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THE CASE C-34/09 *RUIZ ZAMBRANO V. ONEM* – THE TIMELESS JUDGMENT OF THE COURT OF JUSTICE ON EU CITIZENSHIP

Abstract:

The article covers interpretation of the content of EU citizenship in the light of judgment of the Court of Justice of EU, C-34/09 *Ruiz Zambrano v ONEm*. This decision expands horizons of EU citizenship due to the term ‘the genuine enjoyment of the substance of rights conferred by the status of EU citizenship’. A refusal to grant a right of residence to a third country national with dependent minor children in the Member State where those children are nationals and reside, and also a refusal to grant such a person a work permit, has such an effect of depriving EU citizens of their rights. This was applied even that cross-border element was missing. Despite that the destiny and status of dependent children seem to play major role in the course of the case and maybe only situations of care will be granted in the future the same treatment of the Court like *Zambrano*. The Court created timeless basis for more uniform shape of Union Citizenship, free from reverse discrimination, to which may return later in its case law. The article compared also the content of *Zambrano* with later case of C-434/09 *McCarthy*.

Keywords:

EU Citizenship, cross-border situations, third country nationals, family members

1. Introduction

The *Zambrano*¹⁾ case is a progressive decision to become part of EU Law “classics” of creativity of Court of Justice of EU (the Court), concerning sculpturing content of EU citizenship rights. Although perhaps too short in terms of its importance and failing satisfying demand for detailed reasoning, on the other hand due to its general shape it prepared a platform for alternative distinguishing by later decisions. Readers familiar with EU law may remember for comparison famous *Cassis de Dijon* case, where the Court also “has never laid bare its underlying reasoning” why exactly it has devised the structure of the mandatory requirements through its interpretation of ex Article 28 EC (now Article 34 TFEU) and why it has developed apparent “favored status” for indistinctly applicable rules.²⁾ *Cassis de Dijon*³⁾ became part of “the classics of EU Law”⁴⁾ and platform for later adjustment

¹⁾ C-34/09 *Gerardo Ruiz Zambrano v. Office national de l'emploi (ONEm)*, March 8th, 2011.

²⁾ The approach of the Court explained by WEATHERILL S., BEAUMONT P., *EU Law*, Penguin Books, 3rd ed., 1999, p. 578-579.

³⁾ 120/78 *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein*. [1979] ECR 649.

⁴⁾ The case was included for example among top cases in *The Past and Future of EU Law, The Classics of EU Law Revisited on the 50th Anniversary of the Rome Treaty*, eds. MADURO M., AZOULAI L., Hart Publishing, Oxford, Portland, Oregon, 2010.

by *Keck*.⁵⁾ Returning back to issue of EU citizenship, it is true also that facts of the *Zambrano* case are very original. The destiny and status of dependent children seem to play a role in the course of the case. The Court focused on individual term of “the genuine enjoyment of the substance of the rights conferred by virtue of the status of citizens of the Union” to which the Court gave a stamp of standard which applied over the written texts of EU Law, as will be seen below.⁶⁾ At the same time when dealing with the case, let’s not forget that still the Court cannot dictate the submission of ideal disputes on which it can supply model answers.⁷⁾ It had to deal with preliminary ruling questions as they came.

2. Facts of the case

In 1999, Mr Ruiz Zambrano, who was in possession of a visa issued by the Belgian embassy in Bogotá (Colombia), applied for asylum in Belgium. In 2000, his wife, also a Colombian national, likewise applied for refugee status in Belgium. By decision in September 2000, the Belgian authorities refused their applications and ordered them to leave Belgium. However, the order notified to them included a *non-refoulement* clause stating that they should not be sent back to Colombia in view of the civil war in that country. In October 2000, Mr. Ruiz Zambrano applied to have his situation regularized. He referred to the absolute impossibility of returning to Colombia and the severe deterioration of the situation there, whilst emphasizing his efforts to integrate into Belgian society, his learning of French and his first child’s attendance at pre-school. He also was concerned of the risks in the event of a return to Columbia, of a worsening of the significant post-traumatic syndrome he had suffered in 1999 as a result of his son, then aged 3, being abducted for a week. That application was again rejected in August 2001 and an action was brought for annulment and suspension of that decision before the Conseil d’État, which rejected the action for suspension by a judgment of 22nd May 2003. Meanwhile since 18th April 2001, Mr. Ruiz Zambrano and his wife have been registered in the municipality of Schaerbeek (Belgium). On the 2nd October 2001, although he did not hold a work permit, Mr Ruiz Zambrano signed an employment contract for an unlimited period to work full-time with the Plastoria company, with effect from 1 October 2001.⁸⁾

The specific direction of the case seems to be starting not at the Court itself but already in Belgium authorities. They “did not actively pursue coercive measures to deport the family of the failed asylum seeker”.⁹⁾ On the 1st September 2003, Mr. Ruiz Zambrano’s wife gave birth to a second child, Diego, who acquired Belgian nationality pursuant to Article 10 (1) of the Belgian Nationality Code, since Colom-

⁵⁾ C-267/91 and C-268/91 *Criminal proceedings against Bernard Keck and Daniel Mithouard* [1993] ECR I-6097. In relation to *Zambrano* judgment see C-434/09 *Shirley McCarthy v Secretary of State for the Home Department*, May 5th 2011 below in the text.

⁶⁾ Returning back to *Cassis de Dijon*, in this case there is also no mention of ex article 30 EC.

⁷⁾ WEATHERILL S., BEAUMONT P., p. 504-505, cited *supra* note 2.

⁸⁾ Facts in the text above taken from *paras* 14-18 of the judgment.

⁹⁾ Annotation of the case by HAILBRONNER K, THYM D. at *Common Market Law Review* 48, *Kluwer Law Int.*, 2011, p. 1254. Authors also observed as Belgium authorities would nowadays be obliged to do under Art. 6-8 of the “Return” Directive 2008/115/EC (O.J. 2008, L 348/98).

bian law does not recognize Colombian nationality for children born outside the territory of Colombia where the parents do not take specific steps to have them so recognized.¹⁰⁾ Again, despite parents did not register children at Colombian Embassy, Belgium was not obliged to grant nationality under such generous conditions under Art. 1 of the Code.¹¹⁾ In April 2004, Mr. and Mrs. Zambrano again applied to have their situation regularized, putting forward as a new factor - the birth of their second child.¹²⁾ In September 2005 Mr. and Mrs. Zambrano lodged an application to take up residence, in their capacity as ascendants of the Belgian national and in the same month a registration certificate was issued to them provisionally covering their residence until 13th February 2006.¹³⁾ Mr. Ruiz Zambrano's application to take up residence was rejected on 8th November 2005 on the ground that he had disregarded the laws of his country by not registering his child with the diplomatic or consular authorities. Nevertheless he had correctly followed the procedures available to him for acquiring Belgian nationality for his child and then trying on that basis to legalize his own residence. On 26th January 2006, his wife's application to take up residence was rejected on the same ground. Since the introduction of his action for review of the decision rejecting his application for residence in March 2006, Mr. Ruiz Zambrano has held a special residence permit valid for the entire duration of that action.¹⁴⁾

Besides above Mr. Ruiz Zambrano's employment contract was temporarily suspended on economic grounds in October 2005, thus he made first application for unemployment benefit with the result of rejection. That decision was challenged before the referring court by application in April 2006.¹⁵⁾ This was Status quo situation: 'the applicant and his wife cannot pursue any employment, but no expulsion measure can be taken against them because their application for legalizing their situation is still under consideration'.¹⁶⁾ Later he was even compelled to stop working without work permit. Another application was made for unemployment benefits with the same result - refusal.

Ruiz Zambrano argues he enjoys right to residence directly based on EC Treaty (now TFEU) or at least right to derived residence for ascendants of a minor child who is a national of a Member State, thus he does not need any work permit, referring to *Chen*¹⁷⁾ case. *Chen* belongs to category of the case-law on EU Citizenship. According to Article 20 TFEU (ex. 17 EC) every person holding the nationality of a Mem-

¹⁰⁾ Para 19. Under Article 10 (1) of the Belgian Nationality Code (*Moniteur belge*, 12th July 1984, p. 10095), in the version applicable at the time of the facts in the main proceedings, 'the Belgian Nationality Code': 'Any child born in Belgium who, at any time before reaching the age of 18 or being declared of full age, would be stateless if he or she did not have Belgian nationality, shall be Belgian.' (para 4 of judgment).

¹¹⁾ HAILBRONNER K, THYM D., cited *supra* note 9, p. 1254.

¹²⁾ Para 21.

¹³⁾ Para 22.

¹⁴⁾ Paras 23-24.

¹⁵⁾ Para 25.

¹⁶⁾ Para 26.

¹⁷⁾ C-200/02 *Kunqian Catherine Zhu, Man Lavette Chen v. Secretary of State for the Home Department*, October 19th, 2004.

ber State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship. According to Article 21 TFEU (ex. 18 EC) every citizen of the Union shall have the right to move and reside freely within the territory of the Member States (underlined text emphasizes to the reader to be aware of cross-border issue in the case), subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect. Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited according to Art. 18 TFEU (ex 12 EC). The *Chen* case, to which Mr. Zambrano refers, has been cited in literature as an example of individual conduct amounting to form of abuse under what is now Article 21 of TFEU on the basis that the third country national claimants deliberately gave birth to their child in part of the territory of one Member State (UK) which, for particular historical and constitutional reasons, automatically qualified the baby for nationality of another Member State (Ireland), while simultaneously satisfying the need for a cross-border element to trigger the Treaty, all with a view to generating a secure right of residence for the parents themselves under EU Law.¹⁸⁾ Nevertheless, according to the Court in *Chen* “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”¹⁹⁾

3. Decision

The Court understood questions of referred court in following manner (considered them together): the referring court asks, essentially, whether the provisions of the TFEU on European Union citizenship are to be interpreted as meaning that they confer on a relative in the ascending line who is a third country national, upon whom his minor children, who are European Union citizens, are dependent, a right of residence in the Member State of which they are nationals and in which they reside, and also exempt him from having to obtain a work permit in that Member State.²⁰⁾ Arguably, the issue of care for dependent persons, a fragile population that cannot rely on its own resources, is an important issue in this judgment.²¹⁾ According to Governments submitting observations and European Commission, free movement and residence guaranteed by EU Law do not apply since children never left territory of Belgium, thus it concerned internal situation (like it was mentioned in underlined text above, according to Article 21 TFEU (ex. 18 EC) every citizen of the Union shall have the right to move and reside freely within the territory of the Member States).

¹⁸⁾ DOUGAN M., *Some Comments on the Idea of a General Principle of Union Law Prohibiting Abuses of Law in the Field of Free Movement for Union Citizens*, in De la Feria R., Vogenauer S., *Prohibition of Abuse of Law – A New General Principle of EU Law?* Hart Publishing, 2011, p. 359-60.

¹⁹⁾ *Chen*, cited *supra* note 17, para 45.

²⁰⁾ Para 36.

²¹⁾ AZOULAI L., *A Comment on the Ruiz Zambrano Judgment: a Genuine European Integration*, European University Institute, at <http://eudo-citizenship.eu/citizenship-news/457-a-comment-on-the-ruiz-zambrano-judgment-a-genuine-european-integration>.

The Court repeated that citizenship of the Union is intended to be the fundamental status of nationals of the Member States, referring to its previous decision of *Grzelczyk*.²²⁾ The Court excluded application of Directive 2004/38 since this directive refers to beneficiaries concerning all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members. In such circumstances according to the Court 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. A refusal to grant a right of residence to a third country national with dependent minor children in the Member State where those children are nationals and reside, and also a refusal to grant such a person a work permit, has such an effect. Then the Court brings in the term “territory of the European Union” as will be seen below in the text. This reference is not only the metaphor which designates the sum of the physical territories of the Member States but it refers to new common space, a space of distribution of rights and common values.²³⁾ According to the Court it must be assumed that a refusal to grant work permit and right to residence to person in position of Mr. Zambrano would lead to a situation where those children, citizens of the Union, would have to leave the territory of the Union in order to accompany their parents. Similarly, if a work permit were not granted to such a person, he would risk not having sufficient resources to provide for himself and his family, which would also result in the children, citizens of the Union, having to leave the territory of the Union. In those circumstances, those citizens of the Union would, in fact, be unable to exercise the substance of the rights conferred on them by virtue of their

²²⁾ C-184/99 *Grzelczyk* [2001] ECR I 6193. Treaty articles on EU citizenship have been interpreted by the Court’s case law creatively and were used to achieve equal treatment based on nationality of EU citizen in the host Member state of EU, even for economically inactive migrant. I will not in detail cover pioneering jurisprudence on EU Citizenship because of space, I have covered basic cases elsewhere (for example in the article *Horizons of EU Citizenship are still Open in ECJ Case Law*, International Journal of Public Administration in Central and Eastern Europe, Issue 2/2008) but let me refer to summarizing and realistic view of Craig who characterized *Grzelczyk* case scenario clearly: where the Court gave an expansive interpretation to the right to move and reside within Article 18 (now 21 TFEU) and interpreted the qualification to this right, that it was subject to limits and conditions laid down in the Treaty and in Community legislation, narrowly, thereby enabling applicants to benefit from Article 18 (now 21 TFEU) and Article 12 (now 18 TFEU). Besides *Grzelczyk* type of case, in *Martinez Sala* scenarios, even where the applicant did not satisfy the conditions laid down by other Treaty articles or Community legislation, and could not therefore rely on Article 18 (now 21 TFEU), he or she was held to be within Article 17 (now 20 TFEU) and benefit from Article 12(now 18 TFEU), provided that the applicant was lawfully resident in the particular Member State, and provided that subject matter of the action came within the scope of the Treaty *rationae personae* and *rationae materiae* (CRAIG P., *ECJ and Ultra Vires Action: a Conceptual Analysis*, Common Market Law Review 48, 2011, p. 413). That illustrates the picture of style in jurisprudence of EU citizenship, useful for understanding the *Zambrano* as well.

²³⁾ AZOULAI L. <http://eudo-citizenship.eu/citizenship-news/457-a-comment-on-the-ruiz-zambrano-judgment-a-genuine-european-integration>.

status as citizens of the Union. It grants them rights to circulate and to *occupy* the European space.²⁴⁾

4. Observations

4.1 Flavor of human rights within resolution of the case

Could applicant like Zambrano rely on the EU fundamental right to family life independently of any other provisions of EU law? Concerning the status of human rights protection in history of European law, according to the Court's case-law, it had „no power to examine the compatibility with European Convention on Human Rights of national rules which do not fall within the scope of Community Law.²⁵⁾ The Court had been prepared to assess the compatibility of Member States' laws with fundamental rights in two contexts: first, when considering the compatibility of national laws with provisions of Community law which reflect certain fundamental principles or rights; and, secondly, where the States are implementing a Community law or scheme, and thus in some sense acting as agents on the Community's behalf.²⁶⁾ Another alternative when the Court will assess compatibility of national law with fundamental rights is demonstrated by *ERT*²⁷⁾ decision when Member States are derogating from Community law requirements. Where national rules “fall within the scope of Community law, and reference is made to the Court for a preliminary ruling, it must provide all the criteria of interpretation needed by the national court to determine whether those rules are compatible with the fundamental rights, the observance of which the Court ensures and which derive in particular from the European Convention on Human Rights.”²⁸⁾ There is nothing in the Lisbon Treaty that expressly overrules this case law; the Charter is repeatedly said to be declaratory of existing law; and the very authorities that are said to be overruled are expressly cited in the Explanatory Memorandum.²⁹⁾ A.G. Sharpston tried to move boundaries further in her opinion to *Zambrano*, according to her provided that the EU had competence (whether exclusive or shared) in a particular area of law, EU fundamental rights should protect the citizen of the EU *even if such competence has not yet been exercised*.³⁰⁾ She nevertheless does not think that such a step can be taken unilaterally by the Court in the present case. Craig predicted, that Advocate General Sharpston's desired result on the facts of *Zambrano* must therefore be posited on an

²⁴⁾ AZOULAI L, cited *supra* note 23.

²⁵⁾ Case C-260/89 *Elliniky Radiophonia Tileorassi AE v Dimotiky Etairia Pliroforissis and Sotirios Kouvelas* [1991] ECR I-2925, para 42.

²⁶⁾ CRAIG P., De BURCA, *EU Law Text, Cases and Materials*, 3rd. Edition, OUP, p. 341.

²⁷⁾ *ERT* cited *supra* note 25.

²⁸⁾ *ERT* cited *supra* note 25.

²⁹⁾ CRAIG P., cited *supra* note 22, p. 431, Explanations Relating to the Charter of Fundamental Rights, O.J. 2007, C 303/17, p. 32 (“it follows unambiguously from the case law of the Court of Justice that the requirement to respect fundamental rights defined in a Union context is only binding on the Member States when they act in the scope of Union law”).

³⁰⁾ *Para* 163 of her Opinion; Making the application of EU fundamental rights dependent solely on the existence of exclusive or shared EU competence would involve introducing an overtly federal element into the structure of the EU's legal and political system (*para* 172 of her opinion).

interpretation of a Treaty article that furnishes the requisite foundation for the application of the Charter. The most natural candidates in this respect would be Article 18 and/or 21 TFEU (resp. A.G. Sharpston's view as to the application of the Charter is therefore necessarily predicated on an interpretation of the citizenship provisions of the Treaty that can sustain the conclusion that citizens have Charter rights by virtue of their citizenship. Craig makes assumption that it may well be that this is what A.G. Sharpston intended by her reasoning).³¹⁾ Craig then generally stated on the previous case law that "the locus of citizenship is no longer solely grounded on the particular provisions of the EU Treaties. Citizenship becomes in addition a label to describe the rights accorded by the Charter, which are then regarded as belonging to the EU citizen. The focus is no longer solely on fees, grants and so on, but on rights to family life and the like that are protected by the Charter and felt to be constitutive of the EU citizen."³²⁾ It seems to be the direction the Court took in *Zambrano*.

4.2. Internal situations

There is reference in literature that concept of EU Citizenship and the idea of EU as an area of justice should give rise to consideration whether the limitations of application of free movement deriving from the traditional cross-border requirement should be abolished.³³⁾ According to the Court 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.³⁴⁾ More elementarily, the Court's conclusion resonates with the spirit of the Treaty.³⁵⁾ But again, status of dependent children seems to matter in contrast with the following case. In later decision *McCarthy* the Court brought in the cross-border condition back. It concerned an adult family member, Jamaican husband of EU citizen, Mrs. Carthy, so Mr. Carthy gets right to residence in the UK through dual Irish-UK nationality of Mrs. Carthy. The Court dealt with a question whether Article 21 TFEU is applicable to a Union citizen who has never exercised his right of free movement, who has always resided in a Member State of which he is a national and who is also a national of another Member State. Mrs. Carthy not only never exercised moving to another Member State but she even did not work, were not self-employed nor had sufficient means to live with. Thus Directive 2004/38 was of no help

³¹⁾ CRAIG P., cited *supra* note 22, p. 435.

³²⁾ CRAIG P., cited *supra* note 22, p. 416.

³³⁾ CARLIER J. refers to HAILBRONNER K., *Immigration and Asylum Law and Policy of the European Union*, Kluwer 2000, p. 181, then also BARETT "Family Matters: European Community Law and third-country Family Members, 40 CMLRev. (2003), 369-421, 381: "the present cross-border requirements, in the era of EU citizenship and of an area of freedom, security and justice does seem to have a somewhat artificial air about it."; REICH, HARBA-CEVICA, 40 CMLRev (2003), p.629: "Shouldn't the concept of EU citizenship be extended to granting *every citizen* of the Union, wherever he or she is residing, minimum protection under EU Law?"

³⁴⁾ This formula reminds also 'human dignity' term from C-36/02 *Omega Spielhallen und Automatenaufstellungs GmbH*, 14th October 2004, where the Court was also at similar cross road (human vs. economic rights).

³⁵⁾ HAILBRONNER K, THYM D., cited *supra* note 9, p. 1263.

to her.³⁶⁾ Also in *Zambrano* the Court did remove Directive 2004/38 away since it dealt with internal situation but it seems that “Only in exceptional cases, where ‘the very enjoyment of the substance of rights conferred by the status of EU citizenship’ is in question does a situation with no cross-border element fall within the scope of EU law.”³⁷⁾ It was precisely *Zambrano* case where destiny of small children was at stake and return to Colombia from EU territory as well. By contrast with the case of *Zambrano*, the national measure at issue in the main proceedings in the present case does not have the effect of obliging Mrs. McCarthy to leave the territory of the European Union.³⁸⁾ On the specific (and more practical) issue of residence rights for family members of citizens, *McCarthy* would appear to limit the application of *Zambrano* to situations where carer relationship exists.³⁹⁾

5. Conclusion

Let me conclude with the metaphoric comparison. Famous composer Antonín Dvořák allegedly stated that he would exchange all of his symphonies for a fact that he would have invented the steam locomotive. The locomotive is consisting of so many parts, components and screws. Every part has its role, importance, is located in determined place and the result is remarkable. By one move of small lever big parts follow to push the locomotive forward with incredible load behind it.⁴⁰⁾ It looks that the Court exchanged the rigid symphony of EU Law, bound by static interpretations and composed of rules like cross-border/internal situations and decided to invent functioning engine moving forward. The Court removed reading of Directive 2004/38 in *Zambrano*, brought in the term ‘the very enjoyment of the substance of rights conferred by the status of EU citizenship’ and created the timeless content of EU citizenship freed from readings on text of the EC Treaty/TFEU. To reside in Europe means not only to be physically located in its territory but also to be granted a number of rights and ultimately to be under the protection of certain values of

³⁶⁾ Since a Union citizen such as Mrs. McCarthy is not covered by the concept of ‘beneficiary’ for the purposes of Article 3(1) of Directive 2004/38, her spouse is not covered by that concept either, given that the rights conferred by that directive on the family members of a beneficiary of that directive are not autonomous rights of those family members, but derived rights, acquired through their status as members of the beneficiary’s family (*para* 42). This applied despite Mrs. Carthy was national of another Member State (*para* 43).

³⁷⁾ However, no element of the situation of Mrs. McCarthy, as described by the national court, indicates that the national measure at issue in the main proceedings has the effect of depriving her of the genuine enjoyment of the substance of the rights associated with her status as a Union citizen, or of impeding the exercise of her right to move and reside freely within the territory of the Member States, in accordance with Article 21 TFEU. Indeed, the authorities of the United Kingdom to take into account the Irish nationality of Mrs McCarthy for the purposes of granting her a right of residence in the United Kingdom in no way affects her in her right to move and reside freely within the territory of the Member States, or any other right conferred on her by virtue of her status as a Union citizen (*para* 49).

³⁸⁾ *Para* 50.

³⁹⁾ COUTTS S., <http://eudo-citizenship.eu/citizenship-news/475-case-c-434-09-shirley-mccarthy-v-secretary-of-state-for-the-home-department>.

⁴⁰⁾ Summary from: <http://antonin-dvorak.cz/vyroky>.

personal welfare and moral security.⁴¹⁾ This aspect made the *Zambrano* judgment timeless. It gives away the problems of reverse discrimination and unifies the standpoint of EU citizenship but unfortunately in the light of *McCarthy* this gate of the Court is not wide open yet.⁴²⁾ Other cases will show the direction.

There were predictions that in the area of migration law, member states may be inclined to try to further tighten their conditions for the admission and residence of third-country national family members, economic migrants and asylum seekers, in order to counteract their loss of control over the admission of family members of non-moving Union citizens.⁴³⁾ On the other hand more than 850 non-EU parents of Irish-citizen children have already been granted residency in Ireland since *Zambrano* judgment, while six people who were previously deported have been granted visas to re-enter the State.⁴⁴⁾

⁴¹⁾ AZOULAI L, cited *supra* note 23.

⁴²⁾ WRAY H., in <http://eudo-citizenship.eu/citizenship-news/479-family-life-and-eu-citizenship-a-commentary-on-mccarthy-c-43409-5-may-2011> describes the reverse discrimination as “whereby member state nationals residing in their own country cannot have recourse to the more liberal EU regime enjoyed by the nationals of other member states living alongside them.” and “it remains open therefore whether an economically active/self-sufficient individual in Mrs McCarthy’s position (or even one without dual nationality which did not, in the event, figure very prominently in the reasoning) might succeed in future on the basis that reverse discrimination is unlawful”.

⁴³⁾ WIESBROCK A, <http://eudo-citizenship.eu/citizenship-news/449-the-zambrano-case-relying-on-union-citizenship-rights-in-internal-situations>.

⁴⁴⁾ [http://www.irishtimes.com/newspaper/frontpage/2012/0124/1224310673916.html#.
Tx6FRvZtTaw.email](http://www.irishtimes.com/newspaper/frontpage/2012/0124/1224310673916.html#.Tx6FRvZtTaw.email).