

Chapter 13 EU Citizenship

Context for this chapter

Guillermo, a thirty-five-year-old Italian, moved to Germany with his Algerian wife and fourteen-year-old Italian son, with the intention of finding a job in civil engineering. The job offer he had when he moved his family to Germany fell through, and though he applied for many more jobs, he struggled to get past the interview stage. However, he had ample savings, and the family was able to live on those in Germany for a period of six months.

Guillermo decided he would pursue a Master's degree at a German university, as this would both add to his CV and help him learn the German language better. He was given a place at the (fictional) University of Franken, and decided he would apply to the German government for a student loan. His application was denied, and the authorities responded by saying that, as he did not have a genuine link with Germany, he was not entitled to government financial support for his studies.

Meanwhile, Guillermo's son Antonio is arrested alongside some of his friends for spray-painting anti-capitalist slogans on an overpass. He is sentenced to a community service programme for 100 hours, and otherwise released back into his parents' care.

After a long conversation with his wife, Guillermo decided that he would continue looking for a job for another few months, but that, as his money was running low, they would have to return to Italy by the end of the year. Guillermo at this point applied for an unemployment benefit and a child benefit at the Franken local council, in the hopes of making his savings last longer.

That application was also declined, and two days later, Guillermo received a letter from the German immigration authorities calling him in for an interview. At the interview, they asked after his personal finances as well as what his family members were doing. He explained his son was in school, and his wife managed the household, while he looked for work. When asked, he had to admit that his wife and son spoke no German, and his own was improving but not fluent.

Three days later, he received a letter informing him that he had no right to reside in Germany under EU law, nor did his wife and son, as he did not hold sufficient finances to support himself. Additionally, his son was subject to deportation proceedings as the German immigration authorities believed him to be a threat to public security.

Discussing the scenario

Use the material in this chapter to address whether the actions of the German authorities against Guillermo and his family are justifiable. Treat each paragraph as setting out a specific scenario, and explain how EU law applies to that scenario.

Approaching the scenario

This scenario takes the form of a fairly standard law exam question at university: it describes a factual scenario that has legal repercussions, and in your answer, you are expected to consider what those repercussions are and if they are permissible under EU law.

What you are required to do is go through the scenario, paragraph by paragraph, and see what *facts* occur there and what *law* applies to those facts. Assessing that combination of *law* and *facts* will enable you to demonstrate that you not only understand how the law works in the abstract, from having read Chapter 13 in the book, but you are able to apply it to a particular situation that you have not seen before.

The majority of the work you need to do in order to accurately comment on the German authorities' actions will have been done as you answered the '**Discussing the scenario**' boxes throughout Chapter 13. They are addressed here in turn—with a small conclusion at the end on how to summarize the justifiability of the authorities' actions.

Note: one aspect of EU citizenship law that the chapter does not address in detail is that only EU nationals are EU citizens, and therefore direct beneficiaries of the EU's free movement of persons' law. This is not because knowing who the relevant EU citizens are in the scenario is unimportant, but because Chapter 12 already had you investigating how to distinguish between beneficiaries of free movement rights and their third-country national family members. In the current scenario, Guillermo and his son Antonio are both EU citizens, whereas Guillermo's wife is a third-country national.

Discussing the scenario

What does *Grzelczyk* suggest about Guillermo's rights to unemployment benefit or child benefit? In what circumstances can Germany deny his application?

To answer this question fully, it is worthwhile making clear that, after Chapter 13, you understand that the status of EU citizenship *changed* the extent to which EU nationals who were not economically active (or workers) were entitled to equal treatment in Member States of which they were not nationals. Moreover, in general those individuals are still required to hold comprehensive sickness insurance and have 'sufficient resources' to avoid burdening their new Member State of residence. (By the end of the Chapter, you should be able to link this to Article 7 of the Citizenship Directive.)

The bulk of your answer, however, should focus on the CJEU case law *following* EU citizenship, which made clear that these restrictions on equal treatment had to be proportionate. Cases like *Grzelczyk* and *Martinez Sala* both suggest that Guillermo may be entitled to both of these benefits, depending on how long he wished to receive them. The facts do not make clear exactly when Guillermo moved to Germany—but as he has already lived there for 6 months, and intends to leave before the 'end of the year', you can assume it is for a period of 6 months or less. Is this comparable to *Grzelczyk*? You could argue this in any number of ways: Rudy Grzelczyk had lived in Belgium for longer than Guillermo and his family have lived in Germany, so the situation may be distinct on those grounds; or a student finishing a degree is generally in a different situation than a job-seeker who has not managed to find employment. In both those scenarios, while

Grzelczyk indicates that Guillermo's situation should be *considered* by the German authorities, it is likely that he will be declined these benefits. On the other hand, since he is only asking for the benefits for a short period of time and is an active work-seeker who has been in the country for at least six months, *Grzelczyk* seems to suggest that it may be proportionate to give him the benefits for three months.

Here, you can best demonstrate your understanding of EU citizenship law by indicating that EU citizenship introduced a new 'generosity' towards economically inactive EU nationals—but that even in the most generous period of CJEU case law, this 'generosity' was not endless. Therefore, Guillermo's entitlement to benefits was, in any event, dependent on them being short-term; only a 'certain degree of financial solidarity' is attached to the status of EU citizenship.

Discussing the scenario

Is the German authorities' refusal of Guillermo's application for benefits justifiable? If so, on what grounds?

This question expands on the previous one, and considers the details of when a Member State is justified in rejecting an application for benefits from an economically inactive EU citizen. We saw this in Chapter 12 with regards to benefits for job-seekers, and here, too, the key is to cite the *Gebhard* test:

- The measure must be applied in non-discriminatory manner;
- The measure must be justified by imperative requirements in the general interest;
- The measure in place must be suitable for securing the attainment of the objective which they pursue;
- And the measure in place must not go beyond what is necessary to attain the objective.

As Germany explicitly mentions the existence of a 'genuine link', it is likely that their refusal satisfies the *Gebhard* test. It does not appear that they are refusing the benefits on discriminatory grounds, or in a discriminatory way. The facts do not expressly address what 'imperative requirement' the German authorities are trying to achieve, but it seems clear that they are hoping to protect their social security system from being exploited by people who have no 'genuine link' with Germany. Is the measure proportionate? From case law like *Grzelczyk* and *Collins*, we know that in principle it is acceptable, in the absence of a 'genuine link', to deny an EU citizen benefits. You would do very well on this question if you realized that the German authorities also appear to be seeing Guillermo's application for benefits as an indication that he may not actually be legally residing in Germany. If they attempted to revoke his right to reside *purely* because he applied for benefits, this would be contrary to EU law, according to *Grzelczyk*.

Discussing the scenario

Can Antonio be deported from Germany after having been arrested for spray-painting graffiti on an overpass? If so, on what grounds?

The facts show that, while Guillermo is being told that his right to reside is being revoked, Antonio is being threatened with deportation. The difference is important: Guillermo needs only to demonstrate that he *does* have sufficient resources (and comprehensive sickness insurance) in order to have his rights reinstated, whereas, if deported, Antonio would have to leave and re-enter Germany.

Chapter 13 told us that that deportation of EU citizens is very much a last resort, however. The Citizenship Directive has made it clear what while deportation is in principle possible on **public policy** or **public security** grounds, under Article 29(2) this comes with significant conditions. While a deportation would be 'based exclusively on the personal conduct' of Antonio, as required by the first paragraph of Article 29(2) CD, it seems unlikely that his conduct represents a 'genuine, present and sufficiently serious threat affecting one of the fundamental interests of society'. He spray-painted an overpass—this is easy to contrast with the CJEU case law on deportations. Even though Antonio does not have permanent residence—and so Germany does not have to justify his deportation on 'imperative' grounds of public security—it seems clear that this would also not meet the 'sufficiently serious' test. Mentioning cases like *Tsakouridis* and *Orfanopoulos and Oliveri* would be more than enough to help you make such an argument.

Discussing the scenario

Can Guillermo appeal the decision to not give him a loan for a Master's degree? If so, on what grounds?

This question asks you to have paid attention to the specific exception to equal treatment in Article 24(2) of the Citizenship Directive, which excludes student grants and loans from the 'equal treatment' obligation otherwise generally contained in Article 24 CD. While Guillermo is certainly free to appeal this decision, he will not succeed under the current Citizenship Directive, unless he can demonstrate that he has permanent residence (which he does not), or that he is a family member of someone working in Germany (which, according to the facts, he is not).

Discussing the scenario

Consider what you thought about Guillermo's entitlement to unemployment benefit and child benefit in Germany under *Grzelczyk*. Does your answer change in response to *Dano*? Why or why not?

The answer to this question depends on what you thought about Guillermo's entitlement to benefits under case law like *Grzelczyk*. If you had a generous reading of the status of EU citizenship as constructed in *Grzelczyk*, case law as of *Dano* should be making you revisit that. Whereas *Grzelczyk* implies that every individual EU citizen's situation should be considered and decisions taken to deny equal treatment should be proportionate, *Dano* appears to instead focus on how well an EU citizen has 'integrated' into the host State.

Comparing Guillermo's situation to the facts of *Dano*, because his family do not speak German and he has not successfully 'worked' in Germany to date, this seems to suggest that Germany can outright refuse him benefits—as he has not integrated enough—and revoke his residency status as he is failing to meet the 'sufficient resources' condition in

Article 7 of the Citizenship Directive. The more recent CJEU case law thus suggests that Germany would be justified in denying his benefits.

If you already thought that Guillermo's situation was incomparable to Rudy Grzelczyk's, and applied the 'genuine link' test in *Collins* to his length of residence in Germany, it is likely that you were denying him benefits *while* considering his individual circumstances and the proportionality of doing so. The outcome here does not change, then. However, concluding that Guillermo is not entitled to benefits under *Dano* takes a different approach that measures his 'integration'. As of *Brey*, the mere fact that he requires benefits means that he does not have 'sufficient resources'.

Summary

Considering the actions of the German authorities:

- Paragraph 1 does not discuss any actions by the German authorities—but it is worth mentioning at the start of your answer that, as an EU citizen, Guillermo can move his family to Germany as long as he complies with the EU Treaty provisions and Citizenship Directive provisions on free movement of persons. As he is unemployed when he first moves, this requires him to have sufficient resources and comprehensive sickness insurance. Note that the facts never make it clear if he actually has the latter for his entire family!
- The German authorities' decision to decline Guillermo a student loan is expressly permitted by Article 24(2) of the Citizenship Directive, which excludes student grants and loans from an equal treatment obligation in nearly all cases. Whether Guillermo has a 'genuine link' is unnecessary to consider in light of Article 24(2)—only if he were a permanent resident, *or* he had a family member who was a worker in Germany, would he be entitled to any study support.
- The German authorities' decision to decline Guillermo's application for unemployment benefit and child benefit is, in principle, a violation of his Article 21 TFEU rights—but can be justified in situations where Guillermo is economically inactive and cannot demonstrate a 'real' or 'genuine' link to Germany. Earlier CJEU case law like *Grzelczyk* would have required the authorities to consider his individual circumstances before determining if refusing the benefits was proportionate. But, as of *Dano*, a lack of integration would suffice in determining that proportionality; and, as of *Brey*, a German law generally finding that those who require benefits in order to have 'sufficient resources' would be compliant with EU law. The decision to revoke Guillermo and his wife's and son's residence rights consequently seems justifiable under EU law.
- The German authorities' decision to commence deportation proceedings against Antonio, on the other hand, appears to be contrary to CJEU case law on 'public policy' justifications (such as *Tsakouradis*) as well as Article 29(2) CD, because Antonio is unlikely to present a 'genuine, present and sufficiently serious threat' to a fundamental German societal interest.