred by virtue of their status as citizens of the Union". Thus for the first time the Court stated clearly that Article 20 TFEU is a primary legal source of rights for Union citizens; and there it is seen that case law of the ECJ is in support of the EU citizenship being the primary legal status.

In addition to the case law of the ECJ, this paper also points the reader to the Directive 2004/58/EC. Recital three of the Directive **states that 'Union citizenship should be the fundamental status of nationals of the Member States when they exercise their right of free movement and residence' (emphasis added). The Directive** which was a replacement to several existing Directives on EU citizenship also created an unqualified right of permanent residence for Union citizens. Lastly, just as

the question implies if EU citizenship is the primary legal status it will confer rights, if this is so then that means that if the EU law on EU citizenship confers rights that means EU citizenship is of primary legal status. Article 20(2) TFEU provides that EU citizens are conferred the following rights: the right to move and reside freely within MS (Article 21); the **right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence via** Article 22; the right not to be discriminated against on the grounds of nationality. These rights are not exhaustive and are subject to conditions. The submission of the rights conferred on EU citizens is further proof that EU citizenship is viewed as a fundamental legal status of Member State nationals. Furthermore, the EU itself has this note by the side of Article 20 TFEU: 'Double citizenship: national and Union, "additional" "Supplementary" in the Nice-Treaty'. This means that for certain the EU may at one point have viewed EU citizenship as supplementary but post-Lisbon now views it as primary legal status.

Conclusion

It follows that from exegesis of the case law, the Lisbon treaty and the Directive 2004/58, EU citizenship is the primary legal status of EU Member States nationals, therefore conferring rights on nationals of MS.

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