

'Parallel to the deepening of European Integration, a new role of European Citizenship has been created that goes far beyond just economic participation in the internal market.'

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There are three keywords in this topic: *European integration*, *European citizenship* and *internal market*; hence it is both appropriate and necessary to approach the question through examining these concepts and their evolution within the European Union (EU) framework. The main aspect to be considered is the actual development of the European Union in what the European Citizenship is concerned. Firstly, the *European integration*. It is a much debated about subject, in which Ernst Haas' definition contributes from a neo-functionalist approach. In contrast to other approaches that emphasised on war avoiding, such as federalism or functionalism, Haas, on the other hand, argues that the European integration is 'the process whereby political actors in several, distinct national settings are persuaded to shift their loyalties, expectations and political activities toward a new centre, whose institutions process or demand jurisdiction over the pre-existing national states'.¹ As history proved, Haas rightly grasped the shifting focus of the European integration from the political to the economic side. Since the early 1950s, era of the Neo-functionalism and Robert Schuman's Plan which formed the basis of the Paris Treaty,² key actors in the integration process have gradually transformed.³

Secondly, especially in recent years the concept of *European citizenship* has become more and more significant in the process of European integration, which both reflects and represents the changes in the *internal market* within the EU. 'The Maastricht Treaty first introduced the legal concept of EU citizenship as part of the attempt to move from mainly economic community to a political union.'⁴ The Treaty on the Functioning of the European Union (TFEU) defines the EU citizenship in Article 20(1); '*Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the*

¹ Antje Wiener and Thomas Diez, *European Integration Theory* (2nd edn, Oxford University Press 2009) 2

² Damian Chalmers, G. T Davies and Giorgio Monti, *European Union Law* (3rd edn, Cambridge University Press 2014) 12

³ P. P Craig and G De Búrca, *EU Law* (6th edn, Oxford University Press 2015) 4

⁴ *Ibid.* p 852

*Union. Citizenship of the Union shall be additional to and not replace national citizenship.*⁵ Article 21(1) of the TFEU confirms a general concept of the citizenship implied by the Treaty. If Article 20(1) leaves no room for interpretation when it comes to the European citizenship status, the rights stated in Article 21(1) can be controversial. Its wording often leaves room for interpretation by the Court of Justice of the European Union (CJEU) by saying that *'citizens 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 the Treaties and by the measures adopted to give them effect.'*⁶ The importance of the CJEU's interpretation and transition in handling cases in this particular matter will be discussed later in this essay.

The core of the economic side of the EU is indeed the internal market which is defined by Article 26(2) on the TFEU as *'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.'*⁷ The definition above contains a two-part formulation: it was to be an area without internal frontiers, in which there could be free movement of goods, persons, etc. Attainment of an area without internal frontiers can be judged by whether border controls exist on the free movement of goods, persons, etc. It is more difficult to determine how freely goods, persons and capital can move within the EU, even when border controls have been removed.⁸

'For most of the history of the Union, its central policy has been the creation of the internal market [...]. The reasons for this are diverse. The classic economic perception that because nations do not do everything equally well or efficiently, trade between nations can be beneficial for all,

⁵ Consolidated Version of the Treaty on European Union and the Treaty on the Functioning of the European Union [2012] OJ C326/56 art 20(1)

⁶ *Ibid.* art 21(1)

⁷ *Ibid.* art 26(2)

⁸ P. P. Craig and G. De Búrca, *EU Law* (6th edn, Oxford University Press 2015) 614

has of course always been important. However, the internal market has ambitions beyond interstate trade.⁹ 'The internal market project remains at the heart of European integration. As is well known, the project has two key aspects. On the one hand, the European Court of Justice supervises the Member States, using the four freedoms of goods, persons, services, and capital to disapply national laws that are deemed unjustifiably restrictive. This has been labelled negative integration. On the other hand, the EU legislature produces directives and, increasingly, regulations that harmonize, replace, or add to national rules in order to establish the internal market or to improve its workings. This has been called positive integration. Much of the legal writing on the internal market law has focused on the former aspect, while social scientists have tended to concentrate on the latter.'¹⁰ The deepening of the European integration is directly related to the way harmonisation works for all Member States of the Union. The harmonisation itself is based on the removal of technical obstacles to trade and implementing provisions to facilitate an equal treatment for all Member States participating in the internal market. 'In 1985 Single Market White Paper proposed the adoption of about 300 measures to eliminate the three principal barriers to trade (physical, technical and fiscal) identified in the White Paper. The problem facing the EU was how to realise these measures within a relatively short time frame when the principal legal bases provided by the EEC Treaty (Article 100 EEC (now Article 115 TFEU) and Article 235 EEC (now Article 352 TFEU)) required unanimous voting. The Single European Act 1986 provided an answer. It introduced a new legal basis, Article 100a EEC (now Article 114 TFEU), with qualified majority voting.¹¹ The importance of Articles 114 and 115 of the TFEU consist in providing the approximation of the provisions laid down by the law to the

⁹ Damian Chalmers, G. T Davies and Giorgio Monti, *European Union Law* (3rd edn, Cambridge University Press 2014) 668-669

¹⁰ Isidora Maletić, *The Law And Policy Of Harmonisation In Europe's Internal Market* (1st edn, Oxford University Press 2013) 32

¹¹ Catherine Barnard, *The Substantive Law Of The EU* (5th edn, Oxford University Press 2016) 558

attainment of the internal market. An efficient harmonisation process however, would have to cover not only provisions for equal treatment between Member States but help facilitate all four free movements of goods, persons, services and capital. The free movement of persons comes together with the European citizenship which brings new fundamental rights to participants to the internal market. A question remains, however, that *whether the freedom of the European citizens falls out of the scope of the economical contribution to the internal market*, and that if so *how does it affect the EU*.

The Court of Justice of the European Union played a crucial role throughout the years in interpreting the freedom of the European citizens stated in Article 45 of the TFEU¹². The free movement of persons matter, particularly, raised a few interesting cases. In 1989, prior to the Maastricht Treaty which introduced the concept of European citizenship, the CJEU ruling decided to decline the social benefit to *Lebon*¹³, a French national living in Belgium. She was not entitled to claim such benefit as an economically inactive citizen. The CJEU argued that the EU Member States are under no obligation to give social benefits to job-seekers and it *'points out that the right to equal treatment with regard to social and tax advantages applies only to workers. Those who move in search of employment qualify for equal treatment only as regards access to employment in accordance with Article 48 of the EEC Treaty and Articles 2 and 5 of Regulation no 1612/68*.¹⁴ However, in a later case of *Martinez Sala*¹⁵, a Spanish national living in Germany, also economically inactive, the CJEU created a precedent by taking a different stand. Although Germany refused to give her allowance, the Court of Justice of the European Union ruled in Sala's favour arguing that she fell within the scope of the Treaty provisions. Therefore, she was entitled to that

¹² Consolidated Version of the Treaty on European Union and the Treaty on the Functioning of the European Union [2012] OJ C326/65 art 45

¹³ *Lebon* (Case 316/85) [1987] ECR 2811

¹⁴ *Ibid.* para 26

¹⁵ *Martinez Sala v Freistaat Bayern* (Case C-85/96) [1998] ECR I-2691

particular social benefit. As per the Court *'a citizen of the European Union, such as the appellant in the main proceedings, lawfully resident in the territory of the host Member State, can rely on Article 6 of the Treaty in all situations which fall within the scope ratione materiae of Community law, including the situation where that Member State delays or refuses to grant to that claimant a benefit that is provided to all persons lawfully resident in the territory of that State on the ground that the claimant is not in possession of a document which nationals of that same State are not required to have and the issue of which may be delayed or refused by the authorities of that State.'*¹⁶ In the case of *Grzelczyk*¹⁷, a student of French nationality living in Belgium for 3 years, the CJEU stated that Belgium breached Article 18 TFEU¹⁸ by discriminating the claimant on the grounds of nationality. *'Within the sphere of application of the Treaty, 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 citizenship of the Union in order to determine its sphere of application. 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 as are expressly provided for.'*¹⁹ Again, in this case, the Court of Justice of the EU goes beyond considering the claimant's economic participation by deciding in his favour ahead of the economic grounds. The CJEU also states that the benefit received does not represent an unreasonable burden for the State.

Migrants within the European Union have been described as market citizens who participate in, and benefit from, the common market as

¹⁶ *Ibid.* para 63

¹⁷ *Grzelczyk v Centre Public D'Aide Sociale D'Ottignies-Louvain-La-Neuve* (Case C-184/99) [2002] 1 CMLR 19

¹⁸ Consolidated Version of the Treaty on European Union and the Treaty on the Functioning of the European Union [2012] OJ C326/56 art 18

¹⁹ *Grzelczyk v Centre Public D'Aide Sociale D'Ottignies-Louvain-La-Neuve* (Case C-184/99) [2002] 1 CMLR 19 para 30, 31

economic actors or workers.²⁰ However, in the case of *Trojani*²¹ the CJEU redefines the term “worker”. *‘As the Court has held, the concept of ‘worker’ within the meaning of ... [Article 45 TFEU] has a specific Community meaning and must not be interpreted narrowly. Any person who pursues activities which are real and genuine, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary, must be regarded as a ‘worker’. The essential feature of an employment relationship is, according to that case-law, that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration.’*²² Although the claimant was not an employee *per se*, Belgium did allow him temporary leave to reside which entitles him, as a European citizen, to claim the *minimex*. EU citizens who are neither economically active nor economically self-sufficient have invoked Articles 18, 20 and 21 TFEU²³ to claim equality of treatment compared with nationals of the host Member State. If initially the CJEU recognised the right to equal treatment, it has more recently declared that EU citizens must prove sufficient resources in order not to become a burden for the financial system of the adoptive State.²⁴ However, in the case of *Collins*²⁵, the CJEU takes a step further in defining the freedom of EU citizens by referring back to *Lebon*²⁶ where the decision that jobseekers were never entitled to equal treatment in regards to social benefits was too narrow. Collins, an Irish national seeking work and claiming jobseeker’s allowance in the UK was refused on the basis that the requirement of habitual residence in the UK was not fulfilled. The Court considered, however, that *‘in view of the establishment of citizenship of the Union and the interpretation in the case-law of the right*

²⁰ Catherine Barnard, *The Substantive Law Of The EU* (5th edn, Oxford University Press 2016) 324

²¹ *Trojani v Centre Public d’aide sociale de Bruxelles (CPAS)* (Case C-456/02) [2004] 3 CMLR 38

²² *Ibid.* para 15

²³ Consolidated Version of the Treaty on European Union and the Treaty on the Functioning of the European Union [2012] OJ C326/56-57 art 18, 20, 21

²⁴ P. P Craig and G De Búrca, *EU Law* (6th edn, Oxford University Press 2015) 860

²⁵ *Collins v Secretary of State for Work and Pensions* (Case C-138/02) [2004] 2 CMLR 8

²⁶ *Lebon* (Case 316/85) [1987] ECR 2811

*to equal treatment enjoyed by citizens of the Union, it is no longer possible to exclude from the scope of Article 48(2) of the Treaty – which expresses the fundamental principle of equal treatment, guaranteed by Article 6 of the Treaty - a benefit of a financial nature intended to facilitate access to employment in the labour market of a Member State.*²⁷

Therefore, UK's requirement of habitual residence is considered discriminatory by the CJEU, against migrant jobseekers. A similar case is of *Ioannidis*²⁸, a Greek national who arrived in Belgium having completed his secondary education in Greece and obtaining recognition of equivalence of his certificate. After completing a 3-year course of study in Belgium he obtained a graduate diploma in physiotherapy and registered as a jobseeker. He completed another training course in France, and returned to Belgium where he submitted an application for a 'tideover allowance', an unemployment benefit provided for young people seeking their first job, according to Belgian legislation. The claimant was denied the allowance for not meeting the necessary requirements: a) he did not complete his secondary education in Belgium; or b) did not pursue education of the same level or equivalent thereto in another Member State and been the dependent child of a migrant worker who was residing in Belgium. The Higher Labour Court Liege referred a question to the Court of Justice regarding the compatibility of the Belgian system with Union law. The Court of Justice observed that nationals of a Member State seeking employment in another Member State fall within the scope of Article 45 TFEU and therefore enjoy the right to equal treatment laid down in Article 45(20) TFEU.²⁹ As per *Collins*³⁰, it is no longer possible to exclude a benefit of a financial nature intended to facilitate access to employment.

²⁷ *Collins v Secretary of State for Work and Pensions* (Case C-138/02) [2004] 2 CMLR 8 para. 63

²⁸ *Office National de l'Emploi v Ioannidis* (Case C-258/04) [2005] ECR I-8275

²⁹ John Fairhurst, *Law Of The European Union* (10th edn, Pearson Education Limited 2014) 329

³⁰ *Collins v Secretary of State for Work and Pensions* (Case C-138/02) [2004] 2 CMLR 8

Many of the developments in European law the last decades concern the position of the citizen in the European Union. Direct influences on this position come from case-law of the Court of Justice of the European Union in which the notion of 'EU citizen' is being defined and refined, while indirect influence can be found in the immigration paragraph of the EC Treaty and the developments in the fight against terrorism. In combination with the changes on all these issues as they are foreseen in the Treaty of Lisbon, all developments taken together lead to a new position of the citizen in the Member States of the European Union under the influence of European law. A special feature of the notion of EU citizenship is that it has been given form and substance through different means simultaneously: not only by means of the texts of the Treaties, but also through secondary legislation and the caselaw of the ECJ. Firstly, the rights (and duties) given to EU citizenship are listed in the EC Treaty and need to be seen in addition to citizenship rights in the national systems of the Member States, according to the second 1 sentence of Article 17 sub 1 TEC (Art. 20 TFEU).³¹

One important aspect of the EU's approach is to reinforce the protection of the rights of EU citizens and their relatives in situations where the essence of the Member States nationality and the EU citizenship statuses seem to be undermined and where the Member States are unwilling to step in to correct the deficiencies.³² A controversial case involving EU citizenship is of *Ruiz Zambrano*³³ where the actual citizens of the EU were minor children with both parents nationals of third countries. In this case, Article 20 TFEU³⁴ is to be interpreted as meaning that it preventing a Member State from refusing a third country national upon whom his minor children, who are European Union citizens, are

³¹ Flora A. N. J Goudappel, *The Effects Of EU Citizenship* (1st edn, TMC Asser Press 2010)

³² Richard Bellamy and Uta Staiger, 'New European Citizenship: A Move Beyond The Market Bias' [2011] The European Institute 12

³³ Case C-34/09 *Ruiz Zambrano v ONEM* [2011] ECR-I 1177

³⁴ Consolidated Version of the Treaty on European Union and the Treaty on the Functioning of the European Union [2012] OJ C326/56 art 20

dependent. By refusing to grant a work permit to that third country national, such decisions deprive those children of the genuine enjoyment of the substance of the rights attaching to the status of European Union citizen.³⁵ *'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 order to accompany their parents. Similarly, if a work permit were not granted to such a person, he would risk not having sufficient resources to provide for himself and his family, which would also result in the children, citizens of the Union, having to leave the territory of the Union. In those circumstances, those citizens of the Union would, in fact, be unable to exercise the substance of the rights conferred on them by virtue of their status as citizens of the Union.'*³⁶

All in all in the above case law, the Court of Justice of the EU has applied EU law without references to the existence of a cross-border situation. The CJEU thus made a definitive step to detach this concept of EU citizenship from the vestiges of the Internal Market thinking.³⁷ The new approach to the European citizenship taken by the Court has resulted in the emergence of a new, functional notion of EU territory, where no distinction at all is made between the territories of the particular Member States any more.³⁸ As EU citizens move away from the status of being as simply *economic actors*³⁹ on the stage of the European internal market and have equal rights anywhere on the territory of the EU, one question remains whether this freedom changes the actual scope of the EU. The status of EU citizenship created by EU law has been criticised on various grounds including that any meaningful idea of European citizenship would require not merely concrete legal and practical measures, but also deeper political, institutional and democratic change within the EU.⁴⁰ When

³⁵ Case C-34/09 *Ruiz Zambrano v ONEM* [2011] ECR-I 1177

³⁶ *Ibid.* para 44

³⁷ Richard Bellamy and Uta Staiger, *'New European Citizenship: A Move Beyond The Market Bias'* [2011] The European Institute 11

³⁸ *Ibid.* 13

³⁹ Catherine Barnard, *The Substantive Law Of The EU* (5th edn, Oxford University Press 2016) 324

⁴⁰ P. P. Craig and G. De Búrca, *EU Law* (6th edn, Oxford University Press 2015) 891

considering the actual deepening of the European integration, one cannot help but thinking whether the EU is actually meant to be heading towards a United States of Europe or is it really a target that cannot be achieved in the current climate. Either way it is fair to say that a deeper integration comes with benefits beyond the initial scope set out for the EU. As the Member States established new inter-relations based on free trade, including all four freedoms mentioned in Article 26 of the TFEU⁴¹, the risk of conflicts within the Union became considerably low. Hence the Community itself works as one whether negotiating outside deals on the economic sphere or increasing the level of security within the territory of the EU. 'European citizenship can also be viewed positively in terms of its ongoing potential, even if political and electoral dimensions of citizenship have been very slow to take hold. A successful future for the EU urgently requires greater political and democratic participation, and the provisions on EU citizenship attempt to lay the groundwork for this.'⁴²

⁴¹ Consolidated Version of the Treaty on European Union and the Treaty on the Functioning of the European Union [2012] OJ C326/59 art 26

⁴² P. P Craig and G De Búrca, *EU Law* (6th edn, Oxford University Press 2015) 891

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