



universität
wien

MASTER-THESIS

Titel der Master-Thesis

„The significance of European Union citizenship for
the right of free movement“

verfasst von

Isabelle Schwall

angestrebter akademischer Grad

Master of Laws (LL.M.)

Wien, 2015

Universitätslehrgang:	ULG Europäisches und Internationales Wirtschaftsrecht
Studienkennzahl lt. Studienblatt:	A 992 548
Betreut von:	Univ. Prof. Dr. Dr. hc. Peter Fischer



universität
wien

MASTER THESIS

Title of the Master Thesis

„The significance of European Union citizenship for
the right of free movement“

Author

Isabelle Schwall

expected academic degree

Master of Laws (LL.M.)

Vienna, 2015

Postgraduate Program: European and International Business Law

Program Code: A 992 548

Supervisor: Univ. Prof. Dr. Dr. hc. Peter Fischer

Contents

Contents	3
List of abbreviations	6
Zusammenfassung	7
Abstract.....	10
I. Introduction	12
A. A historical review	12
1. The creation of 'an ever-closer union among the peoples of Europe'	13
a) The Treaty of Rome 1957	13
b) The Treaty of Paris 1951	13
2. The European reunification and economic reconstruction	14
a) CEEC, OECD and GATT	14
b) The need of an economically competitive market.....	15
B. The internal market	16
1. The introduction of free movement rights for persons	17
b) Article 18 TFEU: the non-discrimination on grounds of nationality	18
bb) The Austrian Universities Case of 2005.....	19
c) The economic status as a main criterion.....	19
d) The introduction of Union citizenship.....	20
e) The Citizenship Directive 2004/38/EC of 2004	22
2. A great accomplishment with a need for improvement.....	23
a) The benefits of the Union Citizenship at a glance.....	23
b) The remaining obstacles to free movement.....	24
3. Central research questions	25
4. Thesis overview	25
II. Main part	27
A. The situation prior to Maastricht (1950-1992)	27
1. A gradual removal of borders	27
a) The European Coal and Steel Community 1951	28
b) The Schengen Agreement and Area 1985-86.....	29
c) The Single European Act.....	31

2. A sphere of rights limited to an economic activity	33
a) Article 17 EC Treaty (Article 20 TFEU)	33
b) Article 18 EC Treaty (Article 21 TFEU)	34
c) Article 39 EC Treaty (Article 45 TFEU)	34
d) Article 49 EC Treaty (Article 56 TFEU)	35
3. An extension of the rights to the family members	35
4. A broad interpretation of the worker's definition	36
a) The absence of definition in primary and secondary law	36
b) The reliance on ECJ case law	36
5. An extension in favor of the job-seekers	42
a) The <i>Antonissen</i> case of 1991	43
b) The <i>Royer</i> case of 1976	44
6. Restrictions to free movement: public policy, public security and public health	45
a) The escape clause for the free movement of workers	45
b) The escape clause for the freedom of establishment	46
c) The power of coercion and the power of constraint	47
c) The three Directives of 28 June 1990	49
B. Treaty of Maastricht and Union citizenship	50
1. The establishment of Union Citizenship	51
a) Article 20 TFEU	51
b) Article 21 TFEU	55
aa) The <i>Martinez Sala</i> case	56
bb) The <i>D'Hoop</i> case	57
cc) The <i>Grzelczyk</i> case	58
dd) The <i>Baumbast</i> case	60
C. The Citizenship Directive 2004/38/EC	61
1. Scope of application	61
2. No economic status requirement	63
3. The definition of family member extended	63
4. A right of permanent residence	64
5. A right to equal treatment	65

6. Protection against expulsion	65
III. Conclusion: Union citizenship – myth or reality?	67
A. A significant step towards European integration	67
B. Remaining limitations and conditions	68
1. The right of residence limited in time	68
2. The distinction between two groups of family members	70
3. No automatic right to welfare	72
4. The remaining exceptions of public policy, security and health	74
5. The European Union citizenship criticized in the literature	79
Bibliography	83

List of abbreviations

European Union	EU
European Economic Community	
EEC	
European Coal and Steel Community	
ESCS	
Convention for European Economic Cooperation	
CEEC	
Organization for Economic Co-operation and Development	
OECD	
General Agreement on Tariffs and Trade	
GATT	
Single European Act	
SEA	
Treaty on the Functioning of the European Union	
TFEU	
European Court of Justice	
ECJ	
Treaty establishing the European Economic Community	
EC Treaty	
Schengen Information System	
SIS	
Intern-Governmental Conference	IGC

Zusammenfassung

Europäische Unionsbürgerschaft – eine gemeinsame Staatsbürgerschaft, das Teilen von Rechten und Pflichten mit den Bürgern aller 28 europäischen Mitgliedstaaten. Reisen, Arbeiten und Leben in allen Mitgliedstaaten ohne die Erfüllung jeglicher verwaltungstechnischer Formalität wie z.B. Visa, Aufenthaltsgenehmigung oder Arbeitserlaubnis. Das Recht das Europäische Parlament als gemeinsame Institution zu wählen oder selbst gewählt zu werden. Konsularischen Schutz in jedem einzelnen Mitgliedstaat zu geniessen. Vor 65 Jahren erschien dies als ein unerfüllbarer Wunsch.

Und wie ist es heute? Ist heute der Traum einer europäischen Einheit und der Gründung einer sogenannten 'europäischen Grossfamilie' in Erfüllung gegangen? Oder bleibt dies alles nur ein unerfüllbarer Traum, ein altes Mythos an dem wir uns festklammern? Stellt die Einführung einer gemeinsamen europäischen Unionsbürgerschaft einen grossen Schritt vorwärts in dem Aufbau einer Union ohne Grenzen und mit einem freien Personenverkehr, dar? Oder werden die Bürger an den Grenzen der Union immer noch Hindernissen jeglicher Art ausgesetzt und wir sind meilenweit von einer Union ohne Grenzen entfernt?

Die vorliegende Master Thesis hat sich zum Ziel gesetzt, einen näheren, auch ein wenig kritischen Blick auf dieses zielstrebige Projekt Europas zu werfen. Dies bedarf eines detaillierten Rückblicks auf die Geschichte Europas und auf den Ursprung des europäischen Gedankenguts zu Beginn der 1950er Jahre. Die europäische Unionsbürgerschaft besitzt zweifellos zahlreiche Vorteile. Doch dieses fundamentale persönliche Recht auf Bewegung- und Aufenthaltsfreiheit ist leider immer noch an zu viele Voraussetzungen und Einschränkungen gebunden.

In den zwei ersten Sektionen der Einführung beschäftigt sich diese Arbeit mit einem historischen Überblick der ersten Babyschritte der Europäischen Union und der Idee der Einführung eines Binnenmarkts. Nach dem Zweiten Weltkrieg musste ein

zerstörtes Europa seine Handelsmärkte neu aufbauen. Vor diesem, zu Beginn vor allem wirtschaftlichen Hintergrund, kam nach und nach der Wunsch einer Annäherung zwischen den jeweiligen zerstrittenen Völker Europas und der Gründung eines gemeinsamen Markts. Dies wurde zum ersten Mal durch das Pariser Abkommen von 1951, welches einen gemeinsamen Markt für Kohle und Stahl (Europäische Gemeinschaft für Kohle und Stahl) erstellte, ermöglicht. Ein paar Jahre später in 1957 legte der Vertrag von Rom den Grundstein für die Gründung der Europäischen Union und führte zum ersten Mal den Begriff des freien Personenverkehrs ein.

In ihrem Hauptteil beinhaltet diese Arbeit eine Sektion, welche die Situation in Europa vor dem Eintritt der europäischen Unionsbürgerschaft durch den Maastrichter Vertrag in 1992 schildert. In einer zweiten Sektion werden die Neuerungen, welche diese neue Bürgerschaft mit sich bringt, dar gestellt.

Das Konzept der Unionsbürgerschaft wurde auf Basis eines internationalen Abkommens in 1992 eingeführt, jedoch mussten die Vorschriften auch in EU-Sekundärrecht übertragen werden. Aus diesem Grund beschäftigt sich eine dritte Sektion dieser Arbeit mit der Freizügigkeitsrichtlinie aus 2004.

Die Conclusio dieser Master Thesis beschäftigt sich schlussendlich in einer ersten Sektion mit der Erkenntnis, dass die Einführung der Unionsbürgerschaft ohne Zweifel einen Fortschritt in der Ausübung ihrer Freizügigkeitsrechte für die Bürger darstellt. Man muss jedoch in einer zweiten Sektion feststellen, dass die bestehenden gesetzlichen Bestimmungen den Mitgliedstaaten immer noch zu viele Schlupflöcher zur Verfügung stellen, welche es ihnen ermöglichen, die Freizügigkeitsrechte einzuschränken. Abschliessend wirft diese Arbeit einen Blick auf die Reaktionen die die Europäische Unionsbürgerschaft in der Literatur hervorgerufen hat.

Ich habe beim Erstellen dieser Master Thesis mein Bestes gegeben, um ein besseres Verständnis des Ursprungs der europäischen Unionsbürgerschaft zu vermitteln, ihre Vor- und Nachteile sowie ihre verbesserungswürdigen Aspekte näher zu beleuchten.

Ich hoffe dem Leser gefällt das Eintauchen in den spannenden und andauernden Prozess der europäischen Integration genauso gut wie mir.

Isabelle Schwall, Juli 2015.

Abstract

European Union citizenship - a common nationality including rights and duties shared with the citizens of all 28 Member States of the European Union. Being able to travel, to work and to live in every Member State without visa, residence or work permit. Enjoying the right to vote and to be elected to a common European institution, namely the European Parliament. Being protected by the consular authorities of any Member State. Sixty-five years ago, this sounded like an unrealizable dream.

And today? Has the dream of an European unity, of the creation of an 'European family' really become reality or has it always been an will continue to constitute a myth? Has the introduction of a common nationality for all European Union citizens been a huge step forward in the introduction of a borderless Union where free movement of persons is guaranteed? Or do citizens still face barriers of all kinds at the borders of the Union?

The following Thesis seeks to take a closer and also critical look at this ambitious project of the European bodies. It analyses its origins in the history going back to the very beginnings of the idea of an European Union. European Union citizenship has evident and indisputable advantages. However, this fundamental and personal right to free movement and residence is still tied to a heap of conditions and limitations which create barriers and obstacles to the full exercise of free movement rights.

In the two first sections of its introduction, this paper gives a historical review of the first baby steps of the European Union and the idea of the completion of an internal market.

After the Second World War, a destroyed Europe had to reconstruct its trade markets. Out of this merely economic idea grew the wish to approach the disunited people of Europe and create a common market. This has been made possible in 1951 by the Treaty of Paris establishing a common market for coal and steel (European

Coal and Steel Community). A few years later in 1957, the Treaty of Rome laid the foundation stone of the European Community by introducing for the first time the notion of 'free movement of persons' within the Member States of the, at that time called, 'European Community'.

In its main part, this Thesis comprises a first section which describes the situation in Europe before the Treaty of Maastricht introduced the European Union citizenship in 1992. In a second section, it presents the major changes operated by the new citizenship.

Introduced by the treaties in 1992, this new concept and its provisions needed to be enshrined in secondary law. A third section therefore deals with the Residence or Citizenship Directive of 2004 which aims to conglomerate and regroup the significant case law of the ECJ and the existing legislation as regards the free movement and residence rights in one single document.

The Thesis then concludes by considering in a first section that without any doubt, the introduction of Union citizenship has operated significant improvements in the ongoing process of the completion of an internal market without borders. However and unfortunately, one must agree in a second section, that the legislation still provides the Member States too many possibilities which enable them to escape their obligations and restrict free movement rights. To conclude, this thesis will have a look at the echoes of the new concept in the literature and in the press.

In this thesis, I gave my best in order to give a better understanding of the origins of the Union citizenship, its advantages and its still needed improvements. I hope the reader enjoys discovering the exciting process of European integration as much as I did.

Isabelle Schwall, July 2015.

I. Introduction

European Union Citizenship – one of Europe's greatest postwar achievements but also one of its biggest challenges. A Europe without border controls, without visas and residence permits. A Europe where we can live, travel and reside freely and where we enjoy citizen rights such as the right to vote or to be elected to the European Parliament. This has been rather unthinkable only sixty-five years ago. Since 1992, Europe has its own citizenship tied to rights and obligations. But the Union Citizenship only constitutes one single step in the still ongoing process of the completion of a borderless internal market which started after the Second World War.

A. A historical review

The principle of free movement of persons has actually been expressed for the first time in the Treaty of Rome of 1957, officially referred to as the Treaty establishing¹ the European Economic Community. It's in this treaty that the free movement of persons concept found its origins and where the foundation stone of today's European Union (EU) was laid. This international agreement actually established an economic organization called the European Economic Community (EEC) which constituted the milestone of today's European Union. The first step towards the opening of borders has however been made through the Treaty of Paris in 1951 which eliminated the barriers for the trade of raw materials such as coal and steel. And so, the idea of the liberalization of trade was born.

¹ Consolidated Version of the Treaty establishing the European Community [2002] OJ C325.

1. The creation of 'an ever-closer union among the peoples of Europe'²

a) The Treaty of Rome 1957

The main and crucial purpose of this mainly economic agreement was the creation of a 'common' market without borders among the European countries. It was signed on 25 March 1957 by the founding members of the EEC namely Belgium, Luxembourg, France, Italy, the Netherlands and West Germany. Originally, its main purpose was to facilitate the international approximating of the Western European countries and to aspire to the reconciliation of Germany with its former enemies

in the Second World War.³ Today, achieving an area without borders for goods, persons, services and capital has become on the European level a real political mission.⁴

b) The Treaty of Paris 1951⁵

In the context of reconciliation after the Second World War, these same above cited six countries had already signed in 1951 the Treaty of Paris, originally known as the Treaty establishing the European Coal and Steel Community (ECSC). The completion of such an economic community which allowed the free movement of workers and industrial goods was an idea of the brilliant Robert Schuman. The achievement of a common market for steel, coal and other raw material as well as for workers was seen as an instrument to 'ensure lasting peace'⁶ between the two major economic powers, namely France and Germany. The 'father' and 'architect' of

2 Consolidated Version of the Treaty on European Union [2012] OJ C326 art 1 para 2.

3 Friedl Weiss, Clemens Kaupa, *European Union Internal Market Law* (first published 2014, Cambridge University Press) 1.

4 *ibid.*

5 Treaty establishing the European Coal and Steel Community [1951].

6 EUR-lex, 'Treaty establishing the European Coal and Steel Community, ESCS Treaty' (2010) <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:xy0022>> accessed 4 August 2015.

Europe actually saw in the merger of economic interests a way to prevent further
conflicts between Germany and France and to reconstruct the economy of Europe.⁷

c) The upcoming idea of trade liberalization

But in order not to skip steps, it must be underlined that even before the signature of the Treaty of Rome, the process of trade liberalization had already started in the world. The Second World War was caused by the closing of borders to import and export and the subsequent increase of unemployment. Hence, the idea of the existence of a need to restructure and liberalize the trade market has already been in the minds of the European and international powers. After the end of the Second World War in 1945, European countries started going into numerous so called bilateral trade agreements in order to reestablish trade between themselves. Those agreements signed between two countries gave preferences and advantages to the other respective country. In that way, they facilitated trade and investment. They reduced or eliminated tariffs, import and export quotas and all kinds of other barriers which were likely to hinder trade.

2. The European reunification and economic reconstruction

The European reunification and economic reconstruction has been achieved on a gradual basis. As Robert Schuman already estimated in his famous '*Schuman Declaration*' of 9 May 1950, Europe will not be built in one day but through one
achievement after the other.⁸

a) CEEC, OECD and GATT

The first, and probably the most significant step towards the abolition of trade barriers in Europe has been the signing of the Convention for European Economic Cooperation (CEEC) in Paris in 1948. This document became the founding act of

⁷ 'The Schuman Declaration' (1950) <http://europa.eu/about-eu/basic-information/symbols/europe-day/schuman-declaration/index_en.htm> accessed 4 August 2015.

⁸ *ibid.*

the well-known and still existing Organization for Economic Co-operation and Development (OECD). It has been considered as being the European countries' first postwar multilateral attempt to abolish restrictions on trade and payments in

⁹ Europe'. Thus, the first step in direction of trade liberalization was made. The consequences of the creation of the OECD have been very positive. The trade in Europe actually got a new lease of life and in the following years started to boom. In 1948, the Congress of the United States refused to pass the famous Havana Charter which aimed to create an International Trade Organization. After a few other multilateral trade negotiations have been finally signed the so called General Agreement on Tariffs and Trade (GATT). This extremely important multilateral and international agreement regulating trade has been signed by twenty-three countries in Geneva on 30 October 1947. Its main purpose has been merely the same as the one in Europe: it aimed to abolish barriers of tariff and trade as well as all kind of reciprocal advantages which countries could have granted to each other. The aim was to boost trade by abolishing all kinds of physical, fiscal or technical barriers. In this context, the idea of free movement has been developed for the first time. This was the historical and mainly economical context of the signature of the Treaty of Rome ten years later. After the successful finalization of four out of eight multilateral trade negotiating rounds in 1956, time had come for the Treaty of Rome to be conceived. On one hand, the EEC resulting out of the before mentioned Treaty of Rome was the logical next step in the process of the trade liberalization started after the Second World War. But on the other hand, this EEC was also seen as a new chapter, a new page in the book organizing the establishment of an economically competitive market destroyed during the War.

b) The need of an economically competitive market

When it comes to economic growth, the United States have always been a step ahead. And so did they after the Second World War: their economy boomed. Their

⁹ Friedl Weiss, Clemens Kaupa, *European Union Internal Market Law* (first published 2014, Cambridge University Press) 4.

markets have been enormously productive, technically very advanced and even on a social level, they had a very convincing economy. Hence, the European countries wanted to take a leaf out of the American's book. And so they concluded that the strength of the American economy was closely related to the size and structure of its

¹⁰ market. 'The modern world is a world of continents, of markets and economies on the grand scale' did the Commission's president of that time, Walter Hallstein,

¹¹ observe in a speech at Harvard University in May 1961. Surrounded by great powers like the United States, Russia or China, Europe would have to face 'a

¹² challenge of scale, a challenge of size'. Hallstein concluded by saying that 'In a

¹³ world of giants we can't afford to be midgets'. And so the EEC was the next step in the creation of a common and later an internal, single market within the Member States.

B. The internal market

We've seen that the creation of a common market has an economic origin. In the 1950s, the coal and steel being essential raw materials for the production at that time, the idea to share these goods with the surrounding countries appeared to be obvious. But the import and export which makes the economic wealth of a country actually requires the ability of the economically active people to move freely within the territory of the EEC. In order to open the market for persons to make business, to travel, to work and to study, the technical, physical and fiscal barriers between the countries must disappear also for persons, especially workers.

¹⁰ Friedl Weiss, Clemens Kaupa, *European Union Internal Market Law* (first published 2014, Cambridge University Press) 5.

¹¹ Rudolf Granz, 'Hallstein Notes Political Goals of Common Market' (*Harvard Crimson*, 23 May 1961) <<http://www.thecrimson.com/article/1961/5/23/hallstein-notes-political-goals-of-common/>> accessed 27 June 2015.

¹² *ibid.*

¹³ *ibid.*

1. The introduction of free movement rights for persons

The gradual removal of these barriers started in 1957 with the Treaty of Rome and the EEC. In 1968, the created customs union was related to all trade in goods and established a common external tariff within a single customs area. The Schengen Agreement of 1985 constituted especially for the persons a symbolic step towards a borderless area through the abolition of border checks. After further developments, the former common market finally gave the place to the new internal, single market through the introduction of the 'Single European Act'¹⁴ (SEA) signed in Luxembourg in 1986. When in 2007 the Treaty of Lisbon established the Treaty on the Functioning of the European Union¹⁵ (TFEU), the term of 'common market' definitely changed into 'internal market'. Before being able to analyze the situations before and after the introduction of the EU Citizenship, one should have an overview of the main provisions governing today the free movement of persons within the internal market.

a) Article 26 TFEU: the free movement of persons

Article 26 para. 2 TFEU exposes the four fundamental freedoms of the European Union which the European countries committed to provide: 'The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties'.¹⁶ These freedoms enjoy direct applicability which means that they can directly be invoked by the individuals before national courts and the European Court of Justice (ECJ) in Luxembourg. Since the ECJ decision called *Van Gend en Loos*¹⁷ actually, the EU provisions have direct effect if they are sufficiently clear and unconditional. Of particular interest for this thesis which is dealing with the concept

¹⁴ Single European Act [1987] OJ L169.

¹⁵ Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326.

¹⁶ Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C326 art 26 para 2.

¹⁷ Case 26/62 *Van Gen en Loos v Nederlandse Administratie der Belastingen* [1963] ECR 1.

of Union Citizenship will be the free movement of persons. It has originally been created for workers and later extended to economically active people. Persons not pursuing any economic activity in the host Member State needed visas and other formalities to enter the territory. It's only in the following years that the borders of Member States have been opened to students, retirees and other non-economically active persons. With the introduction of the European Union Citizenship in 1992 the right of free movement has finally been granted to every citizen of the European Union and his or her family members.

b) Article 18 TFEU: the non-discrimination on grounds of nationality

In order to accurately ensure the right of free movement of persons, it has to be closely associated to the right of non-discrimination on grounds of nationality.

Article 18 para. 1 TFEU¹⁸ clearly states that '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'.

But the principle of non-discrimination only possesses residual effect. This means that it only applies on situations where there is no appropriate provision in the treaties. In the 1980s, the Court started to build a right of equal treatment regarding access to universities, vocational training and student financial support.

aa) The Bidar Case of 2005 19

In the United Kingdom (UK), students enjoy financial support for their studies by getting government grants or loans. Dany Bidar was a French student and also applied for this favor granted by the British government. However, the British authorities refused his application. The Court had to ascertain whether this financial support was covered by the prohibition of discrimination laid down in Article 18 TFEU or not. At that time (2005), the European Union Citizenship was already

¹⁸ Consolidated version of the Treaty on the Functioning of the European Union [2012] C326 art 18 para 1.

¹⁹ Case C-209/03 *Dany Bidar v London Borough of Ealing* [2005] ECR I-2119.

introduced in the European legal framework. Hence, the Court relied on this concept to consider that the controversial financial support entered into the scope of Article 18 TFEU. Thus, the UK law which grants financial support to students has to comply with the principle of non-discrimination. This case has been very illustrative for the residual application of Article 18 TFEU: no other provision of secondary law dealt with students' rights for allocations.

20 **bb) The Austrian Universities Case of 2005**

The situation here was pretty much the same. The Austrian law required that students who hold a secondary degree from another Member State have to prove that their degree entitles them to apply for the same class in their respective home country. This was the prerequisite to get admission to an Austrian university. A holder of a foreign degree is subject to conditions which an Austrian degree holder doesn't have to comply with. The Court considered that Austria did not fulfill its obligations of non-discrimination. Again, the ECJ made a residual application of Article 18 TFEU.

c) The economic status as a main criterion

'The freedom of movement for workers is a core feature of the EU'²¹ and a necessary instrument to reconstruct trade between Member States. Thus, it has always been closely connected to an economic idea. For example, the ECSC established in 1951 granted the free movement of its workers among the coal and steel sectors. In the following years, the Directives 64/221/EEC²² (today replaced

20 Case C-147/03 *European Commission v Republic of Austria* [2005] ECR I-5969.

21 Friedl Weiss, Clemens Kaupa, *European Union Internal Market Law* (first published 2014, Cambridge University Press) 145.

- 22 Directive 64/221/EEC of 25 February 1964 of the Council on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health [1964] OJ 56.

by the Citizenship Directive 2004/38/EC²³ and 68/360/EEC²⁴) as well as the Regulation 1612/68²⁵ (now replaced by Regulation 492/2011²⁶) became the cornerstones in the creation of the principle of equal treatment and the abolition of restrictions with regard to employment. Originally, the residence and free movement rights have been tied to the requirement of an economic activity and concerned workers exclusively. In the 1970s, these rights have been extended to self-employed persons as well. According to Article 45 TFEU, a worker has the right to move to another Member State with the aim to look there for a job and to accept employment offers.

d) The introduction of Union citizenship

The right to move freely within the internal market officially became a fundamental right through the introduction of the famous Union citizenship by the Treaty of Maastricht in 1992. Since then, Union citizenship has become and is still 'one of the Union's most ambitious legal projects'.²⁷

aa) An additional citizenship

Previous free movement, non discrimination and residence rights granted to workers, service providers and service recipients are now extended to every person holding the nationality of one of the Member States. The ECJ together with national courts developed and gave birth to an EU legislation which now officially offers the

23 Directive 2004/58/EC of European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC [2004] OJ L158.

24 Directive 68/360/EEC of 15 October 1968 of the Council on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families [1968] OJ L257/13.

• 25 Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community [1968] OJ L 257.

26 Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union Text with EEA relevance [2011] OJ L141.

27 Friedl Weiss, Clemens Kaupa, *European Union Internal Market Law* (first published 2014, Cambridge University Press) 93.

right of free movement and residence to not necessarily economically active people such as:

- students
- retirees
- family members
- self-employed people
- people who wish to stay in the host Member State after having been employed or self-employed there
- job-seekers
- all people who are able to pay their expenses.

Article 20 TFEU actually states that: 'Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be

additional to and not replace national citizenship'.²⁸ Among the other rights conferred by Article 20 TFEU we can find the right to vote and to stand as a candidate in elections to the European Parliament. Other advantages are the right to be protected by the consular and diplomatic bodies of other Member States and the right to petition the European Parliament as well as to complain to the European Ombudsman. The fact that European citizenship is closely tied to the holding of the nationality of a Member State entitles Member States to decide discretionary who is a national of their State and subsequently of the European Union.

bb) The fundamental status of nationals

Today, the Union citizenship is seen as Europe's finest masterpiece. Even though there have been some initiatives before 1992, it is the first time that the free movement of persons has officially been consecrated in the legal order of the European Union. With the Union citizenship, the legislation has moved 'beyond the

narrow framework of mere economic mobility'.²⁹ Thus, the Union Citizenship, as a

28 Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C326 art 20 para 1.

29 Friedl Weiss, Clemens Kaupa, *European Union Internal Market Law* (first published 2014, Cambridge University Press) 93.

supranational citizenship, changed and increased the initial economic purpose of the European Union and allowed a huge step towards a common market: all nationals of all Member States are Union citizens, no matter if they pursue an economic activity or not. Creating a Union citizenship constitutes a considerable step towards the

30

always wanted 'ever closer union among the peoples of Europe'. Besides having the nationality of a Member State, people now also have a second, parallel and additional nationality which they share not only with their compatriots but with all the nationals of the Member States. This strengthens among the people 'a new –

31

European - sense of belonging'. Another big novelty is the access to the social security system which is no longer reserved to national citizen only. As Friedl Weiss and Clemens Kaupa notice in their book, this is capable to 'change what the idea of

32

citizenship is' . Some authors see that as an advantage since it creates 'a solidarity

33

which does not end at the borders of the Member States' . Some other critics warn of danger by saying that the EU 'may abolish internal barriers but that it risks to

34

create new ones at its external borders' and through that establish a phenomenon

35

of 'fortress Europe' .

e) The Citizenship Directive 2004/38/EC ³⁶ of 2004

30 Consolidated Version of the Treaty on European Union [2012] OJ C326 art 1 para 2.

31 Friedl Weiss, Clemens Kaupa, *European Union Internal Market Law* (first published 2014, Cambridge University Press) 95.

32 *ibid* 96.

33 Dimitry Kochenov, 'Double Nationality in the EU: An Argument for Tolerance' (2011) 17 *European Law Journal* 323, quoted in Friedl Weiss, Clemens Kaupa, *European Union Internal Market Law*, (first published 2014 Cambridge University Press) 6.

34 Sonja Buckel, Jens Wissel, 'The Transformation of the European Border Regime and the Production of Bare Life' (2010) 4 *International Political Sociology* 33, quoted in Friedl Weiss, Clemens Kaupa, *European Union Internal Market Law*, (first published 2014 Cambridge University Press) 96.

35 Friedl Weiss, Clemens Kaupa, *European Union Internal Market Law* (first published 2014, Cambridge University Press) 96.

36 Directive 2004/38/EC of the European Parliament and the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of

In 1992, the Treaty of Maastricht introduces for the first time the concept of Union citizen in the European Union legal environment. From that moment on, the Union Citizenship has become one of the most important and prestigious projects of the European legislative bodies. During almost two decades, ECJ case law and secondary law have developed significantly. In 2004 then, the new Citizenship or Residence Directive has been enacted with the aim to regroup all the existing primary and secondary law as well as the Court of Luxembourg's case law in one single, complete and understandable document. As being a Directive, its provisions are directly applicable on individuals and are supposed to facilitate the exercise of free movement rights.

2. A great accomplishment with a need for improvement

Unfortunately, despite a heap of regulations, the new Citizenship Directive and numerous and dynamic ECJ case law, the right to free movement of Union citizens is still subject to a lot of restrictions. In the development of this thesis, we will notice that a huge step towards an open and borderless Union has been made. The ECJ has developed significant case law in the field of free movement of persons. Additionally, the Residence Directive enshrined the provisions of the Treaty of Maastricht in the secondary law.

a) The benefits of the Union Citizenship at a glance

Today, in order to enjoy free movement rights, the economic status is not required anymore. The Directive provides free movement and residence rights to all Union citizens and their family members. Then, the scope of the definition of the term of 'family member' has been extended. Today the concept of family member does not only include the spouse but also the registered partner. The provisions of the Directive grant moving Union citizens equal treatment with the nationals of the host Member State. The Directive introduced a right to permanent residence for Union citizens staying in the host State for more than five years. Union citizens are

the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC [2004] OJ L158/77.

protected against expulsion. Once they have acquired the status of permanent resident, Union citizens can be expelled only on serious and present grounds of public policy, public safety or public health. The same treatment is reserved to the family members of the Union citizen even in case of his or her death or divorce.

b) The remaining obstacles to free movement

However, both primary and secondary law still contain provisions which enable Member States to escape from their treaty obligations and restrict free movement and residence rights.

In the very first place, it begins with a lack of precision concerning the qualification of 'citizen' itself. Since the TFEU considers as citizens all those who are qualified as such by the Member States, the latter possess a discretionary right to determine who is their national and subsequently who is an European citizen.

Secondly, it must be outlined that the residence right is limited in time. The Citizenship Directive actually distinguishes between stays of a period going up to three months and stays which exceed this time. A Union citizen can only enjoy a three month stay without any formality other than the presentation of his or her passport or identity card. As soon as the Union citizen exceeds this period, proof of enough financial means and social cover can be required by the host Member State.

Then, the Directive makes a distinction between the family members. Union citizens family members enjoy all the advantages (free movement, equal treatment) without fulfilling any special condition. Third-country family members however do not automatically enjoy equal treatment with the country nationals as Union family member do.

When it comes to social assistance, a lot of questions remain unanswered. There are no treaty or directive provisions which provide for a right for welfare of Union citizens in the host Member State. Free movement and residence is usually only permitted as long as the Union citizen can afford his or her expenses by himself and proves that he/her's covered by a comprehensive sickness insurance. Furthermore, primary and secondary law still contain a lot of escape possibilities for the Member States. The last paragraph of Article 20 TFEU itself states that the free movement

rights can be subject to 'conditions and limits'.³⁷ Also, Articles 27, 28 and 29 of the Residence Directive contain restriction grounds of public policy, public security or public health. They provide exceptions to the free movement rights which enable Member States to deny access or expel Union citizens from their territory. Even though these restriction grounds have been and continue to be restrictively interpreted by the ECJ, they still provide Member States an escape clause to free movement obligations.

3. Central research questions

Hence, it must be observed that on one hand, the Union citizenship offers important rights to the nationals of Member States and constitutes a considerable step towards a liberalized and open market. A Union citizen is entitled to move freely within the Member States and to enjoy the same and equal treatment with the nationals. On the other hand however, one should make a critical assessment of what is known for being Europe's masterpiece. Unfortunately, it is still subject to too many limitations and conditions. There is no unconditional right to free movement since Member States are still granted exceptions to restrict or hinder the establishment of a perfectly borderless area. Did the Union Citizenship genuinely and significantly improve the right of free movement? Does the Citizenship Directive grant to Union citizens all the necessary rights to enjoy free movement? Or are Europe's nationals still forced to fight against nationality barriers?

4. Thesis overview

In this thesis, we'll proceed with historical steps. We'll start in a first section to have a closer look on how the situation was before 1992. What was the position before the signing of the Treaty of Maastricht and the subsequent introduction of Union citizenship (Section 1). In a second section, we'll then analyze what the Union citizenship provisions managed to change on the free movement of persons level (Section 2). The Residence or Citizenship Directive aimed to consolidate the

³⁷ Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326 Article 21 para. 1.

existing primary law and case law – how did it proceed (Section 3)?

Finally, we'll assess what have been the major improvements of the introduction of the Citizenship provisions. To what extent did the provisions of the Citizenship Directive facilitate the free movement rights? Where do limitations still remain? Where are the still existing lacks in the legislative framework of the free movement rights? To conclude, this paper will deal with the echos of the concept of European citizenship in the literature. After having analyzed the objectively remaining obstacles to the free movement of persons, it might be interesting to have a look at the opinions of the legally active persons and their critics or praises to the new bound between the peoples of Europe (Conclusion).

II. Main part

A. The situation prior to Maastricht (1950-1992)

In order to be able to explain the development of the right of free movement, it's crucial to bear in mind the original legal texts which lay down the constitutional basis of the EU. It's of common knowledge that the TEU and the TFEU are only the result of numerous amendments by other treaties over the last sixty-five years. Actually, everything started with the Treaty establishing the European Economic Community (EC Treaty) better known as the Treaty of Rome. It entered into force in 1958 and is on the origin of today's TFEU. The word 'community' has been changed throughout the different treaties into 'union'. Accordingly, the Maastricht Treaty of 1992 established the Treaty on the European Union (TEU). Finally in 2009, the Treaty of Lisbon amended the original EC Treaty to establish today's TFEU. The introduction of Union citizenship in 1992/93 was a great step towards a borderless European Union. But how was the situation for people moving through Europe before? The only fact of being a Union citizen has never been sufficient to move freely within the Union without border checks or other requirements like pursuing an economic activity.

1. A gradual removal of borders

As already exposed before, the idea of a supranational union was born out of the wish of a successive approximating of the European countries after the Second World War. After the end of the War in the end of the 1940s and the beginning of the 1950s, Jean Monnet and Robert Schuman, known as the fathers of Europe have been searching for a way to erase competition between the two big European powers, France and Germany. The situation in Europe was difficult: the economies were destroyed, the European countries suffered from bad living conditions and the economic growth was poor. The creation of a common market for steel and coal aimed to re-install freedom and peace between the big economic powers and to work

together on the reconstruction of the trade in Europe. This idea finally got concretized by the signing of the Treaty of Paris in 1951. During the following thirty-five years, the borders of Europe have been opened to economically active persons only. Closely related to the free movement of the economic goods and raw material, the free movement of persons was limited to workers. The idea of free movement of persons laid to disagreements between the Member States who didn't really know how to deal with that notion. Difficult understandings of this concept hindered the countries to take agreements. Finally, in 1985 five of the European countries (France, Germany and the BENELUX) grasped the nettle and agreed to mutually open their internal borders to one another. The abolition of border checks has been introduced for all persons, irrespective of their economic status. Hence, the signing of the Schengen Agreement in 1985 constituted a great step towards a borderless Union.

a) The European Coal and Steel Community 1951

The creation of a common market for coal, steel, iron ore and scrap was the very first try to facilitate the trade between the countries participating in the project. The objective was to increase the economic growth and the standards of living as well as to create employments. It first opened the borders to a free movement of goods without customs duties and taxes, later to workers. Robert Schuman, Prime Minister of France in the years of 1947-8 and then Foreign Minister from 1948 to 1953 was convinced that the reconstruction of a competitive market and peace in Europe should start with such an economic agreement. By that time, Europe was governed by the ideas and thoughts of the French later president Charles de Gaulle who wanted to see Germany more and more weakened and didn't follow the ideas of a rapprochement to his German neighbour. Schuman wanted a change in the European politics and in his famous *Schuman Declaration*³⁸ held at Quai d'Orsay in Paris on 9 May 1950 he suggested that:

38 'The Schuman Declaration' (1950) <http://europa.eu/about-eu/basic-information/symbols/europe-day/schuman-declaration/index_en.htm> accessed 4 August 2015.

'Franco-German production of coal and steel as a whole should be placed under a common High Authority, within the framework of an organization open to the participation of the other countries of Europe'.³⁹

At that time, the most productive regions of Europe were the German Ruhr and Saar as well as the Lorraine in France on the border to Germany. Hence, coal and steel were the raw materials contributing to Europe's economic recover.

Robert Schuman continued:

The solidarity in production thus established will make it plain that any war between France and Germany becomes not merely unthinkable, but materially impossible. The setting up of this powerful productive unit, open to all countries willing to take part and bound ultimately to provide all the member countries with the basic elements of industrial production on the same terms, will lay a true foundation for their economic unification.⁴⁰

In the end, the ECSC has been a great success and had reached a lot of its objectives: there was an increase of steel production and the Community grew enormously on an economic level. Even if the coal and steel sector diminished over the next fifty years, the ECSC managed to rise the economical, social, technical and environmental development in Europe. When it expired in 2002, fifty years after being established, the ESCS had accomplished a lot in the process of the development of a common market in a stable and productive Europe.

b) The Schengen Agreement and Area 1985-86

The border checks of persons in the EU used to be of the competence of inter-governmental agreements. Hence, in the 1980s, European countries started to argue about what free movement of persons actually should look like. Some countries had the opinion that free movement should be granted only within the countries which are actually members of the EU. Some other countries disagreed and had the view

³⁹ *ibid.*

⁴⁰ *ibid.*

that free movement rights should be enjoyed by all the European countries. In this context, it was difficult to reach an agreement. Finally, only five out of the then existing ten Member States (namely France, Germany, Belgium, the Netherlands and Luxembourg) agreed upon the meaning of the concept of free movement of persons and created between themselves a territory without internal borders. On 14 June 1985, on board of the lovely boat on the Moselle River called 'Marie-Astrid' they signed the famous Schengen Agreement abolishing their internal borders and drawing one single external border.

This agreement was named after the tiny village of Schengen in Luxembourg on the border triangle between France, Germany and Luxembourg where the agreement was signed. The Schengen Agreement 'established a system for common conditions

of entry and exclusion of third country nationals into the combined territory'⁴¹ and where open borders enable the full exercise of free movement rights. This was the birth certificate of the Schengen Area. The signing countries decided upon a bundle of common legislation concerning border controls, visas and the cooperation between the different police and justice authorities. With the Schengen Agreement, internal border controls have been abolished for the first time in Europe. Today, the borderless Schengen Area comprises 26 of the European countries including Switzerland, Liechtenstein, Norway and Iceland.

A few years later, on 19 June 1990 a second agreement was signed. It came into force in 1995 and its purpose was to eliminate all border checks at the internal borders of those countries who entered into the agreement. The signing countries implemented equal procedure and common rules concerning checks at the external borders of their area. Their cooperation as regards police and justice got concretized by the establishment of the Schengen Information System (SIS). Today, the bundle of rules integrated in Schengen is crucial for the free movement of persons in Europe:

41 Catherine Barnard, Joanne Scott, *The Law of the Single European Market: Unpacking the Premises* (first published 2002, Hart Publishing) 301.

- removal of checks on persons at the internal borders;removal of checks on persons at the internal borders;
- a common set of rules applying to people crossing the external borders of the EU Member States;
- harmonisation of the conditions of entry and of the rules on visas for short stays;
- enhanced police cooperation (including rights of cross-border surveillance and hot pursuit);
- stronger judicial cooperation through a faster extradition system and transfer of enforcement of criminal judgments;
- establishment and development of the Schengen Information System⁴² (SIS).

c) The Single European Act

Only one year after the signing of the Schengen Agreement was signed a revision of the Treaty of Rome: the Single European Act. It was signed in Luxembourg on 17 February 1986 by the at that time nine Member States and 11 days later by Denmark, Italy and Greece! It was the result of a few very important events taking place between 1983 and 1985:

- the Declaration of Stuttgart in 1983 where the Heads of State of the Member States discussed about the possible integration of the developments of Schengen in the TEU.
- the drafting of the Treaty establishing the European Union which aimed to replace the European Communities by the European Union. The European Parliament adopted this draft in 1984.
- the European Council of Fontainebleau, France in 1984 where an ad hoc

42 'The Schengen area and cooperation' <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:l33020>> accessed 10 August 2015.

committee with representatives of the different Member States analyzed the draft Treaty establishing the EU and examined the issuing questions.

- Finally, the 'White Paper Completing the Internal Market'⁴³ of 1985 published by the European Commission and its president, the French Jacques Delors. It comprised the 279 legislative measures needed to complete the internal market.
- The European Council of Milan of June 1985 finally proposed an Inter-Governmental Conference (IGC) which opened under the Luxembourg Presidency on 9 September 1985 and closed in The Hague on 28 February 1986.⁴⁴

This Single European Act constituted an important step as regards the will of the European countries to cooperate in order to establish an internal market. The preamble of the SEA actually provided the Member States' determination to transform their relations as a whole with a view to creating an European Union'.⁴⁵

However, the completion of the internal market proved to be difficult to reach on the base of the existing legislation because in the European Council unanimity was required for the harmonisation of legislation.⁴⁶ Nevertheless, the Single European Act integrated in the Treaty of Rome provisions which enabled the creation of an area without border checks at the internal borders of this area for everyone, independently of the nationality of the person crossing the border. The establishment of this area was supposed to be achieved by the end of 1992. Unfortunately, the countries did not manage to make the deadline.

In 1990, the Convention Implementing the Schengen Agreement⁴⁷ was signed and

43 European Commission, 'Completing the Internal Market'[1986].

44 'The Single European Act' <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:xy0027>> accessed 10 August 2015.

45 'The Single European Act' <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:xy0027>> accessed 10 August 2015.

46 ibid.

47 The Schengen acquis - Convention implementing the Schengen Agreement of 14 June 1985

together with the Schengen Agreement they formed the Schengen *acquis*.⁴⁸ The improvements and developments of the Schengen Agreements finally got integrated in EU legislation by the Treaty of Amsterdam in 1997.

2. A sphere of rights limited to an economic activity

The first articles dealing with the topic of free movement and residence rights were Articles 17 and 18 of the former EC Treaty. They are today replaced by Articles 20 and 21 TFEU of Part Two of TFEU which is called 'Non-Discrimination and Citizenship of the Union'. Article 17 and 18 EC Treaty dealt with the same issues and had basically the same content as the ones of the TFEU today.

a) Article 17 EC Treaty (Article 20 TFEU)

Article 17 EC Treaty actually established the Citizenship of the Union as a complementary citizenship and ordered that 'citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby'.⁴⁹ In the TFEU, Article 20 is today formulated as follows:

'Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.'⁵⁰

European citizenship is introduced as a second citizenship on its own but not independent of the nationality of a Member State. This creates additional problems in the case an individual loses the nationality of a Member State or simply because

between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders [2000] OJ L239.

⁴⁸ *ibid*.

⁴⁹ Consolidated Version of the Treaty establishing the European Economic Community [2002] OJ C325 art 17 para 2.

⁵⁰ Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326 art 20 para 1.

the determination criteria as regards the individuals qualified as being a national of a Member State are determined by the Member State. Subsequently, the Member States not only fix the conditions to become their own nationality but also those to become an European citizen.

b) Article 18 EC Treaty (Article 21 TFEU)

Article 18 stated that:

'Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect'.⁵¹

Today, the wording of Article 21 of the TFEU has remained exactly the same.

c) Article 39 EC Treaty (Article 45 TFEU)

These provisions got concretized by Article 39 EC Treaty⁵² which, for the first time, laid down the rights conferred to a worker:

- the abolition of discrimination based on nationality between workers of Member States as regards employment, remuneration and other working conditions and the right to enjoy equal treatment with nationals;
- the right to accept offers of employment in another Member State without needing a work permit;
- the right to move freely within the territory of Member States in order to find a job;
- the right to stay in a Member State for job purposes;
- and the right to remain in this Member State even after the employment has finished.

⁵¹ ibid art 18 para 1.

⁵² ibid art 39.

After having provided the right to free movement for workers, it has subsequently⁵³ been extended to self-employed persons by Article 43 EC Treaty. Restrictions on the freedom of establishment are prohibited and self-employed persons should be subject to the same requirements and conditions as nationals of the host Member State. Restrictions were only allowed on grounds of public policy, public security and public health.

d) Article 49 EC Treaty (Article 56 TFEU)

Finally, Article 49 EC Treaty⁵⁴ granted the freedom to provide services within the EU by prohibiting any kind of restrictions between nationals and non-nationals who establish themselves in the Member State. One of the prime example of the freedom to provide services is the *Donatella Calfa*⁵⁵ case which will be discussed later in this thesis.

3. An extension of the rights to the family members

During the first stages of the EC, due to its mainly economic origin, the scope of the rights was limited to the persons pursuing an economic activity. But since the early days, the legislation of the EC granted free movement and residents rights not only to the worker but also to his family members. This was especially the case regarding the equal treatment provisions of today's Article 18 TFEU. Regulation⁵⁶ 1612/68 (now repealed) and more precisely its Articles 10 and 11 enumerated the persons who were, irrespectively of their nationality, allowed to stay with the worker in the Member State:

⁵³ *ibid* art 43.

⁵⁴ *ibid* art 49.

⁵⁵ Case C-348/96 *Donatella Calfa* [1999] ECR I-11.

⁵⁶ Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community [1968] OJ L257.

- the worker's spouse and their descendants who are under the age of 21 years or are dependent;
- dependent relatives in the ascending line of the worker and his spouse;
- those of the children who are under the age of 21 years or dependent on the worker shall have the right to take up any activity as an employed person throughout the territory of that same State.

4. A broad interpretation of the worker's definition

a) The absence of definition in primary and secondary law

Since the sphere of the free movement and residence rights was definitely very narrow and the exercise of them closely tied to the status of worker, it could be interesting to know who is considered as being a worker under EU law. Are individuals workers as soon as they work irrespective of their working time, the wage they earn and the kind of work they accomplish? Does an individual need to work full-time in order to be qualified as a worker? Does the individual need to earn a certain amount of money? Does the activity need to have an economic purpose or is freelance working also covered by the workers definition? What about students who take up a little job parallel to their studies? Does the individual have to work as an employee or does the term of worker also include individuals working on their own such as self employed persons? There is no definition to be found in the primary and secondary sources of the EU (treaties, directives etc.) but in the course of the years, the jurisprudence of the ECJ concretized the criteria which have to be taken into account for the qualification of workers within the meaning of Article 45 TFEU.

b) The reliance on ECJ case law

There is no common definition of 'worker' to be found in the treaties and directives. However, the ECJ case law provides a few core elements to rely on. The ECJ actually released a heap of cases to clarify its position concerning the definition of the terms of 'worker' and 'activity as an employed person'. The following analysis of

the ECJ case law should clarify how the Court managed to draw the conditions to fulfill in order to be covered by the free movement of workers provision. The concept of worker turns out to be a very broad one and the Court proceeds on a case-by-case basis by assessing the circumstances of the case.

⁵⁷
aa) *The Levin* case of 1982

The first and at the same time one of the most significant and iridescent ECJ

decision regarding the qualification of 'worker' is the *Levin*⁵⁸ case of 1982. Ms. Levin was a British national who applied for a residence permit in the Netherlands. The Dutch authorities refused her this permit by arguing that she did not pursue a beneficial occupation in the Netherlands. According to that, for the Dutch authorities she was not considered as a 'worker' within the meaning of Article 45 TFEU (former Article 39 EC Treaty) and doesn't enjoy any residence right out of Article 45 TFEU. Following that decision, Ms. Levin took up a part-time job. The Staatssecretaris van Justitie considered however, that this part-time job was still not in the scope of application of Article 45 TFEU since Ms. Levin actually earned a wage which was lower than the official minimum wage. Does Article 45 TFEU really do not cover jobs which do not pay the official minimum wage? The answer of the ECJ is: NO, Article 45 does also cover low-paid jobs. The Court actually holds that can be qualified as worker's activities all those activities which are 'effective and genuine'⁵⁹

as long as they are not 'purely marginal and ancillary'.⁶⁰ In order to understand the Court's broad interpretation of the worker's definition, let's analyze a bit more carefully some of the landmark cases in this area.

⁵⁷ Case C-53/81 *Levin v Staatssecretaris van Justitie* [1982] ECR 1035.

⁵⁸ *ibid.*

⁵⁹ *ibid* para 17.

⁶⁰ *ibid.*

61

bb) The Lawrie-Blum case of 1986

Ms. Deborah Lawrie-Blum was a British national who studied at a German university and applied for a job as a teacher in a German school. One of the requirements here was the accomplishment of the so called 'Vorbereitungsdienst'. The German authorities denied her the access to this preparatory service on the grounds of her nationality: the work as a teacher is a civil service job and for the sake of the public interest, must be exercised by Germans only. Subsequently, the German authorities applied the exception of 'employment of public service' of Article 45 para 4 TFEU and considered, that Ms. Lawrie-Blum was not a worker within the meaning of this article. The Court argued that a job is covered by this exception only 'if it involves the exercise of powers conferred by public law and contributes to safeguarding the general interests of the state. The activities of a teacher and a fortiori of a trainee teacher do not, however, involve the exercise of

62

powers conferred by public law. In the further development, the Court explains that a worker is a person who does a performance of 'work for and under the direction of' ⁶³ another person. The worker has a link of submission and subordination to his employer and gets a remuneration in return:

Objectively defined, a worker is a person who is obliged to provide services to another in return for monetary reward and who is subject to the direction or control ⁶⁴ of the other person as regards the way in which the work is done.

65

Additionally, the worker's activity shall be a 'genuine and economic activity' :

The Court held that the expressions 'worker' and 'activity as an employed person' must be understood as including persons who, because they are not employed full time, receive pay lower than that for full-time employment, provided that the

61 Case C-66/85 *Deborah Lawrie-Blum v Land Baden-Württemberg* [1986] ECR 2121.

62 *ibid* para 23.

63 *ibid* para 17.

64 *ibid* para 14.

65 *ibid* para 21.

activities performed are effective and genuine.

Ms. Lawrie-Blum therefore must be considered as a worker within the meaning of Article 45 TFEU and can rely on the free movement of worker provisions of this article.

⁶⁷
cc) The Kempf case of 1986

Mr. Kempf was a part-time music teacher who worked twelve hours a week. For the rest, he got supplementary income from the State. The question arose whether this kind of activity was qualified as the activity of a worker and subsequently covered by the free movement of workers of Article 45 TFEU. The Court repeated what she already emphasised in the *Levin* case: part-time work is not excluded from scope of application of the free movement of workers of Article 45 TFEU as long as the

⁶⁸
activity is 'effective and genuine' and not 'on such a small scale as to be regarded

⁶⁹
as purely marginal and ancillary'. As regards as the fact that Mr. Kempf got financial assistance from the State, the Court emphasised that the fact that this

⁷⁰
supplementary income was 'financial assistance payable out of public funds' did

⁷¹
not disqualify him as a worker within the meaning of Article 45 TFEU.

⁷²
dd) The Megner and Scheffl case of 1995

Ms. Ursula Megner and her colleague Ms. Hildegard Scheffl were working as cleaning employees for a German cleaning firm. They had working times of two hours per day, five days a week and got paid according to the collective agreement

⁶⁶ *ibid.*

⁶⁷ Case C-139/85 *R. H. Kempf v Staatssecretaris van Justitie* [1986] ECR 1741.

⁶⁸ *ibid* para 10.

⁶⁹ *ibid.*

⁷⁰ *ibid* para 16.

⁷¹ *ibid.*

⁷² Case C-444/93 *Ursula Megner and Hildegard Scheffl v Innungskrankenkasse Vorderpfalz* [1995] ECR I-04741.

of cleaners. They required the payment of social security rights which the employer refused to pay since Ms. Megner and Ms. Scheffel were working only ten hours the week, a working time which was not subject to compulsory payments of social security rights by the employer according to the German Social Insurance Code. The latter Code considered employment was 'minor' in the case of a working time below twelve hours a week and paid at a wage lower than a certain threshold. The two cleaning ladies not being workers couldn't therefore benefit from the social security rights tied to this status. The Court argued that '(...) Persons in minor employment of the type referred to in the national court' s question are part of the working population (...)'⁷³. Hence, Ms. Megner and Ms. Scheffer are qualified as workers and as such, they must be granted the social security rights.

⁷⁴
ee) The Ninni-Orasche case of 2003

Ms. Ninni-Orasche was an Italian national who was married to an Austrian. She lived in Austria with a valid residence permit for three years but was working there only for a short period of time before starting to study in Austria. Ms. Ninni-Orasche applied for the benefit of a student assistance. The Austrian authorities denied her the benefit of this assistance on the grounds that she entered the Austrian territory with the only objective of getting this student assistance. They argued that Ms. Ninni-Orasche did only have an occupation for a short period of time which is not enough to qualify her as a worker. The ECJ answered that Ms. Ninni-Orasche, irrespective of the reasons of her stay in Austria, was a national of a Member State who took up an occupation in another Member State for a certain period. As such, Ms. Ninni-Orasche was qualified as a worker within the meaning of the Treaty as long as the activity was not 'purely marginal and ancillary'.⁷⁵ Hence, the Court extended the qualification of a worker even to a person who only worked for a temporary period of two and a half month in the territory of a foreign Member State.

⁷³ *ibid* para 21.

⁷⁴ Case C-413/01 *Franca Ninni-Orasche v Bundesminister für Wissenschaft, Verkehr und Kunst* [2003] ECR I-13187.

⁷⁵ *ibid* para 32.

76

ff) The Steymann case of 1988

Mr. Steymann worked for a religious community where he did not earn a normal wage but was 'logé-nourri' ('with board and lodging'). The question arose whether the fact that Mr. Steymann did not get a normal remuneration disqualified him as a worker within the meaning of Article 45 TFEU. The Court qualified the commercial activities of the religious community of Mr. Steyman as economic activities within the meaning of the provision: According to the ECJ, those activities can be regarded

77

as an 'indirect quid pro quo for genuine and effective work' attributing Mr. Steymann the status of a worker under the terms of Article 45 TFEU. The ECJ even accepted that the remuneration given from the employer to the employee in return of the completed work can have another form than money. Thus, an economic activity does not necessarily have to be gratified by money. However, it needs a demonstrable compensation.

78

gg) The Bettray case of 1989

79

Also it is irrelevant, says the Court in the *Bettray* case, whether the remuneration is paid directly by the employer or comes from another source. Although the concept of 'worker' is broadly interpreted, there are some activities which remain outside of the scope of application of Article 45 TFEU. For instance, in this case, the ECJ excluded the work in a social employment program provided by an institution for drug abuse since it only constitutes a program of rehabilitation or reintegration in the

80

society.

81

hh) The Trojani case of 2004

76 Case C-196/87 *Udo Steymann v Staatssecretaris van Justitie* [1988] ECR 6159.

77 *ibid* para 14.

78 Case C-344/87 *Ingo Bettray v Staatsecretaris v. Justitie* [1989] ECR 1621 para 15.

79 *ibid*.

80 *ibid* para 17.

81 Case C-456/02 *Michel Trojani v Centre public d'aide sociale de Bruxelles* [2004] ECR I-7573.

At a later stage in the *Trojani*⁸² case, the Court specified that this kind of rehabilitation and reintegration activity can be regarded as an economic one⁸³ exclusively when it can be seen as 'forming part of the normal labour market'. In the present case actually, Mr. Michel Trojani was a Frenchman who lived and worked in Belgium for a military related institution (a so called 'Salvation Army hostel'). He did not earn a normal wage but was rather 'logé-nourri' like Mr. Steyman was and got some 'pocket money' for the services he provided in the area of a so called 'socio-occupational reintegration programme'. Mr. Trojani applied for a social advantage called 'minimex' granted to Belgian citizens or to workers. The Belgian authorities refused to grant him this advantage since he did not hold the Belgian nationality and either has he been a worker. The Court held that, in order to be a worker, Mr. Trojani must have a job which is 'real and genuine'⁸⁴ and 'forms a part⁸⁵ of the normal labour market'. However, since Mr. Trojani had a residence permit in Belgium, he must enjoy equal treatment of Article 18 TFEU but this fact isn't relevant here where we search for conditions to be qualified as a worker.

Over the last few decades, the ECJ actually broadly extended the application scope of Article 45 TFEU. For instance, workers no longer need to quit their host Member State after the termination of their employment contract but are entitled to remain within the territory of that State.

5. An extension in favor of the job-seekers

As time passed, the ECJ changed its jurisprudence which became more 'worker-friendly'. If in the beginning, free movement and residence rights were only granted to workers, the Court gradually opened the borders to other categories of working people. A major step was thus the conferral of rights of Article 45 not only to

⁸² *ibid.*

⁸³ *ibid* para 24.

⁸⁴ *ibid* para 29.

⁸⁵ *ibid* para 24.

workers but also to job-seekers, employers or individuals which have finished their employment in the Member State but want to continue to stay there. In its case law, the ECJ actually started to allow job-seekers to rely on the non-discrimination paragraph of Article 45 TFEU (namely Article 45 para. 2 TFEU). They enjoy equal treatment in the host Member State where they search for an employment. This can be seen through the ECJ case law where the Courts orders equal treatment of EU job-seekers with nationals when it comes to the benefit of social or financial benefits. This thesis concretizes these facts through the following analysis of a few of the landmark cases in the area.

86

a) *The Antonissen* case of 1991

Here the Court expansively interpreted the treaty provisions and extended their application to an individual seeking for a job in a Member State. Mr. Antonissen was a Belgian citizen living in the United Kingdom since 1984. He tried without success to find a job before being arrested because of drug possession in 1987. Since the UK law allows such a deportation after six month of unemployment, the British authorities ordered Mr. Antonissen's expulsion. Can a national legislation set residence limitations for work-seekers? The ECJ answered positively and found that:

It is not contrary to the provisions of Community law governing the free movement of workers for the legislation of a Member State to provide that a national of another Member State who entered the first State in order to seek employment may be required to leave the territory of that State (subject to appeal) if he has not found employment there after six months, unless the person concerned provides evidence that he is continuing to seek employment and that he has genuine chances of being
87
engaged.

Hence, the Court estimates that Article 5 para. 3 TFEU needs an expansive interpretation and allows Member States to expel work-seekers:

86 Case C-344/95 *Antonissen* [1991] ECR I-745.

87 *ibid* para 22.

- after a 'reasonable period' (in the present case the Court accepts a period of six months);
- however, the work-seeker should have the opportunity to provide evidence regarding his genuine efforts to find an employment and his real chances to succeed;
- furthermore, the deportation decision must stay subject to appeal.

88

b) The *Royer* case of 1976

In this case, another extensive application of Article 45 has been noticed. Mr. Royer was a French national convicted for procuring and illegal entrance to the Belgian territory where his spouse pursued an economic activity. He actually failed to comply with the Belgian administrative formalities of entry to the territory. As a result of that, he has been expelled. The deportation decision was taken on the grounds of his personal conduct: Mr. Royer was actually unlawfully resident and by virtue of that a threat to public policy. Was this expulsion lawful? The Court repeats that the right to free movement and residence covers the right to move to another Member State with the purpose to search for an employment or to join a spouse or another family member. The fact that Mr. Roger did not comply with the legal formalities in Belgium was not severe enough to justify a deportation on the grounds of public policy:

The failure to comply with the legal formalities concerning the entry, movement and residence of aliens does not in itself constitute a threat to public policy and public security within the meaning of the Treaty'.⁸⁹

The lack of compliance with the administrative formalities does therefore not validate the expulsion of Mr. Royer.

⁸⁸ Case C-48/75 *Procureur du Roi v Royer* [1976] ECR 497.

⁸⁹ *ibid* para 47.

6. Restrictions to free movement: public policy, public security and public health

Out of what has been exposed above, we can conclude that the Court's interpretation of what is a worker has become more and more liberal and in favor of the moving individuals. The European legal order prohibits national measures which hinder the achievement of the goal of a single market. National legislations should not create barriers to the free movement of persons. Also, Member States have to ensure equal treatment. However, they are allowed to discriminate (directly or indirectly) on the grounds of nationality only if they can justify:

- that their national measure is 'designed to achieve a legitimate interest';⁹⁰
- that they've respected the principle of proportionality and that the measure doesn't go beyond what is necessary to achieve this legitimate interest;
- that the attainment of the objective is secured.

a) The escape clause for the free movement of workers

Member States are provided with three arguments which can be used to explain a restriction of the free movement rights of a worker:

- Article 45 para. 3 TFEU enumerates the 'limitations justified on grounds of public policy, public security and public health';⁹¹
- Article 45 para. 4 TFEU which allows an exception regarding the employment in the public service;

Another landmark case regarding the definition of an employment 'in the public

⁹⁰ Friedl Weiss, Clemens Kaupa, *European Union Internal Market Law* (first published 2014, Cambridge University Press) 165.

⁹¹ Consolidated Version of the Treaty on the Functioning of the European Union, [2002] OJ C326 Article 45 para 3.

92

service' is the *Belgian National Railway Company* case. Here, the ECJ holds that such an employment requests the 'exercise of powers conferred by public law and with responsibility for safeguarding the general interests of the State.'

93

- the justifications set out by the case law of the ECJ on the grounds of imperative reasons of overriding public interest.

The Court needs to find a balance between the fight for the right of free movement and residence of the worker and the general interests of the Member States. Therefore the ECJ sometimes accepts indirect discriminating or restrictive measures which are justified by the prevailing general interest of the State as long as they comply with the principle of proportionality. However, these limitations have been narrowly interpreted by the Court. For instance, the ECJ considers that:

The concept of public policy must, in the Community context, and where, in particular, it is used as a justification for derogation from the fundamental principles of equality of treatment and freedom of movement for workers, be interpreted strictly, so that its scope cannot be determined unilaterally by each Member State

94

without being subject to control by the institutions of the Community.

b) The escape clause for the freedom of establishment

Just as it is the case for the free movement rights of a worker, Member States are allowed, under certain conditions, to have measures which possibly restrict, hinder or make the free movement rights less attractive. Article 51 TFEU contains the so called 'official authority' exception. Free movement rights don't apply to activities which are associated to the exercise of official authority. Article 52 para. 1 TFEU actually states that:

The provisions (..) shall not prejudice the applicability of provisions laid down by

92 Case C-149/79 *Commission v Belgium – Public Service* [1982] ECR 1845.

93 *ibid* para 12.

94 Case 36-75 *Roland Rutli v Ministre de l'intérieur* [1975] ECR 1219 para 2.

law, regulation or administrative action providing for special treatment for foreign
nationals on grounds of public policy, public security or public health.⁹⁵

c) The power of coercion and the power of constraint

The ECJ specifies these two exemption clauses by a bundle of case law out of which the two major decisions will be discussed in the developments below. The Court actually gives further detail about the extent and the meaning of the 'public authority' exception.

aa) The *Reyners*⁹⁶ case of 1974

One of the most iridescent examples is the case of a Dutchman called Reyners and holding a doctorate in Belgian law. His application to the Belgian Bar Association however, got refused. Belgium justified this rejection by the fact that in Belgium the lawyer's profession did not fall within the scope of Article 49 TFEU since this profession was 'organically connected with the functioning of the public service of

the administration of justice'.⁹⁷ The Court considers however that the activities of a lawyer don't possess the requested connection with the exercise of the official

authority.⁹⁸ It continues by saying that even though a lawyer might be in contact with the court where he represents the parties and even though the representative function of the lawyer might be compulsory or a legal monopoly, it can't be seen as

the exercise of official authority.⁹⁹ Hence, the Belgian authorities couldn't rely on the official authority exception of Article 45 TFEU. The Court requires that, in order to be covered by the exception, the profession must 'involve a direct and specific

connection with the exercise of official authority'¹⁰⁰ which for the Court is

⁹⁵ Consolidated Version of the Treaty on the Functioning of the European Union [2002] OJ C326 art 52 para 1.

⁹⁶ Case 2/74 *Jean Reyners v Belgium* [1974] ECR 631.

⁹⁷ *ibid* para 35.

⁹⁸ *ibid* para 51.

⁹⁹ para 52.

¹⁰⁰ para 54.

obviously not the case here. For Advocate General Mayras, this 'official authority' manifests itself as being the 'power of enjoying the prerogatives outside the general law, privileges of official power and power of coercion over citizens'.¹⁰¹

¹⁰²

bb) The Luxembourg Notaries case of 2011

Basically the same has been decided almost 40 years later in the Luxembourg Notaries case. Under Luxembourgish law, notaries practice as a liberal profession. Article 1 of the 'loi relative à l'organisation du notariat' (the law relative to the organisation of the Notarial Profession) provided that notaries are 'officiers d'état public' ('public-office-holders'). As such they are entrusted with the power to confer the authentic character to acts of public authorities, to certificate their date, to make official copies, to insure the safety of the documents and to attest the lawfulness of private documents. Therefore, Article 15 of that same law ties the admission as a civil-law notary in Luxembourg to the Luxembourgish nationality. This is seen by the ECJ as a clear breach of the fundamental European law obligations.

The Court affirms that:

The concept of establishment within the meaning of that provision (Article 49 TFEU) is a very broad one, allowing a national of the European Union to participate, on a stable and continuous basis, in the economic life of a Member State other than his State of origin and to profit therefrom, so contributing to economic and social interpenetration within the European Union in the sphere of activities of self-employed persons.¹⁰³

The State of Luxembourg considers however that the profession of the notary is outside of the scope of Article 49 TFEU. The notary public's activities are 'connected with the exercise of official authority' and therefore fall under the 'official

¹⁰¹ Paul Craig, Grainne de Burca, *EU Law – Text, Cases and Materials* (6th edn, Oxford University Press 2015) 799.

¹⁰² Case C-51/08 *European Commission v Grand-Duchy of Luxembourg* [2011] ECR I-4231.

¹⁰³ *ibid* para 78.

authority' exception of Article 51 TFEU as exposed above. The Court repeats that the exception of Article 51 must be narrowly interpreted. This means that it only covers activities 'which in themselves are directly and specifically connected with

the exercise of official authority'.¹⁰⁴ This official authority is noticeable especially

through the 'exercise of powers of constraint'.¹⁰⁵ As regards the freedom of establishment, two major arguments can be filtered out of the case law of the ECJ. Member States can restrict the freedom of establishment if the job concerns activities which are directly and specifically linked with the exercise of official authority. The ECJ has illustrated through its decisions that this official authority implies:

- the power of coercion (*Reyners* ¹⁰⁶ case)
- the power of constraint (*Luxembourg Notaries* ¹⁰⁷ case)

c) The three Directives of 28 June 1990

Altogether we can observe that smoothly and step by step, the EC has moved towards a common territory without borders. However, if in the beginning the free movement rights were only granted to those in the European area who were economically active, this economic connection has finally been broken in the beginning of the 1990s by three crucial Directives of 28 June 1990 on the right of residence:

- Directive 90/364/EEC ¹⁰⁸
- Directive 90/365/EEC ¹⁰⁹

¹⁰⁴ *ibid* para 1.

¹⁰⁵ Case C-14/97 *European Commission v Spain* [1998] ECR I-6717 para 37.

¹⁰⁶ Case 2/74 *Jean Reyners v Belgium* [1974] ECR 631.

¹⁰⁷ Case C-51/08 *European Commission v Grand-Duchy of Luxembourg* [2011] ECR I-4231.

¹⁰⁸ Directive 90/364/EEC of the Council of 28 June 1990 on the right of residence [1990] OJ L180.

¹⁰⁹ Directive 90/365/EEC of the Council of 28 June 1990 on the right of residence for

- Directive 90/396/EEC

The first directive aims to remove obstacles to the free movement of persons and allows any European national to reside in a country other than its own Member State.

The second one ('Playboy Directive') grants to employed and self-employed persons the right to stay in the host Member State after the termination of their employment contract. It extends the movement and residence rights to persons not contributing in any economic activity.

The third one finally extends the free movement rights to students who don't pursue any economic activity as long as they can afford their living costs themselves. The rights is extended to their spouses and their dependent children (Article 1).

For the first time in the history of the EC, the beneficiaries of the residence rights are not only workers but all citizens of the European Union! However, all these directives tie the benefit of their rights to the necessity to have sufficient resources and comprehensive sickness insurance cover in the host Member State in order not to become a burden on the social assistance system of the host State. In the meantime, these Directives got repealed and replaced by the famous and fundamental Residence/Citizenship Directive 2004/38/EC of 2004. This directive is a particular and individual act which regroups all the previous legal texts and case law of the Court which deal with the free movement and residence rights. It incorporates the rights not only for workers but also for self-employed and retired persons and their families, as well as for all the nationals which prove having sufficient financial means.

B. Treaty of Maastricht and Union citizenship

employees and self-employed persons who have ceased their occupational activity [1990] OJ L180.
 110 Directive 90/366/EEC of the Council of 28 June 1990 on the right of residence for students
 [1990] OJ L180.

It's with the Treaty of Maastricht that the concept of free movement and residence was for the first time established into the European legal order. If Article 17 EC Treaty still contained restrictions regarding who should enjoy the rights, Article 20 TFEU now allocates free movement rights to every holder of the nationality of a Member State. The status of a citizen of the European Union is attached to the usual nationality of a Member State, it is additional and does not replace it. The Union citizenship provisions have in the meantime been supplemented by the succeeding Treaties of Amsterdam, Nice and Lisbon and today, European Union citizenship has found its place in the legal framework of the European Union.

1. The establishment of Union Citizenship

a) Article 20 TFEU

The core provision of the legislation is Article 20 TFEU para. 1 which institutes Union citizenship and which wording hasn't changed since Article 17 EC Treaty:

Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be
111
additional to and not replace national citizenship.

The European citizenship is not only additional to the nationality of a Member State but it is also closely tied to it: without the nationality of a Member State, an individual cannot possess the nationality of the European Union. It goes without saying that the person holding the EU citizenship is also a national of one of the Member States of the Union. But this implies that the grant of EU citizenship is dependent on the different Member States who decide whether they attribute their nationality or not. The conditions which have to be fulfilled to get the nationality of the Member States actually remain within the competence of the Member State

111 Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326 art 20 para 1.

itself. A lot of ECJ case law actually has been released on this subject and according to a few Advocates Generals, Union citizenship could therefore be 'an autonomous source of rights which can potentially limit the discretion of Member States'.¹¹² The quality and status of the European citizen is in a certain way determined by the Member States themselves. As a matter of fact, the Member States have, to a greater or lesser extent, the discretionary power to determine the attribution or the loss of their nationality. The Member States themselves define, maybe indirectly but still, who will have the quality to figure as an Union citizen and who not. The ECJ has released a few core decisions on that subject which will be discussed below.

¹¹³
aa) The *Micheletti*' case of 1992

This decision also had to deal with the Member State's right to arbitrate the conditions to become one of their nationals. The Court actually had to find a balance between this right of the Member State and the rights granted by the Union citizenship provisions. In the facts, Mr. Micheletti was a dentist of dual nationality: Argentina and Italy. He studied dental medicine in Spain where he first applied for a temporary residence, then for a permanent residence permit with the purpose to facilitate his establishment as a dentist in Spain. However, the Spanish authorities refused and justified their decision by a national provision: Mr. Micheletti possessing a dual nationality and none of them being the Spanish one, his habitual residence before entering the territory of Spain was supposed to be Argentina and as such he was not an European citizen enjoying the free movement of establishment rights. The Court's answer was unambiguous: Member States got the right to determine who is a national and who not but not to the detriment of the free movement rights if one of the applicants nationalities is actually one of a Member State (in this case Italy). The interpretation of the European provisions should not be such that it has the effect that:

(...) where a national of a Member State is also a national of a non-member country,

¹¹² Friedl Weiss, Clemens Kaupa, *European Union Internal Market Law* (first published 2014, Cambridge University Press) 99.

¹¹³ Case C-369/90 *Mario Vincente Micheletti and others v Delegación del Gobierno en Cantabria* [1992] ECR I-04239.

the other Member States may make recognition of the status of Community national subject to a condition such as the habitual residence of the person concerned in the territory of the first Member State.¹¹⁴

The Spanish provision, by taking into account the precedent habitual residence of the applicant and ignoring his already existing nationality of a Member State, precludes the applicant from his exercise of free movement rights legally granted to him as an European citizen. Such a legislation does not comply with EU law. The Court finally held that:

(...) The provisions of Community law on freedom of establishment preclude a Member State from denying a national of another Member State who possesses at the same time the nationality of a non-member country entitlement to that freedom on the ground that the law of the host State deems him to be a national of the non-member country.¹¹⁵

This decision marks another time the difficulties which may arise when combining the discretionary power of the Member States to determine their nationality criteria and the European citizenship provisions.

bb) The *Janko Rottmann v. Freistaat Bayern* case of 2010¹¹⁶

In this ruling called *Janko Rottmann v. Freistaat Bayern*,¹¹⁷ the Court set a few limitations for the Member States when it comes to granting or withdrawing the nationality of their nationals. The ECJ actually confirmed that the Member States are given the right to fix the conditions which have to be fulfilled to acquire their nationality. However, Member States have to be aware of two major points:

- In case of the withdrawal of the nationality, this withdrawal decision must be justified by the gravity of the fact that pushes the Member State to remove the nationality. It also has to check whether there is a possibility for the

114 *ibid* para 11.

115 *ibid* para 15.

116 Case C-135/08 *Janko Rottmann v Freitstaat Bayern* [2010] ECR I-01449.

117 *ibid*.

individual to get back his original nationality in order not to end up
118
stateless.

- Granting the nationality of a Member State means granting the European citizenship. Thus, if a Member State withdraws the nationality of an individual, as a matter of fact, it also withdraws the Union citizenship. However, the latter, as well as the nationality of the Member State, granted to the individual certain rights. Therefore, whenever a Member State withdraws a nationality, it must ascertain that this withdrawal decision observes and is in accordance with the principle of proportionality.

119

cc) The Ruiz Zambrano case of 2011

In this case, Mr. Ruiz Zambrano and his wife were Colombian nationals and got denied lawful entrance to the Belgian territory. Since in Colombia the war was still going on, Belgian authorities granted them the right to stay in Belgium where the couple got two children. The children being of Belgian nationality, the parents applied another time for a residence permit in Belgium in order to be able to stay with their children and not being forced to leave Belgium. This permit got again refused. The Court then held that Article 20 TFEU prohibits Member States to adopt a legislation which does not allow their nationals to fully enjoy the rights conferred

120
by the European citizenship. The fact that Belgium refused the residence right to the parents had as a consequence that the children had to leave the Belgian territory and subsequently stopped enjoying the European citizen rights. The wording of the Court was actually the following:

It must be assumed that such a refusal would lead to a situation where those children, citizens of the Union, would have to leave the territory of the Union in

118 *ibid* para 56.

119 Case C-34/09 *Gerardo Ruiz Zambrano v Office national de l'emploi (ONEm)* [2011] ECR I-01177.

120 *ibid* para 42.

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

121

them by virtue of their status as citizens of the Union.

Even though in the future it has been seen that this decision must be carefully interpreted, it is an important example showing that the Member States have a discretionary power to determine their nationality criteria but that the Court tries to moderate this right of the Member States in favor of the provisions of European citizenship. Member States continue to be asked to take into consideration the fact that the European citizenship confers to the individuals rights when ruling the conditions of attribution of their nationality. Under certain conditions, the person needs to prove that it is covered by a comprehensive health insurance and that it has sufficient means to avoid to become a social burden on the host Member State. The European citizen rights have direct effect and by virtue of that are directly invocable before national courts. Union citizens and their families can only be expelled under strict exceptions regarding the personal conduct of the individual and on grounds of public health, policy and security.

b) Article 21 TFEU

As seen above, Article 18 EC Treaty has been transformed into Article 21 TFEU which finally provides the free movement and residence rights for all the nationals of every Member State:

Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in

122

the Treaties and by the measures adopted to give them effect.

This article finally grants the right to freely move within the Member States to all persons irrespective of their economic status! In the following developments we can

121 *ibid* para 44.

122 *ibid* art 21 para 1.

see that the status of European citizenship has become through the ECJ case law a essential and integral status to which are attached a certain number of rights.

123

aa) *The Martinez Sala* case

This case constitutes one of the pillars in the relevant ECJ case law. In the facts, Ms. Martinez Sala was a Spanish citizen who lived in Germany without a residence permit. Nevertheless, the German authorities allowed her to continue to stay in Germany. In 1993, when Ms. Martinez Sala gave birth to a child and applied for a child-raising allowance in Germany. This application was dismissed on the grounds that Ms. Martinez Sala didn't possess neither the German nationality nor a proper residence permit officially allowing her to live in Germany. Following that refusal, Ms. Martinez Sala claimed that the decision of the German authorities refusing to grant her the residence permit and the social benefit constituted a discrimination on the grounds of nationality. Actually, there should be no discrimination regarding the beneficiary of this allowance on the grounds that Ms. Martinez Sala did not hold the German nationality or a residence permit. Hence, the first question raised to the ECJ was whether to know if this child-raising allowance actually constituted a social benefit which should be granted if the applicant had fulfilled the objective criteria. Only when this is the case, Union law becomes applicable and the measure of Germany becomes unlawful. The Court argued in a positive way: a child-raising allowance falls under the definition of a 'social advantage' and subsequently has to be allocated 'without any individual and discretionary assessment of personal

124

needs'.

The second question the ECJ had to deal with was to know whether in general, Member States can add a supplementary condition for the benefit of a social advantage, condition which does not have to be fulfilled by their own nationals. Here the Court clearly answered: No. The controversial child-raising allowance constitutes without any doubt a 'social advantage' within the meaning of Article 7

123 Case C-85/96 *Maria Martinez Sala v Freistaat Bayern* [1998] ECR I-269.

124 *ibid* para 1.

125

para. 2 of Regulation 492/2011.¹²⁵ Thus, Union law is applicable and Germany has to comply with principles of non-discrimination and equal treatment. Ms. Martinez Sala is a citizen of the EU and therefore, the German authorities are under the obligation to grant her this child-raising allowance independently of nationality or residence permit. The refusal of that social benefit to non-nationals on the grounds that they don't possess a certain document which German nationals are not required to have definitely constitutes a breach of EU law and a clear discrimination on grounds of nationality!

126

bb) The *D'Hoop* case

Here, a similar position has been held. Ms. Marie-Nathalie D'Hoop was a Belgian citizen having completed her secondary school education in France with a French diploma. The Belgian authorities recognized her French degree as being equivalent to their national certificate. Ms. D'Hoop went back to Belgium for her university studies and applied for a tideover allowance, a social benefit that helps young people to find their first job. Unfortunately, the benefit of this allowance got denied to Ms. D'Hoop. The Belgian authorities argued that in order to be able to benefit from this allowance, the legal condition of the fulfillment of secondary education in a school of the applicant's own country must be given. Therefore, Ms. D'Hoop, who completed her secondary school in France, could not enjoy the right to this tideover allowance. The question arose as to whether Article 39 EC Treaty (Article 45 today)

127

and Article 7 of Regulation 1612/68¹²⁷ have to be interpreted as to proscribe Member States to refuse an application for a social benefit like the tideover allowance to a national for the reason that this person did not accomplish its secondary school in that same Member State but in another.

125 Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union Text with EEA relevance [2011] OJ L141.

126 Case C-224/98 *Marie-Nathalie D'Hoop v Office National de l'Emploi* [2002] ECR I-6191.

127 Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community [1968] OJ L257.

The ECJ basically had to deal with two issues:

- Can Ms. D'Hoop rely on Community law and base her claim for the tideover allowance on the principles of equal treatment and non-discrimination?
- Has Ms. d'Hoop become the victim of discrimination based on nationality within the meaning of Article 12 EC Treaty (today Article 18 TFEU prohibiting nationality based discrimination) and which was not justified on grounds of public policy, public security or public health?

The answer of the Court was unambiguous:

Community law precludes a Member State from refusing to grant the tideover allowance to one of its nationals, a student seeking her first employment, on the sole ground that that student completed her secondary education in another Member State.¹²⁸

129

cc) The *Grzelczyk* case

Such a decision could never have been released only one year before in the legendary *Grzelczyk*¹³⁰ case. Mr. Grzelczyk was a French national who undertook a course of studies in Belgium. During the first three years of his studies, he came up himself for his living expenses. Then, Mr. Grzelczyk applied for the payment of an allowance called 'minimex'. This social benefit is a non-contributory minimum subsistence allowance. In the beginning, this allowance has been granted to the student. But then, the benefit of this advantage got withdrawn on the grounds that Mr. Grzelczyk was not entitled to it since he was not a Belgian national. Mr. Grzelczyk brought an action challenging this withdrawal and the case was subsequently referred to the ECJ.

128 ibid para 40.

129 Case C-184/99 *Rudy Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve* [2001] ECR I-6193.

130 ibid.

The latter decided that:

It is clear from the documents before the Court that a student of Belgian nationality, though not a worker within the meaning of Regulation 1612/68, who found himself in exactly the same circumstances as Mr. Grzelczyk would satisfy the conditions for obtaining the minimex. The fact that Mr. Grzelczyk is not of Belgian nationality is the only bar to its being granted to him. It is not therefore in dispute that the case is
131
one of discrimination solely on the ground of nationality.

The Court made, for the first time, an extensive reading of Article 18 TFEU (principle of non-discrimination) and considered that:

(...) Such discrimination is, in principle, prohibited by Article 18. In the present case, Article 18 must be read in conjunction with the provisions of the Treaty concerning
132
citizenship of the Union in order to determine its sphere of application.

It continues by introducing a new central formula:

Union citizenship is destined to be the fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality, subject to such exceptions
133
as are expressly provided for.

This leads the Court to the statement that:

The fact that a Union citizen pursues university studies in a Member State other than the State of which he is a national cannot, of itself, deprive him of the possibility of relying on the prohibition of all discrimination on grounds of nationality laid down
134
in Article 18 of the Treaty.

This judgement constitutes a milestone in the ongoing process of the creation of an European area without borders. This is the first formal and official consecration of the Union citizenship as an instrument to be invocable against discrimination. The

131 ibid para 29.

132 ibid para 30.

133 ibid para 31.

134 ibid para 36.

provisions of the Union citizenship are invokable by nationals (if they pursue an economic activity or not is irrelevant) who move from one Member State to another and are in a cross-border situation.

dd) The *Baumbast* ¹³⁵ case

In this other major case, the direct effectiveness of Article 21 TFEU has been confirmed. Mr. Baumbast was a German national who lived with his family in the United Kingdom where he pursued an economic activity. In a later stage, he got employed by a German company in China and Lesotho while the Baumbast family still enjoyed health coverage in Germany. The British authorities refused to renew Mr. Baumbast's residence permit. They argued that he did not qualify anymore as a worker within the meaning of Article 45 TFEU and did not fulfill the conditions required for a general right of residence in the United Kingdom where his family still used to live. The main question was whether EU citizens who are no longer migrant workers in the host Member State continue to enjoy a residence right within the meaning of Article 45 TFEU? The answer was: Yes.

The ECJ ruled that as soon as a person is a citizen of the EU, it does enjoy a right of residence by direct application of Article 21 TFEU! This provision was not subject

to any condition or intervention of a Community institution ¹³⁶ and therefore able to be directly applicable. Moreover, the provisions of the Treaty are no longer tied to the exercise of an economic activity to be applicable! The only fact that Mr. Baumbast was an EU national entitled him to invoke the rights conferred by Article 21! However, Member States may ask for a full and comprehensive sickness insurance and enough financial means as a condition for Union citizens to stay in their country. The purpose is to avoid that the Union citizen becomes an unnecessary financial burden on the social security and financial system of the host State. Incidentally, Mr. Baumbast and his family complied with those requirements.

¹³⁵ Case C-413/99 *Baumbast and R v Secretary of State for the Home Department* [2002] ECR I-7091.

¹³⁶ Case C-41/74 *Yvonne Van Duyn v Home Office* [1974] ECR 1337.

C. The Citizenship Directive 2004/38/EC

The main lesson of the ECJ's case law on the Union citizenship has been that one and only sentence in the above exposed *Grzelczyk* case: 'Union citizenship should be the fundamental status of nationals of the Member States'. Article 21 TFEU is the central provision for the Union citizenship but is the evolution of the European citizenship really that significant? On 29 April 2004, the European Parliament and the Council released the already mentioned Directive 2004/38/EC (commonly referred to as the 'Residence or Citizenship Directive') which aims to embed the provisions of Article 21 TFEU into secondary legislation. It also intends to consolidate the existing law as well as the case law of the ECJ regarding the free movement rights into one single comprehensive text. The free movement of persons requires the abolition of all major administrative barriers such as visas and encourages people to move. If persons who move are facing discrimination, formalities and a lack of social assistance in the Member State, they are not motivated to move. Entrance refusals shall be reduced to a minimum as well as expulsions from the territory of the Member States. But what are the specific improvements provided by the introduction of the new Directive? Who does it cover, who does it not and what does it cover? Has the Directive of 2004 changed the condition of the nationals of the Member States and if so, to what extend? Can we talk about a significant advancement, a huge step forward in the common process of the completion of a borderless Union? To all these questions we'll try to find an answer in the following chapters.

1. Scope of application

The Citizenship Directive applies to all nationals of the European Union and their families who live in another Member States as the one they are nationals of.

137

137 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC,

This globally covers:

- all the citizens of an EU or European Economic Area (EEA) Member State who visit, live, study or work in a different Member State than the one they are originated from;
- the Directive also applies to the Union citizen's direct family members, including their partner and the partner's direct family members (such as children) even though they might not be EU citizens;
- Other family members who are qualified as beneficiaries within the meaning of Article 3 of the Directive;
- Common law partners, same sex partners and dependent family members, members of the household and sick family members;
- Family members where the Union citizen has worked in another Member

138

State and now wants to go back to its home country to work.

The Directive basically applies to all the persons relying on Article 21 TFEU as well as to workers and self-employed persons who make use of their free movement rights conferred by the treaties. The scope of application is now disconnected from the requirement of being economically active. The Directive covers both economically active persons (freedom of establishment and to provide services) and those who are not active anymore or never have been (retired persons and students). Outside of the scope of application of the Directive is the situation of a family member of a non-EU citizen who moves into its home Member State. Such a situation is governed by national law as well as all movement from non-EU citizens to their home States. Also not covered are citizens which are not from a country of the EEA when they are not travelling with or joining family members who are EU/EEA citizen. Even though the Citizenship Directive is supposed to consolidate already existing legislation and case law, one can observe certain major improvements which will be exposed in the following chapters.

90/365/EEC and 93/96/EEC [2004] OJ L158 art 3.

138 <<https://eumovement.wordpress.com/directive-200438ec/>> accessed on 5 August 2015.

2. No economic status requirement

The Directive 2004/38 provides a right of entry and a right of exit for all citizens of the EU irrespective of their economic status! Article 6 of the Directive actually states that Union citizens and their family members are allowed to stay in the territory of the other Member State to a period up to three months without any other obligation than to show a valid passport or identity card. The authorities of the hosting Member States cannot require from the Union citizen to proceed to a registration when the Union citizen doesn't stay longer than three months in the country. For Union citizens there is no requirement of entry visa, unlike it is for their non-EU family members for whom a residence card is required. Additionally, Article 4 of the Directive confers citizens holding the EU citizenship as well as their family members a right of exit.

3. The definition of family member extended

Before the introduction of the new Directive, residence and free movement rights were only granted to the Union citizen's spouse and some other persons specifically mentioned. The Citizenship Directive extends the scope of definition of 'family member of the worker' at least for one type of family members. Those individuals who are listed as family members under Article 2 para. 2 of the Directive enjoy the same treatment as the Union citizen himself. This right of equal treatment is granted

139

to the following persons:

- the spouse of the Union citizen;
- the partner under a registered partnership in one of the Member States under the condition that the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions

139 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC [2004] OJ L158 art 2.

laid down in the relevant legislation of the host Member State;

- the direct descendants (children, grand-children) of the Union citizen or of the spouse or partner and who are under the age of twenty-one or are dependent;
- direct relatives of the Union citizen in the ascending line (parents, grand-parents) of the Union citizen or of the spouse or partner if they are dependent.

Additionally, Article 12 of the Directive provides under the respect of certain conditions a retention of the right of residence of third-country family members:

- in the case the Union citizen they join dies;
- in the case the Union citizen they join leaves the host Member State.

Furthermore, Article 13 of the Directive allows the family member who is the partner, under certain conditions, to remain in the host State even in case of divorce, annulment of marriage or termination of registered partnership. Thus, one can observe that there is a prolongation of the term of 'family member' to the registered partner of the Union citizen and his descendants. They are entitled to enjoy free movement and residence rights even after the death of the Union citizen or the end of their marriage or partnership.

4. A right of permanent residence

Article 16 of the Citizenship Directive introduces a permanent residence right for citizens of the EU having lived legally in the host Member State for a constant period of five years. This constitutes a great development regarding the situation as it was before. This right to permanent residence is actually not tied to the requirement of having an economic activity, sufficient financial means or comprehensive sickness insurance! Once acquired, there is no need to prove any of these facts. Moreover, it also applies to the family member accompanying the Union

citizen! Paragraph 3 of Article 16 of the Directive fixes the limits to the permanent residence right by stating that:

Continuity of residence shall not be affected by temporary absences not exceeding a total of six months a year, or by absences of a longer duration for compulsory military service, or by one absence of a maximum of twelve consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country.¹⁴¹

Thus, once the Union citizen has acquired the permanent residence permit, it can be withdrawn only under a few specific conditions.

5. A right to equal treatment

Article 24 of the Citizenship Directive grants to all the Union citizens and their respective families relying on the provisions of the Directive the right to be treated in the same way as the nationals of the host State are. This also applies to family members who are not nationals of a Member State and who have the right of residence or permanent residence.

6. Protection against expulsion

Article 28 of the Citizenship Directive deals with the aim of restricting expulsion of Union citizens out of the European territory. The legislation wants to avoid as much as possible the banishment of Union citizens from host Member States. Therefore, it tries to reduce to a minimum the situations where an expulsion is possible.

The Directive provides two reasons of expulsion which can be used by the host Member State:

- expulsion on the grounds of non compliance with the requirements of sufficient financial means and social insurance;
- expulsion on the grounds of public policy or public security.

¹⁴¹ ibid art 16 para 3.
65

Recital 23 of the preamble of the Citizenship Directive¹⁴² explains that the consequences of an expulsion are too harsh and harmful especially for a Union family who is well integrated in the host Member State. Therefore an expulsion decision should always comply with the principle of proportionality. In order to avoid expulsions as much as possible, they should only be the last solution and justified by 'exceptional circumstances'.¹⁴³

The host Member State must actually take into account the whole personal and economical situation of the Union citizen such as the length of the stay in the country, age, health, family and economic situation, social and cultural background and the relationship to the country of origin.

Only when after this assessment, the host Member State comes to the conclusion that the citizen became an unreasonable burden on the social assistance system of the host State, the citizen can conceivably be expelled. There is no right of automatic expulsion for the Member State as soon as the individual recourses to the local social assistance system (Article 14 para. 3 of the Directive). Hence, becoming a burden on the social assistance system cannot be, in the first place, the only reason of expulsion. Recital 17 of the Preamble as well as Article 28 para. 2 of the Directive prohibit the expulsion of citizens and their families who enjoy a permanent residence right in the host Member State except on serious grounds of public policy, public security or public health.

Additionally, Article 28 para. 3 of the Directive prohibits the expulsion except for imperative reasons of public security of minors or citizens who have been living in the host Member State for at least ten years.

¹⁴² Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC [2004] OJ L158 Preamble Recital 23.

¹⁴³ *ibid* Recital 24.

III. Conclusion: Union citizenship – myth or reality?

A. A significant step towards European integration

The introduction of European Union citizenship has been an evident and indisputable step in the completion of an 'ever closer union among the peoples of

Europe'.¹⁴⁴ It created a bundle of directly applicable rights and attributed them the important characteristic of being invocable before national courts. Out of these rights, free movement and residence rights are probably the most crucial and decisive in the process of the creation of an internal market and an integrated Europe. Through European Citizenship, the status of the European citizen got consecrated. Europeans now 'have their say'¹⁴⁵ as it figures on the front page of the EU Citizen's Agenda of 2012. The Directive definitely contributed to consecrate the citizenship rights in the secondary legislation. Before 2004, free movement rights were only found in primary legislation which needed the Member State's translation in national law before being invocable by the nationals. By virtue of that, the treaties' provisions were much more difficult to enforce in national courts. Today, the Directive's provisions are directly invocable by individuals who can rely on them directly. This constitutes a major improvement in the sphere of the free movement rights!

Let's put the most notable achievements of Union Citizenship in a nutshell:

- The Union citizen does no longer pursue an economic activity in order to enjoy free movement and residence rights.
- The notion of family member has been extended.
- Union citizens living in a Member State for more than five years earn a right to permanent residence.

¹⁴⁴ Consolidated Version of the Treaty on European Union [2012] OJ C326 art 1 para 2.

¹⁴⁵ <http://ec.europa.eu/justice/citizen/files/eu-citizen-brochure_en.pdf> accessed 5 August 2015.

- The Union citizen and his or her family enjoy a right to equal treatment with Member State nationals.
- Union citizens and their family can only be expelled from the host Member State under certain conditions.

B. Remaining limitations and conditions

Unfortunately, the above listed and explained advantages conferred by ECJ case law and the new Directive are counterbalanced by still existing limitations and conditions.

First, the free movement rights conferred to Union citizens and their families are limited in time and subject to conditions.

Secondly, even though the Residence Directive extended the scope of who is a family member of the Union citizen, it still makes a clear distinction between family members which are EU citizens and those who are not.

In the third place and this is probably one of the major disadvantages still remaining: the Member States have for merely all these new rights the possibility to restrict them on the grounds of public policy, public security and public health! This is especially the case for the right for protection against expulsion.

The Directive does not confer an automatic right to welfare for the moving EU citizens.

Then, the Directive confers to the Member States the possibility to restrict the right of free movement and residence every time the Union citizen does not comply with the required standards of sufficient financial means and social coverage.

To conclude, we have a look on the echoes in the literature and press concerning the introduction of this new citizenship.

1. The right of residence limited in time

Concerning the right of residence, the Directive contains a few limitations and actually distinguishes between:

- Union citizens and their families which move to another Member States for a period not longer than three months (Article 6 of the Directive);
- Union citizens and their families which move to another Member State for a period which exceeds a period of three months (Article 7 of the Directive);
- Union citizens who have stayed on a continuous basis in the host Member State for more than five years and who get a right for permanent residence.

This last right of permanent residence we've discussed it above and isn't actually subject to limitations. However, the first two rights need a closer look. Article 6 of the Directive actually confers to Union citizens and their accompanying non-EU family members the right to stay in another Member State for a period going up to three months. During this period, the only requirement is a valid passport or identity card. Article 8 even states that Member States are not allowed to force the individuals to proceed to a registration in their country for that small period of only three months. Nevertheless, Article 14 of the Directive gives the Member States a so

called 'retention of the right of residence'.¹⁴⁶ Member States are granted a right to restriction of the residence rights if the Union citizens becomes an 'unreasonable burden on the social assistance system of the host Member State'. The Union citizen is entitled to stay in the host Member State if he or her delivers proof of enough financial means. Concerning the evaluation of these 'sufficient resources', Article 8 para. 4 of the Directive lays down the conditions. Member States shall not require a fixed amount of money, they should rather assess the person's whole situation. In any case, the required amount should not exceed certain thresholds. Also, as it has

been stated in the *Zhu and Chen*¹⁴⁷ case, resources from a third person must be accepted by the Member State. Thus, moving Union citizens shall always make sure

¹⁴⁶ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC [2004] OJ L158 art 14.

¹⁴⁷ Case C-200/02 *Kunqian Catherine Zhu and Man Lavette Chen v Secretary of State for the Home Department* [2004] ER I-9925.

that they have comprehensive sickness insurance and sufficient financial means. Article 7 of the Directive deals with the situation of Union citizens staying longer than three months in their host Member State.

European law actually provides conditions to the right of residence and states that it is granted only to Union citizens:

- who are workers or self-employed persons pursuing an economic activity;
- who give the proof of sufficient financial means in order to avoid becoming 'a burden on the social assistance system of the host Member State';
- who make sure to be covered by a comprehensive sickness insurance in the host Member State;
- who are students or self-funding migrants and prove that they have enough financial means and a broad and complete sickness insurance in order not to become a financial and social strain during the time they stay in the host Member State;
- who are currently unable to work because of medical reasons or an accident;
- who became involuntarily unemployed during the first year of their stay and registered for the status of a job-seeker;
- Union citizens who start vocational training.

148

Thus, there is still no general right to enter the host Member State for a Union citizen which is not tied to conditions and limitations.

2. The distinction between two groups of family members

The Directive, in its Article 2, significantly distinguishes between two categories of 'family members' joining the Union citizen in the foreign Member State:

- Article 2 para. 2 deals with the family members who are Union citizens as well as the individual they accompany. As explained above, this kind of

148 Friedl Weiss, Clemens Kaupa, *European Union Internal Market Law* (first published 2014, Cambridge University Press) 123.

family members enjoy the same equal treatment rights by the Member State as the nationals. The individuals treated as such have been listed above.

- Article 3 para. 2 of the Directive deals with the second type of family members.

This group of family members covers:

- all the other family members who are not covered by Article 2 para. 2 of the Directive and who are qualified as 'dependants' in their home State, are members of the household of the Union citizen's primary residence or who have a health status which obligatory requires them to be taken care of by the Union citizen;
- the partner of the Union citizen with whom he has a durable relationship, duly attested.

This last group of family members does not immediately and automatically enjoy the same and equal treatment as the Union citizen they join. Even though Member States are obliged to have a national legislation making their entry and residence as easy as possible, Article 3 para. 2 of the Directive lays down some supplementary obligations. Member States can actually discretionary decide to whom of the individuals of Article 3 para. 2 of the Directive they grant entry and residence rights. However, they have to fix these criteria in their national legislation as the ECJ ruled

149
in the *Rahman* case:

It is, however, incumbent upon the Member States to ensure that their legislation contains criteria which enable those persons to obtain a decision on their application for entry and residence that is founded on an extensive examination of their personal
150
circumstances and, in the event of refusal, is justified by reasons.

149 Case C-83/11 *Secretary of State for the Home Department v Muhammad Sazzadur Rahman and Others* [2012] ECR I-00000.

150 *ibid* para 26.

Also, the Directive limits the discretionary right of the Member States when it comes to selecting those criteria:

The Member States have a wide discretion when selecting those criteria, but the criteria must be consistent with the normal meaning of the term 'facilitate' and of the words relating to dependence used in Article 3 para. 2 and must not deprive that provision of its effectiveness.¹⁵¹

Thus, the limit of the Member State's discretion is fixed by the effectiveness of the provision. It can be observed that individuals falling into the family member group of Article 3 para. 2 of the Directive are more likely not to be granted entry and residence rights. Since Member States enjoy a discretionary right to fix the criteria to be qualified as such, they risk to get their entry and residence denied. However, the Directive reserves the same treatment for those family members who are EU citizens and those who originate from third countries. Nevertheless Article 5 para. 2 of the Directive dealing with the right of entry may require from the latter to have a visa if they don't provide a valid residence permit. In the following articles of the Directive, the obligations of the Member States are described more in detail. They have to facilitate the entry to all the family members, irrespective if they are EU citizens or not. For instance, they shall accelerate the procedures to get visas or residence permits if they are required. The family members are entitled to the same treatment as the persons they accompany.

3. No automatic right to welfare

The Citizenship Directive grants every Union citizen the right to enter and to reside on the territory of another Member State. However, it doesn't provide any right for welfare to the Union citizen in the host Member State. Article 6 and 7 of the Directive actually grant entry and residence rights for Union citizen but only as long as they care for themselves! As long as they are not a social or financial burden on

¹⁵¹ ibid.
72

the host State, they enjoy free movement rights. Hence, their permission is, as exposed before, tied to the ability of the citizen to provide himself or herself with sufficient social insurance. There is no provision dealing with an obligation for the host Member State to provide the Union citizen with sufficient and comprehensive sickness insurance. The same objection can be made concerning the right to equal treatment. Article 24 of the Directive, in its first paragraph, actually grants the Union citizen an equal treatment with the nationals of the host Member State. However, paragraph 2 of the same article excludes the Union citizen from certain social favors:

The host Member State shall not be obliged to confer entitlement to social assistance during the first three months of residence (...), nor shall it be obliged, prior to acquisition of the right of permanent residence, to grant maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain such status and members of their families.

152

To sum up, the host Member States are not obliged:

- to pay social assistance to the Union citizen during the first three months of his or her stay;
- to pay any maintenance aid for studies or vocational training during the first five months of his or her stay.

However, the Member States enjoy this right only for Union citizens who are not workers or self-employed persons and their families. Furthermore, the ECJ released a few significant cases in which it created exceptions to the possibilities laid down in Article 24 para. 2 of the Directive. For instance, Mr. Grzelczyk and Mr. Bidar, as explained earlier in this thesis, finally enjoyed the same advantages as the nationals

153

of the Member State they lived in.

152 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC [2004] OJ L158 art 24 para 2.

153 Friedl Weiss, Clemens Kaupa, *European Union Internal Market Law* (first published 2014, Cambridge University Press) 126.

4. The remaining exceptions of public policy, security and health

Even though the Directive has significantly improved the rights which Member States are obliged to confer to the Union citizens moving to their territory, some powerful exceptions remain. The situation as it was before the introduction of Union citizenship hasn't really changed. Member States can still rely on the exceptions of public policy or order, public security and public health to restrict the free movement of EU citizens. The hosting Member States are still allowed to restrict the entry and residence rights on the grounds that the public policy, public security or public health of the Member State is presently, seriously and genuinely threatened.

a) Articles 27, 28 and 29 of the Citizenship Directive

The crucial provisions of the Directive concerning these exceptions are Article 27, 28 and 29 which grant the Member States a bundle of instruments to restrict entrance and free movement rights.

Article 27 actually states that Member States may restrict free movement rights on the above quoted grounds. Derogations cannot be justified either by an economic purpose nor by previous criminal convictions. Additionally, the decision to restrict the rights must comply with the principle of proportionality and take into account the personal conduct of the citizen.

Article 28 of the Directive grants to all Union citizen having acquired permanent residence the protection against expulsion. However, paragraph 2 of the same Article allows Member States to expel permanent residents on serious grounds of public policy or public security. Additionally, minors who have been living on the territory of the Member State for at least ten years can be expelled on grounds of public health.

Article 29 clarifies which diseases can justify a restriction of the free movement rights on the grounds of public health. For instance, only severe diseases with

74

epidemic potential qualified as such by the World Health Organisation or other infectious or contagious parasitic diseases can, under certain conditions, justify a restriction of free movement rights.

a) A restrictive interpretation by the ECJ

Even though Member States still may have recourse on this bundle of exceptions to derogate from the right of free movement of persons, the ECJ interprets these restriction grounds in a very restrictive and narrow way. The European institutions want to avoid that Member States have a discretionary right to determine the conditions of derogation. In a few landmark cases which will be analyzed in the further development, the Court lays down the conditions under which Member States may derogate from the principle of free movement and residence. Already in the 1970s and until today, the Court of Luxembourg restrictively interpreted the public policy, security and health exceptions.

¹⁵⁴ aa) *The Bonsignore* case of 1975

Since the derogations from the rights of free movement of persons shall remain exceptions, the Court gives further explanations to the definition of 'personal conduct'. Member States shall only expel a Union citizen if the personal conduct

¹⁵⁵
breaches peace and public security. In order to deport a Union citizen due to his or her criminal conviction, the Member State must confirm that his or her personal conduct constitutes an actual and present threat to the interests of society. It's not sufficient for them to consider that there is only a risk of threat. In the facts, Mr. Bonsignore was an Italian national who lived in Germany. During a family event, he shot his brother and got convicted for involuntary homicide. Subsequently, the German authorities expelled him from the German territory on the grounds of public policy. The city of Cologne considered that in order to preserve the public interest, it should be better to expel individuals like Mr. Bonsignore who was in possession of a

¹⁵⁴ Case C-67/74 *Carmelo Angelo Bonsignore v Oberstadtdirektor der Stadt Köln* [1975] ECJ 297.

¹⁵⁵ *ibid* para 6.

firearm. The ECJ however did not agree with the position of the German authorities and ordered the annulment of the decision of expulsion. Decisions to expel or deport EU citizens shall remain very rare exceptions and therefore. Therefore, Member States shall meticulously assess the personal conduct of the individual they plan to expel: '(...) measures taken on grounds of public policy or of public security shall be based exclusively on the personal conduct of the individual concerned'.¹⁵⁶

The Court then repeats that criminal convictions alone cannot justify the Member State's decision to expel an EU citizen.¹⁵⁷

¹⁵⁸
bb) The Bouchereau case of 1977

In this case, the Court had to deal with the provisions of Article 27 para. 2 of the Residence Directive refusing a restriction on the grounds of previous criminal convictions. In that case, the Court in Luxembourg points out that previous criminal convictions can only justify the expulsion decision of a national of another Member State in so far as the personal conduct of the national which led to the conviction constituted a present threat to the public policy. Furthermore, the ECJ holds that the exception of public policy 'must be interpreted strictly, so that its scope cannot be determined unilaterally by each Member State without being subject to control by

¹⁵⁹

the institutions of the Community'. Nevertheless, the Court admits that the concept of public policy can possibly vary from one Member State to another and from one time period to another. Therefore, an area of discretion is granted to the Member States. Finally, the ECJ repeats that in order to be able to justify a derogation of the free movement of persons rights, there must be a 'genuine and sufficiently serious threat (...) affecting one of the fundamental interests of society'.¹⁶⁰

¹⁵⁶ *ibid* para 5.

¹⁵⁷ *ibid*.

¹⁵⁸ Case C-30/77 *Régina v Pierre Bouchereau* [1977] ECR 1999.

¹⁵⁹ *ibid* para 33.

¹⁶⁰ *ibid* para 35.

4.2.3. *The Donatella Calfa* case of 1999

The Donatella Calfa case was dealing with the restriction of the right to provide services. The ECJ emphasised that Member States who want to use one of the exceptions must take into account the personal conduct of the Union citizen and its effects on the society. Ms. Donatella Calfa actually was an Italian lady who spent her holidays in Crete. She got convicted for the possession and use of prohibited drugs by a Greek criminal court, got jailed for three months and then expelled for life from Greece. Ms. Donatella Calfa then claimed that the expulsion decision violated Article 56 TFEU (prohibition of restrictions to provide services) and thus discriminated her as a foreign tourist. The question at issue was: does Article 56 TFEU also cover tourists like Ms. Donatella Calfa?

The Court's answer was yes:

It should be remembered at the outset that the principle of freedom to provide services established in Article 56 of the Treaty, which is one of its fundamental principles, includes the freedom for the recipients of services to go to another Member State in order to receive a service there, without being obstructed by restrictions, and that tourists must be regarded as recipients of services.¹⁶²

According to the Court, Ms. Calfa's expulsion 'clearly constitutes an obstacle to the freedom to provide services recognized in Article 56 of the Treaty'.¹⁶³ The Court points out that the restriction ground of public policy, security or health should be tied to a 'genuine and sufficiently serious threat to the requirements of public policy affecting one of the fundamental interests of society'.¹⁶⁴ In the present case, the personal conduct of Ms. Donatella Calfa did not threaten the fundamental interests of society. Hence, the decision of the criminal court was not justified by the public policy exception.

161 Case C-348/96 *Donatella Calfa* [1999] ECR I-11.

162 *ibid* para 16.

163 *ibid* para 18.

164 *ibid* para 21.

dd) The joined Orfanopoulos and Oliveri cases of 2004

Another important illustration of the Court's restrictive interpretation of the derogation grounds are the joined cases of *Orfanopoulos and Oliveri* ruled in 2004. In the first case, the facts were the following: Georgios Orfanopoulos was a Greek national who joined his parents to Germany in 1972. In 1978, being called up for military service, he had to go back to Greece. In 1980, he went back to Germany where he has been convicted several times for crimes and offences. In 2001, Mr. Orfanopoulos got expelled from the territory of Germany and deported to his original country namely Greece. The question was raised whether the German expulsion decision was lawful.

The second decision dealt with criminal convictions as well. Raffaele Oliveri was actually an Italian national who was born in Germany where he spent his whole life. Like Mr. Orfanopoulos, he was convicted for several criminal facts and got expelled from the German territory and deported to his country of origin, namely Italy by a decision of 2000. In 2001 however, he got infected with HIV and claimed, that he will not get the appropriate treatment in his home State (Italy). In both cases the question arose as regards the lawfulness of an expulsion based on previous criminal convictions. In its judgement, the Court repeated the conditions under which an expulsion can be justified. The Court repeated that must be taken into account the personal conduct of the individual in order to assess whether this constitutes a threat for the society's interests or not. As already ruled before, the Court stated that criminal convictions alone are not a sufficient reason to expel an individual:

Concerning measures of public policy, it is clear from Article 3 of Directive 166
64/221 that in order to be justified, they must be based exclusively on the

165 Joined Cases C-482/01 and 493/01 *Georgios Orfanopoulos and Others and Raffaele Oliveri v Land Baden-Württemberg* [2004] ECR 5257.

166 Directive 64/221/EEC of the Council of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health [1964] OJ 056.

personal conduct of the individual concerned. It is stated in the same provision that
previous criminal convictions cannot in themselves justify those measures.¹⁶⁷

This personal conduct can justify an expulsion on the grounds of public policy only
in situations where there exists, 'in addition to the perturbation of the social order

which any infringement of the law involves'¹⁶⁸ a 'genuine and sufficiently serious
threat to the requirements of public policy affecting one of the fundamental interests

of society.'¹⁶⁹ Thus, the Court sticks with its previous position in *Bonsignore*¹⁷⁰
and others to state that an expulsion of an EU citizen needs a meticulous assessment
of its personal conduct which has to constitute a serious threat to the society's

interest!¹⁷¹ The Court refers to the previously analyzed *Donatella Calfa* case to
conclude and repeat that the restrictions grounds must be interpreted very strictly
and that previous criminal convictions cannot as such justify an expulsion. The
Member State may consider that the personal conduct such as convictions for drug
abuse can constitute a threat for the public policy of the State, however this
exception must be used in a very restrictive way 'with the result that the existence of
a previous criminal conviction can justify an expulsion only in so far as the
circumstances which gave rise to that conviction are evidence of personal conduct

constituting a present threat to the requirements of public policy'.¹⁷² Since this
pretty recent case still interprets the derogation provisions in a very restrictive
manner, the Luxembourg Court will without any doubt continue to rule in this way.

5. The European Union citizenship critized in the literature

This Master Thesis aimed to create an understandable and comprehensive summary

¹⁶⁷ ibid para 66.

¹⁶⁸ ibid.

¹⁶⁹ ibid.

¹⁷⁰ Case C-67/74 *Carmelo Angelo Bonsignore v Oberstadtdirektor der Stadt Köln* [1975] ECJ
297.

¹⁷¹ Case C-348/96 *Donatella Calfa* [1999] ECR I-11.

¹⁷² Joined Cases C-482/01 and 493/01 *Georgios Orfanopoulos and Others and Raffaele Oliveri
v Land Baden-Württemberg* [2004] ECR 5257 para 67.

of the origins of the European body of thought that came out of the realization that European countries should stick together after the War in order to build a new, economically competitive Europe. Great minds such as Robert Schuman, Jean Monnet, Alcide de Gasperi and a lot of other European thinking head of States helped the European Union in its first baby steps. However, not everybody is convinced by this new concept, a lot of authors see the European Union citizenship with a critical eye. In this last part of the conclusion, we'll have a quick look at the echoes of the citizenship provisions in the literature.

One of the major interests of Union citizenship has been, according to some scholars, the fact that through this 'constitutional moment'¹⁷³ the Maastricht Treaty completed by introducing the European citizenship in the European legal framework, 'EU citizenship has served more than just symbolic value – the EU's Charter of Fundamental Rights is now legally binding'.¹⁷⁴ A lot of other critics consider that even though the economic status is no longer a condition to the exercise of free movement and residents rights, individuals still face the condition of proving that they have enough financial means to assure their livelihood. This has as a consequence that only individuals which are not living on the breadline are entitled to move and reside freely within the European countries: 'The European Union citizenship is a citizenship for all Europeans who are not poor or sick'.¹⁷⁵ A lot of critics see the European citizenship as a purely 'symbolic and decorative institution'. It is considered being of weak impact and 'toothless' compared to the nationality of Member States since it is depending on the Member States's decision to attribute the nationality of their country or not. The rights deriving from EU citizenship are seen

¹⁷³ Loke Hoe Yeong, 'EU citizenship: Citizenship and Identity beyond national borders' (2013) <<http://www.eucentre.sg/wp-content/uploads/2013/10/BB10-EU-citizenship-and-identity.pdf>>accessed 14 August 2015.

¹⁷⁴ *ibid.*

¹⁷⁵ Damian Chalmers, Gareth Davies, Giorgio Monti *European Union Law Texts and Materials* (2nd edn, Cambridge University Press 2010) 449.

as 'indirect – as part of the obligations of each Member State.'¹⁷⁶ Additionally, it has been considered as being of little substantive value in addition to whatever rights and freedoms European citizens already have.¹⁷⁷ One author considers that European citizenship abolishes the dichotomy of 'foreign citizen' and creates a new one: 'EU citizen and non-EU citizen'.¹⁷⁸ She also compares the new citizen to the privileges of the 18th century and says that EU citizenship constitutes the same 'structural contradiction'¹⁷⁹ as it has been the case under the French Revolution: the new citizenship is an 'exclusive good'¹⁸⁰, the 'last surviving privilege of status'¹⁸¹ since it is granted to some and denied to others. The author considers that the Union citizenship creates a new area where European law applies even though it is not autonomous and does not exist per se since the procedure to acquire it is dependent on the different Member States.¹⁸²

If we take into account the above established review of the advantages and disadvantages of the introduction of the European Union citizenship, one must conclude that without any doubt it has operated a huge step towards the unification of Europe and the creation of an 'European family'. One must bear in mind that everything started at a much smaller level. Beginning with an economic idea of sharing raw materials and workforce, it granted in a first stage free movement rights to the workers. The main objective was at that time to reconstruct trade and rise the living conditions of the people just coming out of the Second World War. A broken

176 Jonathan Scheele, 'An Introductory Note: EU Citizenship and the Market' <<https://www.ucl.ac.uk/european-institute/analysis-publications/publications/Final.pdf>>.

177 Loke Hoe Yeong, 'EU citizenship: Citizenship and Identity beyond national borders' (2013) <<http://www.eucentre.sg/wp-content/uploads/2013/10/BB10-EU-citizenship-and-identity.pdf>>accessed 14 August 2015.

178 Costanze Margiotta, 'European citizenship on trial' <<http://www.eutopiamagazine.eu/en/costanza-margiotta/issue/european-citizenship-trial>> accessed 15 August 2015.

179 *ibid.*

180 *ibid.*

181 *ibid.*

182 *ibid.*

Europe had to be reunited. Freedom in the world, today and in the past, indisputably has needed a certain economic strength. Even before the end of the Second World War in Europe, Franklin D. Roosevelt, on the other side of the Atlantic, realized that freedom has always been closely linked to economic stability. He actually said:

We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence. People who are hungry and out
183
of a job are the stuff of which dictatorships are made.

In the following years in Europe, the idea of free movement has drifted away from a strictly economic view and today, the nationality of any Member State of the EU has become the entrance ticket to all the other ones. The dream of a borderless Union became tangible. Today, the objective might of course still be an economic one but European citizenship has grown into something bigger. It has become an institution. And even though there are still some difficulties remaining and which need to be overcome, the Union citizenship as a 'fundamental status' has been concretized. European integration is a subject which evolves and takes time. Like the great
184
Robert Schuman already anticipated in his famous *Schuman Declaration* of 1950:

Europe will not be made all at once, or according to a single plan. It will be built
185
through concrete achievements which first create a de facto solidarity.

The creation of European Union citizenship has definitely been one of these achievements.

183 Franklin D. Roosevelt (Message to the Congress of the United States on the State of the Union 11 January 1944).

184 'The Schuman Declaration' (1950) <http://europa.eu/about-eu/basic-information/symbols/europe-day/schuman-declaration/index_en.htm> accessed 4 August 2015.

185 *ibid.*

Bibliography

Primary Sources

ECJ cases

- Case 26/62 *Van Gen en Loos v Nederlandse Administratie der Belastingen* [1963] ECR 1
- Case C-209/03 *Dany Bidar v London Borough of Ealing* [2005] ECR I-2119
- Case C-147/03 *European Commission v Republic of Austria* [2005] ECR I-5969
- Case C-66/85 *Deborah Lawrie-Blum v Land Baden-Württemberg* [1986] ECR 2121
- Case C-53/81 *Levin v Staatssecretaris van Justitie* [1982] ECR 1035
- Case C-139/85 *R. H. Kempf v Staatssecretaris van Justitie* [1986] ECR 1741
- Case C-444/93 *Ursula Megner and Hildegard Scheffel v Innungskrankenkasse Vorderpfalz* [1995] ECR I-04741
- Case C-413/01 *Franca Ninni-Orasche v Bundesminister für Wissenschaft, Verkehr und Kunst* [2003] ECR I-13187
- Case C-196/87 *Udo Steymann v Staatssecretaris van Justitie* [1988] ECR 6159
- Case C-344/87 *Ingo Bettray v Staatsecretaris v. Justitie* [1989] ECR 1621
- Case C-456/02 *Michel Trojani v Centre public d'aide sociale de Bruxelles* [2004] ECR I-7573
- Case C-344/95 *Antonissen* [1991] ECR I-745
- Case C-48/75 *Procureur du Roi v Royer* [1976] ECR 497
- Case C-149/79 *Commission v Belgium – Public Service* [1982] ECR 1845
- Case 36-75 *Roland Rutili v Ministre de l'intérieur* [1975] ECR 1219
- Case 2/74 *Jean Reyners v Belgium* [1974] ECR 631
- Case C-51/08 *European Commission v Grand-Duchy of Luxembourg* [2011]

ECR I-4231

- Case C-14/97 *European Commission v Spain* [1998] ECR I-6717
- Case C-369/90 *Mario Vincente Micheletti and others v Delegación del Gobierno en Cantabria* [1992] ECR I-04239
- Case C-135/08 *Janko Rottmann v Freistaat Bayern* [2010] ECR I-01449
- Case C-34/09 *Gerardo Ruiz Zambrano v Office national de l'emploi (ONEm)* [2011] ECR I-01177
- Case C-85/96 *Maria Martinez Sala v Freistaat Bayern* [1998] ECR I-269
- Case C-224/98 *Marie-Nathalie D'Hoop v Office National de l'Emploi* [2002] ECR I-6191
- Case C-184/99 *Rudy Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve* [2001] ECR I-6193
- Case C-413/99 *Baumbast and R v Secretary of State for the Home Department* [2002] ECR I-7091
- Case C-41/74 *Yvonne van Duyn v Home Office* [1974] ECR 1337
- Case C-200/02 *Kunqian Catherine Zhu and Man Lavette Chen v Secretary of State for the Home Department* [2004] ER I-9925
- Case C-83/11 *Secretary of State for the Home Department v Muhammad Sazzadur Rahman and Others* [2012] ECR I-00000
- Case C-348/96 *Donatella Calfa* [1999] ECR I-11
- Case C-30/77 *Régina v Pierre Bouchereau* [1977] ECR 1999
- Case C-67/74 *Carmelo Angelo Bonsignore v Oberstadtdirektor der Stadt Köln* [1975] ECJ 297
- Joined Cases C-482/01 and 493/01 *Georgios Orfanopoulos and Others and Raffaele Oliveri v Land Baden-Württemberg* [2004] ECR 5257

Statutes and statutory instruments

- Single European Act [1987] OJ L169
- European Commission, 'Completing the Internal Market' [1986]

European legislation

- Consolidated Version of the Treaty establishing the European Community [2002] OJ C325
- Consolidated Version of the Treaty on European Union [2012] OJ C326
- Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326.
- Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community [1968] OJ L257
- Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union Text with EEA relevance [2011] OJ L141
- Directive OJ/221/EEC of 25 February 1964 of the Council on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health [1964] OJ 56
- Directive 68/360/EEC of 15 October 1968 of the Council on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families [1968] OJ L257/13
- Directive 2004/58/EC of European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34//EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC [2004] OJ L158

- The Schengen acquis - Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders [2000] OJ L239

Secondary sources

Books

- Anderson B, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (Verso 2002 rev edn)
- Barnard C, Scott J, *The Law of the Single European Market: Unpacking the Premises* (first published 2002, Hart Publishing)
- Craig P, de Burca G, *EU Law – Text, Cases and Materials* (6th edn, Oxford University Press 2015)
- Weiss F, Kaupa C, *European Union Internal Market Law* (first published 2014, Cambridge University Press)
- Chalmers D, Davies G, Monti G, *European Union Law Texts and Materials* (2nd edn, Cambridge University Press 2010)

Journal Articles

- Dimitry Kochenov, 'Double Nationality in the EU: An Argument for Tolerance' (2011) 17 *European Law Journal* 323
- Sonja Buckel, Jens Wissel, 'The Transformation of the European Border Regime and the Production of Bare Life' (2010) 4 *International Political Sociology* 3

Websites and blogs

- EUR-lex, 'Treaty establishing the European Coal and Steel Community, ESCS Treaty' (2010) <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:xy0022>> accessed 5 August 2015
- Rudolf Granz, 'Hallstein Notes Political Goals of Common Market' (*Harvard Crimson*, 23 May 1961) <<http://www.thecrimson.com/article/1961/5/23/hallstein-notes-political-goals-of-common/>> accessed 5 August 2015
- 'The Schuman Declaration' (1950) <http://europa.eu/about-eu/basic-information/symbols/europe-day/schuman-declaration/index_en.htm> accessed 4 August 2015
- <<https://eumovement.wordpress.com/directive-200438ec/>> accessed 5 August 2015
- <http://ec.europa.eu/justice/citizen/files/eu-citizen-brochure_en.pdf> accessed 5 August 2015
- 'The Single European Act' <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:xy0027>> accessed 10 August 2015
- Jonathan Scheele, 'An Introductory Note: EU Citizenship and the Market' <<https://www.ucl.ac.uk/european-institute/analysis-publications/publications/Final.pdf>> accessed 14 August 2015
- Loke Hoe Yeong, 'EU citizenship: Citizenship and Identity beyond national borders' (2013) <<http://www.eucentre.sg/wp-content/uploads/2013/10/BB10-EU-citizenship-and-identity.pdf>> accessed 14 August 2015
- Costanza Margiotta, 'European citizenship on trial' (2014) <<http://www.eutopiamagazine.eu/en/costanza-margiotta/issue/european-citizenship-trial>> accessed 15 August 2015

Curriculum vitae

PERSONAL INFORMATION

Isabelle Schwall

TRAINING

02/2015	Lansky Ganzger + partner Rechtsanwälte, Wien
2014	Elvinger Hoss & Prussen, Attorneys-at-law, Luxembourg
2013	Voigt Salus Rechtsanwälte und Insolvenzverwalter, Berlin
2012	Banque de Luxembourg, Luxembourg
2011	Maître Cosita Delvaux, Notary Public, Redange/Attert, Luxembourg Maître Francis Kessler, Notary Public, Esch/Alzette, Luxembourg Maître Léonie Grethen, Notary Public, Luxembourg
2010	Wolter – Attorneys-at-law, Luxembourg

EDUCATION

Since 10/2014	Master of Laws (LL.M.) European and International Business Law, Universität Wien
2014	Master 2/Master of laws (LL.M.) French & German Business Law Université Paris 1 Panthéon-Sorbonne/Universität zu Köln
2014	Magister French & German Business Law, Université de Strasbourg

LANGUAGES

Mother tongue: Luxembourgish

Other language(s):

	UNDERSTANDING		SPEAKING		WRITING	
	Listening	Reading	Spoken interaction	Spoken production		
French:	C2	C2	C2	C2		C2
German:	C2	C2	C2	C2	C2	

English: C2 C2 C1 C1 C1

Latin: 'Kleines Latinum'

Levels: A1 and A2: Basic user - B1 and B2: Independent user - C1 and C2: Proficient user

Common European Framework of Reference for Languages