

## Prisoners in British prisons today

### Sally Ramage

There are undoubtedly many pressing issues in British prisons today. The prison population in England and Wales continues to increase despite the fact that crime rates have allegedly been decreasing since 1997 and this is due to the zealous judges handing out custodial sentences.

Prison Guards are another important factor is studying the contemporary issues in British prisons because prison officers they hold much sway but have not been given academic attention, especially because prisoners see prison officers as the people who hold the power. The relationship that they build up with the prisoners is very important. The relationship between third-country national family members, fundamental rights and citizenship rights has been unclear since the *Zambrano* ruling in 2011. Several years later, the Court of Justice of the EU is still grappling with the question of their interaction.

These issues form the subject of cases C-456/12 and 457/12 *O and B; S and G*<sup>1</sup>. The facts of this case are that there are four third country nationals ('O', 'B', 'S' and 'G'), who each have family ties to a different Netherlands national (and thus EU citizen<sup>2</sup>) who is their sponsor. O, B and G are in fact married to 'Sponsor O, sponsor B and sponsor G.'

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<sup>1</sup>Adrienne Yong, 'Opinion of AG Sharpston (12 December 2013) and Grand Chamber Judgment (12 March 2014) in Cases C-456/12 *O and B* and C-457/12 *S and G*', *King's Law Journal*, Volume 25, Number 2, October 2014, pp. 155-158 (4), London: Hart Publishing.

<sup>2</sup> Article 20(1) TFEU establishes EU citizenship and provides that '*every person holding the nationality of a Member State*' is an EU citizen. In accordance with Article 20(2)(a), EU citizens have '*the right to move and reside freely within the territory of the Member States*'. Starting from the assumption that citizen status implies civil, social and political rights, it suggests that the existing Treaty provisions on Union citizenship are of a more symbolic nature, and that its legal potential lies in the sphere of social rights. If the ideal is creating a reflection of a full citizen status on the Union level, disappointment will be inevitable as long as the Member States remain reluctant in offering genuine political participation on both stages of the European multi-level system.

Sponsor O and Sponsor B have lived in other Member States but had not worked in those Member States.

Sponsor G is employed by a Belgian employer and travels daily to work in Belgium and also, G and Sponsor G have children living with them.

They all sought lawful residence in the Netherlands where their respective sponsors reside. In each case, the sponsor had moved across borders with other Member States, for work or other reasons. The Raad van State (Council of State) (Netherlands) asked the Court whether such movement suffices to establish that EU law applies and to generate a derived right of residence in the Netherlands for those third country nationals.

Only EU citizens<sup>3</sup> who exercise their free movement rights can invoke the right to be joined or accompanied by close family members. Therefore an EU citizen who moves to another Member State can take his close family members along, even if the latter are not EU citizens themselves; the same is true when the EU citizen later returns to his home Member State. However, there remains a large degree of uncertainty as to how much 'movement' is in fact required in order to be able to invoke this right.<sup>4</sup> The specific issue is the applicability of the Citizens Rights Directive 2004/38 but other related issues include whether fundamental rights are enough to trigger rights for third-country national family members of Union citizens. The Court, in this judgment, did not address these other issues. This is a human rights case with implications for certain people in the United Kingdom, at the crux of which is the issue of

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<sup>3</sup> Union citizenship is the product of a political process, which aimed at enhancing the status of the individual. Parallel to the deepening of European integration, a new role was sought for citizens that go beyond participating in the Common Market. To achieve this goal, a strategy is followed which tries to sketch out a legal frame what has to be filled with political life. Starting from the assumption that citizen status implies civil, social and political rights, it suggests that the existing Treaty provisions on Union citizenship are of a more symbolic nature, and that its legal potential lies in the sphere of social rights. If the ideal is creating a reflection of a full citizen status on the Union level, disappointment will be inevitable as long as the Member States remain reluctant in offering genuine political participation on both stages of the European multi-level system.

See Stefan Kadelbach, 'Union Citizenship', *Max Planck Institute for Comparative Public Law and International Law*, Working Paper 2003/9, Feb 2003.

<sup>4</sup> See <http://europeanlawblog.eu/?p=2301#sthash.aleOxI49.dpuf>.

creating integration and identification by law and if so, whether this constitutes the prerequisite of an active European citizenship, the continuing development of which will be influenced by a gradual enhancement in legal status.<sup>5</sup>

## References

ICPS Prison Brief for United Kingdom: England and Wales, at [http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb\\_country.php?country=169](http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=169)

HM Prison Service, 'Working with Women Prisoners' from 2003 and <http://www.hmprisonservice.gov.uk/resourcecentre/publicationsdocuments/index.asp?cat=86>

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<sup>5</sup> See C.Tomuschat and S. Kadelbach, 'Staatsbürgerschaft - Unionsbürgerschaft – Weltbürgerschaft', in: J. Drexl et al (ed.), *Europäische Demokratie*, 1999, 73 (84 et seq.) and 89 (104 et seq.), respectively. Here Kadelbach and Tomuschat consider first consider the aim which rules governing Union citizenship seek to achieve and the positive law governing Union citizenship.