

Abstract

Status of a family of EU citizens as derivative beneficiaries of the right to free movement of persons within the EU

This thesis analyses the legal status of an EU citizen and his family members which are derivative beneficiaries of the right of free movement within the EU. For the purposes of analysis, comparison and understanding of the real benefits of European citizenship, the focus of my thesis is on the family members, whether they may be other EU citizens or third country nationals. The thesis also aims to highlight certain rights and general principles in the case law of the CJEU which have taken shape in the case law of the CJEU on the right of the EU citizens to move and reside freely in other Member States as well as in their home Member state. These include in particular the right to respect for private and family life, the principle of the best interests of the child, the principle of proportionality, the principle of non-discrimination and the doctrine of the genuine enjoyment of the substance of the rights attaching to the status of European Union citizen.

The first chapter of my thesis serves to introduce the institution of European citizenship, its origins, its development, recalling the key case law that has shaped it, its future development considerations on its reform and highlighting the role of the right to move and reside freely within the EU in forming contemporary European identity. This chapter also examines the exercise of the right to move and reside freely in the territory of Member States by non-EU citizens – British citizens covered by the UK Withdrawal Agreement, citizens of European Free Trade Association (EFTA) and Swiss citizens, and family members of all these groups. The chapter analyses the Brexit process, the negotiations on the future status of Gibraltar and possible ideological inspirations to be taken from the decisions of the EFTA Court. The chapter highlights certain problematic points of Switzerland's unilateral steps in the area of its immigration policy.

The second chapter of my thesis focuses on the principle of the best interests of the child and the right to respect for private and family life in the case law of the Court of Justice of the EU (CJEU) and the European Court of Human Rights (ECtHR). At the same time, several judgments of both courts are selected in this chapter for a thorough analysis and comparison to capture the approach of both courts to the concept of family life.

The third chapter deals with the formation and, as a result of the CJEU's case law, the continuous transformation, expansion and refinement of the concept of family member of an EU citizen, with the main focus on the systematics of the provisions at stake in Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, which give the concept of family member its limits.

The fourth chapter focuses on the analysis of the various rights under Directive 2004/38/EC which allow EU citizens and their family members to work, do business, study, reside and lead a family life in another EU Member State under the same conditions as nationals of that Member State. Attention is also paid to the current issue of the COVID-19 pandemic, the restrictions on the right of entry and the right of residence on grounds of public policy, public security, and public health and possible forms of fraud and abuse of the rights granted by Directive 2004/38/EC.

In the conclusion, the author of this thesis summarises and synthesises his findings into general trends in the area of free movement and the right to respect for family life in the current case law of the CJEU, underlines the human rights emphasis that the case law has and stresses the limited scope of EU Member States to restrict the rights of individuals on the grounds of public policy, public security, and public health.

Keywords: right to respect for family life, EU citizenship, free movement of persons.