

**Op-Ed: “Skeletons in the Closet: For How Long Can You Lift the Veil of Citizenship?
Besthame (C-560/24)”**

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Introduction

Ireland, 2019: a third country national mother applies for a residence permit to stay with her Irish national, EU citizen child. The Netherlands, 2020: a third country national mother applies for a residence permit to stay with her Dutch national, EU citizen child. Luxembourg, 2026: respectively in the *Besthame* (C-560/24) and in the *Safi* (C-147/24) cases, the Court of Justice rules on the questions that the actions of the two mothers triggered. Despite the striking similarity of the two stories, those questions point in completely different directions and ultimately make for two judgments that have at first sight little in common but for the date of their delivery.

The *Safi* ruling sits in the progeny of *Ruiz Zambrano* (C-34/09). It is a case about the extent to which minor Union citizens and their third country national parent caretakers can rely on the protection of Union citizenship in the absence of an exercise of free movement. *Besthame* is a ruling about abuse of EU law free movement rights. This latter case, and the tight line it walks between sanctioning abuse of rights and scrutinizing citizenship deprivation are the subject of this Op-ed. But I begin by casting the judgment next to the one in *Safi* because it is the very silence in *Besthame* as to the questions at the heart of *Safi* – in my view – that betrays the former judgment’s significance as a citizenship ruling.

Similar Stories, Different Legal Questions

In *Safi* the Court is asked to consider whether the fact that the third country national mother has a residence permit in another Member State defeats the purpose of granting her a residence permit in the Member State of her child’s nationality. The Court ultimately answers in the negative, drawing on considerations of the effectiveness of Union citizenship, of family life and the best interest of the child.

Each of these three aspects would have been as relevant in *Besthame*. However, in *Besthame*, the third country national mother’s application for a residence permit, rather than triggering a *Zambrano*-type inquiry, triggers an inquiry into the status of the child’s father, R.S. An Irish national at the time of the application, R.S. had first entered Ireland as a third country national student and had later secured his residence status through his marriage – now terminated – to a Union citizen exercising free movement rights in Ireland. When a person other than his former spouse applies for residence as the mother of his child, the Irish authorities look into his previous marriage and establish that it had been a marriage of convenience – his skeleton in the closet.

Bringing that skeleton out of the closet tilts the legal story in *Besthame* in an opposite direction to that in *Safi*. The legal questions in *Safi* are ultimately forward-looking: does the mother have a legal right to reside with her child in his country of nationality? The legal questions in *Besthame*

are instead backward-looking: was there an abuse of EU law at the basis of this family's residence rights and citizenship status?

These questions ultimately yield a judgment about the temporal scope of Article 35 of [Directive 2004/38](#) on abuse of rights. But like a gothic novel, the judgment is full of echoes. Echoes of other branches of the case law, on loss of EU citizenship, on the genuine substance of EU citizenship, and on derivative rights for third country nationals. The rest of this Op-ed endeavours to capture some of those echoes through focusing on the two fundamental citizenship questions that the judgment indirectly raises: for how long after acquisition can you lift the veil of citizenship and question the residence story on which it rests? And when does that veil become sufficiently thick that one can no longer distinguish the citizen from the migrant he used to be?

For How Long Can You Lift the Veil of Citizenship?

The question referred by the Irish Court of Appeals to the Court of Justice in *Besthame* is whether a Member State can investigate an alleged abuse of EU law rights on the part of a person who has acquired the nationality of the host Member State and is no longer a 'beneficiary' within the terms of the directive (para. 30). The Court ultimately answers the referred question in the affirmative.

To justify its conclusion, the Court relies on a literal, contextual and teleological interpretation of Article 35 of the directive. The choice of verbs in Article 35 embraces rights being sought, being exercised and having been exercised in the past (para. 42). Directive 2004/38, of which the provision is part, is meant to govern not only the rights of residence of EU citizens and their family members in a host Member State, but also the loss of those rights, and thus the position of those who are no longer 'beneficiaries'. And effective pursuit of the *telos* of art.35, combating fraud and abusive practices, requires that the power recognized to the Member States under that provision extend beyond the period during which rights are enjoyed under the directive. Three cases touching upon the themes of abuse of rights and the temporal scope of directive 2004/38 are engaged in support of the court's reasoning: *McCarthy and others* ([C-202/13](#), followed for the definition of abuse), *Lounes* ([C-165/16](#), distinguished as to the parts of the directive that only apply to a beneficiary) and *Chenchoolia* ([C-94/18](#), followed for the applicability of selected provisions of the directive beyond its beneficiaries).

So the veil of citizenship can be lifted to investigate any underlying abuses of residence for a potentially very long time. But does lifting the veil necessarily entail tampering with citizenship? The judgment in *Besthame* next turns to this question. The referring court is reported to have indicated that under Irish law there is currently no constitutionally valid procedure to revoke Irish citizenship in a situation such as that at hand. Nonetheless, any determination as to an abuse of rights may be considered in a future re-assessment of a person's Irish citizenship (para. 23). The Court of Justice emphasizes that the exercise of the powers of investigation of an abuse under Article 35 does not need to lead to a withdrawal of rights, let alone to a citizenship deprivation decision (para. 63). The Member State thus can lift the veil of citizenship, peek underneath, and then just frown and let the veil fall again.

Should the Member State instead decide to proceed further, and consider a denaturalization decision, it can do so – the judgment continues. EU law does not prevent a Member State from depriving one of its nationals of nationality (and thus EU citizenship) if this has been acquired by deception. A requirement of proportionality however applies in this case (para. 64). Through this

light-weight reference to *Rottmann* (C-135/08), the judgment in *Besthame* ultimately incurs into a crucial question. When does a migrant truly become a citizen, so that a story of abuse of migration and residence rights turns into a story of citizenship deprivation?

When Does the Migrant Disappear Under the Citizenship Veil?

By the time the authorities start looking into his story, R.S. has been in Ireland for a long time. He has lived in Ireland since sometime before 2010. In 2010 he married an EU citizen and continued to reside there on that basis. In 2015 he became an Irish national. Once the Irish authorities begin to lift the veil on him in 2020, he has been residing in Ireland for ten years, and has been a national of Ireland, and an EU citizen, for five of those years. An Irish national child has been born in the meanwhile. And by the time the Court of Justice confirms in 2026 that an investigation into abuse of rights is permissible under EU law, that child will be well into his school career in Ireland.

Still, R.S. is treated as a migrant rather than a citizen. And as his migrant story becomes the dominant tone in the legal case, two citizenship stories are reduced to an echo. A feeble echo, in the case of the *Rottmann*-style story of possible citizenship revocation that find its place in a few lines towards the end of the judgment. A wholly silenced one in the case of the *Safi*-style story of protection of a EU citizen child in his own Member State of nationality.

Of course, the question referred to the Court dictates the trajectory of the Court's answer. Those latter stories may become relevant in the context of any further proceedings between the Irish authorities and R.S. Yet the Court often repeats in its rulings that in the context of a preliminary procedure, it is its responsibility to offer to the national court all elements of interpretation that may be helpful to determine the dispute in the main proceedings, even if these exceed the perimeter of the EU law provisions to which the questions referred pertain (most recently, [Aleb](#)).

Along these lines the Court could have signalled more clearly what EU citizenship, whether that of the father or that of the child, demands, in a situation like that at hand. In focusing on the migrant and his story, the ruling loses sight of the citizen and his family life. Ultimately suggesting that when we are dealing with EU citizenship acquired through the exercise of EU law residence rights, the veil of citizenship never thickens enough to conceal the migrant underneath it.

Conclusion

Some skeletons need rescuing from the closet in the interest of protecting the legal order and preventing abuses of law. But if the closet is that of citizenship, one ought to be wary that entangled stories of migration and citizenship will be found in there. In *Besthame*, in unravelling the migrant story from the citizenship one, the latter is downgraded to a mere echo.

Capturing that echo, it becomes clear that the concerns raised in *Safi*— the effectiveness of EU citizenship, the protection of family life, the best interest of children would have had a place in *Besthame* as well.

This in turn yields a word of caution for when one lifts the veil of citizenship. As there are many threads, and many folds to a citizenship story, legal certainty, proportionality and fundamental rights suggest that the veil must be lifted gently and considerately. Several sets of interests that may have come to rest on it - those of family life, those of children who are citizens themselves, those of spouses who aspire to security of status - could otherwise slip off. This is particularly true if, as the Court tells us in this case, there is no set deadline for lifting that veil.

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