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State of the Art on the European Court of Justice and Enacting Citizenship

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Sergio Carrera and Massimo Merlino

Abstract

This report provides a state of the art of the main interdisciplinary academic discussions, EU acts and European Court of Justice (ECJ) case law surrounding issues related to citizenship, migration and integration. The report was finalised in mid-2008 and has provided the basis upon which the work conducted by the Justice and Home Affairs Section at CEPS in the framework of the ENACT research project funded by DG Research of the European Commission has been developed. In particular, the general objectives of CEPS' contribution to this project are: first, to assess the impact of Community governance on the enactment of European citizenship and the exclusivity of the nation-state competence over nationality matters; and to examine the ways in which the ECJ and the adoption of the Council Directive 2004/38/EC on the rights of citizens of the Union and their family members to move and reside freely have influenced its enactment; second, to analyse the impacts of the enlargement processes, and of accompanying measures such as the transitional arrangements inserted in the Acts of Accession and other restrictions to the fundamental right of freedom of movement, on the status and practices of European citizenship; and third, to assess the tensions inherent to nationality and/or residence-based enactment of citizenship versus European citizenship of TCNs; to address the effects and dilemmas posed by the Council Directive 2003/109/EC of November 2003 on the status of third country nationals who are long-term residents.

This Report falls within the scope of ENACT (Enacting European Citizenship), a research project funded by the Seventh Framework Research Programme of DG Research of the European Commission and coordinated by the Open University UK. In particular, it constitutes the Deliverable for project's Work Package 7.

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I. Setting the Scene

Introduction

Workpackage 7 (WP7) on *The European Court of Justice and Enacting Citizenship* examines the law and policy (contextual normative framework) on the enactment of Citizenship in the European Union (EU). The study aims at facilitating an understanding of the boundaries and limits of the current organising principles and regulatory premises in the enactment of European citizenship, and the potential for the emergence of alternative mechanisms, principles and strategies meeting the complexities of current societies. Special attention is paid to EU practices applying to those individuals who do not fall within the category of citizen or other privileged statuses of third country nationals (TCNs), and are therefore inhibited from acting in the European polity. WP7 aims at pointing out frictions and limitations inherent to current normative configurations, and the potential for renewal offered on the one hand by the status of supranational citizenships established and developed at EU level, and on the other by the institutional mechanisms comprising the EU legal system which allow the individual to resist these practices of inhibition. This State of the Art report aims at constituting the basis upon which WP7's research agenda will be developed in the ENACT Project.

The academic literature dealing with citizenship, nationality, migration and integration has been very substantial across the various disciplines comprising the social sciences and humanities. Indeed these are issues whose nature and implications have been at the heart of law, political science, sociology, political theory, philosophy, etc. Part II of this State of the Art report provides an overview of the main academic discussions (secondary sources) and EU acts and European Court of Justice (ECJ) case law (primary sources) surrounding the general objectives of WP7, and which according to the ENACT Work Programme might be summarised as follows: first, to assess the impact of Community governance on the enactment of European citizenship and the exclusivity of the nation-state competence over nationality matters; and to examine the ways in which the ECJ and the adoption of the Council Directive 2004/38/EC on the rights of citizens of the Union and their family members to move and reside freely have influenced its enactment; second, to analyse the impacts of the enlargement processes, and of accompanying measures such as the transitional arrangements inserted in the Acts of Accession and other restrictions to the fundamental right of freedom of movement, on the status and practices of European citizenship; and third, to assess the tensions inherent to nationality and/or residence-based enactment of citizenship versus European citizenship of TCNs; to address the effects and dilemmas posed by the Council Directive 2003/109/EC of November 2003 on the status of third country nationals who are long-term residents.

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Section 1 provides a general overview of the primary sources, i.e. EU legislative acts and policy documents, covering or having an impact on the citizenship of nationals and others. It presents a synthesised analysis of the objectives and scope of these measures, and highlights their most relevant elements in relation to the focus pursued by WP7. In this context it also provides a selection of key ECJ rulings addressing the status of European citizenship, nationality matters and rights/freedoms of TCNs. By doing so, we do not intend to provide an in-depth and global analysis of the extensive jurisprudence held by Community Courts in these domains. Rather, this section conducts a synthesised review of those rulings having fundamental effects in respect of our purposes, and points out their key findings.

One main research question is posed to all these documents and case law: How does the EU's legal and policy framework affect the performance and position of the individual affected by Europeanisation processes on citizenship? The review mainly covers those EU official documents and selected case law that have emerged after the entry into force of the Maastricht Treaty in 1993, when the supranational status of European citizenship was formally established. On the other hand, the personal scope of the primary sources mainly includes those individuals holding the nationality of a member state and therefore qualifying as European citizens according to Article 17.1 of the EC Treaty. Any person not falling formally within this juridical category is qualified by EU law as TCNs. Special attention will be also given to the EU's legal and policy responses applying to those individuals who do not formally fall within the privileged legal categories of citizens. This State of the Art report does not cover other privileged categories of TCNs, such as those falling within the scope of Association and Cooperation Agreements between the European Union and Third Countries. For instance, the enactment of European citizenship of Turkish citizens has already been addressed by the WP6 titled: "*Enacting European Citizenship in Turkey: actors, discourses, strategies*".

Section 2 offers an overview of the various academic inputs and main scholarly discussions covering the nature and developments of European citizenship, as well as its effects over the position of nationals of member states and the legal status, rights and inclusion of TCNs. This report examines those contributions and general lines of debate brought so far by the legal literature in relation to the three above-mentioned WP7's objectives. In addition, it includes, and benefits from, key academic sources coming from other scholarly disciplines which we consider to be relevant in order to address the current limits and potentials of the normative framework of the EU citizenship. Therefore, while it needs to be acknowledged that our driving focus is law, our attempt has been to complement it, and further expand it, along with an interdisciplinary approach including political science, sociology and prominent theoretical debates.

Part I of this State of the Art report is intended to 'set the scene' and aims to raise some preliminary questions in relation to the main themes addressed by WP7: 1) the legal and policy elements of citizenship in the EU; 2) the evolving dynamics of citizenship in the EU legal system: the role of the ECJ and general principles of EU law; 3) European citizenship resulting from the enlargement processes; 4) the legality, length of residence and integration of third country nationals, and 5) acts of citizenship.

1. The Legal and Policy Elements of Citizenship in the EU

The academic literature has paid extensive attention to the ways through which the status of European citizenship has experienced substantial processes of maturation and mutation after its establishment with the entry into force of the Maastricht Treaty (see section 1 in Part II below). Art. 17 (1) of the EC Treaty states that: "*Citizenship of the Union shall complement and not replace national citizenship.*" The legal status of European citizen is indeed of a derivative nature (O'Keefe, 1992). It does not replace, but rather complements, national citizenship (De Groot, 1998 and 2004). Holding the nationality of one Member State is therefore a precondition

to have access to the Union citizenship and its rights, which result from the freedom to move. European citizenship also constitutes a direct source of civil, social, political and economic freedoms.[1] As it has been stressed by Guild (2004), the premise behind the constructed legal status of European citizen is the need for the EU national to move beyond the traditional configurations of the nation-state, to cross the border of her/his state of nationality. The practice of mobility constitutes the act and the connecting factor by which a subject becomes beneficiary of the rights and freedoms attached to the status of European citizen. While performing the act of moving, this supranational status confers rights, non-discrimination and security to the individual outside her/his State of nationality.

While the status of nationality has gradually lost in importance as a result of the establishment of European Citizenship and the recognition of a set of supranational rights to some categories of TCNs, the predominant logic in the EU continues being the one highlighted inside the Declaration on nationality attached to the final Act of the Treaty on European Union (TEU):

> … the question whether an individual possesses the nationality of a member state shall be settled solely by reference to the national law of the member state concerned. Member states may declare, for information, who are to be considered their nationals for Community purposes….[2]

Linking the acquisition of the status of European citizen to the acquisition of Member States' nationality or citizenship[3] implies an official recognition that the nationality policy of each nation-State composing the EU still keeps the monopoly to determine those who qualify as Europeans (O'Leary, 1992). The TEU established the institution of Union citizenship, but membership of the emerging European polity has been confined only to those defined as nationals of the Member States. Indeed, under the modern states system, there has been a tendency to prioritise the linkage between state and citizen above all else and to use citizenship as a means of delineating "the inside" from "the outside" (Shaw, 2007). The idea of a community which goes beyond the nation-state construction, that would transform aliens into associates in a collective venture, has been reduced to code of nationality (Geddes 2003; Kostakopoulou 2002a; La Torre, 1998). The legal literature has therefore studied the nationality laws of the Member States and has compared them in order to ascertain their variations, the existence of trends and divergences and their practical implementation over time and across countries. Special attention has been also given to the consequences of the establishment of the status of European citizenship on them (see for instance Weil and Hansen, 1999 and 2001; Aleinikoff and Klusmeyer, 2001 and 2002; Nascimbene, 1996). Two collective volumes falling within the framework of an EU research project called NATAC ("*The Acquisition of Nationality in EU Member States: Rules, Practices and Quantitative Developments*") have recently addressed modes of acquisition and loss of nationality and highlighted a number of trends (Bauböck et al. 2007; Bauböck et al. 2006a). From these comparative exercises we might see how for example the naturalization criteria that exist in the nationality legislations of the EU Member States are mainly based on the requirements of length of residence as well as integration and/or assimilation. There appears to exits as well a huge diversity when comparing

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1 Rights covered: the right to move and reside within the EU (Article 18 TEC), the right to vote and stand as a candidate in European and municipal elections in the Member State of residence (Article 19 TEC), the right to diplomatic and consular protection in third countries (Article 20 TEC), the right to petition the European Parliament (EP) and the right to apply to the Ombudsman (Article 21 TEC).

2 Declaration on nationality of a member state attached to the final Act of the Treaty on European Union, OJ C 191, 29 July 1992.

3 On the differences between the legal terms "nationality" and "citizenship" see G.R. De Groot (2006b). Also, De Groot, G.R. (2004).

Member States nationality law and legal rules for the acquisition and lost of nationality, something which might cause problems at the practical level.[4] Furthermore, Bauböck et al. (2006a) have concluded that

> …the trend towards more liberal nationality laws, which has been postulated in much of the comparative literature, *is at best uneven and may even have been reversed in a number of countries* where concerns about irregular immigration, abuse of asylum, terrorist threats and social marginalization and cultural alienation from the mainstream society among communities of long-term immigrants have recently prompted restriction on access to denizenship as well as nationality.[5] (Emphasis added)

It is also necessary to highlight that, as De Groot (2003 and 2004) has pointed out, not all the nationals of a member state are effectively recognized from a legal point of view as EU citizens. There are a number of borderline categories of European citizenship. Such cases include for instance some categories of British nationals who are excluded from European citizenship, the Danish inhabitants of the Faroe Islands, the Netherlands' Antillian and Aruban populations, nationals of South America who may fall within the personal scope of a dual-nationality Treaties concluded with Spain (De Groot, 2002), etc. Groenendijk (2006b) has additionally identified a status of quasi-citizenship[6] characterized by nearly identical rights to those enjoyed by nationals of the country of residence. That status has been granted in some EU Member States to certain groups of people considered to be in need of enhanced protection and security by the State without the need of naturalisation. The status of quasi-citizen is at times, yet not always, related to colonial histories.[7]

2. The Evolving Dynamics of Citizenship in the EU legal System: The Role of the ECJ and General Principles of EU Law

European citizenship is dynamic and transformative in nature, scope and potentials. It remains in constant change thanks to the substantive instruments and institutional structures forming part of the EU legal system. The Europeanization processes over citizenship have made of the institution of nationality not only a linking factor between the individual with her/his own State, but also between the former and the EU. This supranational linkage has inflicted huge implications in respect of the exclusive competence and the boundaries of the Member States autonomy over nationality-related matters and the consequent acquisition of European citizenship. As de Groot (2003) has pointed out:

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[4] It has been stressed that since the residence period for naturalization varies greatly across Member States and are not cumulative, access to Union Citizenship by mobile individuals may be impeded.

[5] Bauböck et al. (2006a), p. 475.

[6] Groenendijk defines this status as "a status of enhanced denizenship that entails almost the same rights as those enjoyed by resident nationals, including voting rights at some level (local or national) or access to public office and full protection from expulsion. While the extent to which equal rights are approximated may vary, full protection from expulsion is a necessary (but not sufficient) criterion for quasi-citizenship". See p. 412.

[7] Groenendijk makes reference for example the status of displaced persons in post-war Germany under the Act of 1951 and the status of Moluccan immigrants in the Netherlands under their special 1976 Status Act. See Groenendijk (1996).

> … the conclusion that Member States continue to have full autonomy cannot be maintained however in all circumstances…it is my view that the nationality legislation of a Member State could conceivably violate general principles of Community law.[8]

The ECJ has showed important interventions and proactive interpretations of the foundations of European citizenship which have expanded this status both *ratione materiae* and *ratione personae* (See Section 1.4 below). The judicialization of the status of European citizen, and the freedoms and rights attached to it by the Treaties, has gradually enlarged and liberalised the limits of European citizenship. The literature has focused on the role of Community Courts in the enactment of European citizenship and the significance and effects of their successive rulings (see for instance, Craig and De Búrca, 2007; Kostakopoulou, 2007; Jacobs, 2007; Hailbronner, 2006; Guild, 2004; etc). As a way of illustration, in cases such as *Baumbast*[9] and *Chen*[10] the ECJ stated that the rights of free movement and residence deriving from Article 18.1 EC Treaty are directly applicable, and that the conditions and limitations that States may impose on these rights must be interpreted and applied in accordance with the general principles of EU law, and more particularly with that of proportionality. Moreover, in *Sala*[11] and *Trojani,*[12] *Grzelczyk,*[13] and *Collins*, the ECJ interpreted articles 17 and 18 EC in a way which has created new substantive rights for EU nationals, in particular for those who are neither economically active nor economically self-sufficient (Craig and De Búrca, 2008).

The Court of Luxembourg has also challenged the classical premise according to which nationality-related matters remain under the exclusive competence of the Member States in the EU. Cases such as *Micheletti*[14], *Kaur*[15], *Zhu and Chen*[16], *Spain v. UK*[17], *Eman and Sevinger v. Council of the State*[18], have challenged, and progressively eroded, the nation-State autonomy over nationality and citizenship. They must be "*in compliance with Community law*" and comply with "*the principle of equal treatment*". While the effects that the statement "*compliance with community law*" in the nationality laws remains limited, it also true that the increasing involvement of the Community Courts are limiting their traditional power of

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[8] De Groot (2003) makes reference especially to the principle of Community loyalty as expressed in Article 10 EC Treaty, p. 18.

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

[10] Case C-200/02, *Zhu and Chen v Secretary of State for the Home Department* [2004] ECR I-9925.

[11] Case C-85/96, *Martínez Sala v Freistaat Bayern* [1998] ECR I-2691.

[12] Case C-456/02, [2004] ECR I-7573 – Trojani v CPAS;

[13] Case C-184/99, *Grzelczyk v Centre Public d'Aide Sociale d'Ottignes-Louvain-la-Neuve* [2001] ECR I-6193

[14] Case C-369/90, *Mario Vicente Micheletti and others v Delegación del Gobierno en Cantabria*, [1992] ECR I-4239. It is stated here that the effects of nationality being attributed by one member state may not be restricted by another member of the Union that imposes additional conditions on the recognition of such a nationality for the purposes of exercising the fundamental rights provided by the EC Treaty.

[15] Case C-192/99, *Kaur*, [2001] ECR 1-1237.

[16] Case C-200/02, *Zhu and Chen v Secretary of the State for the Home Department*, [2004] ECR I-9925;

[17] Case C-145/04 *Spain v UK* [2006] ECR I-07917.

[18] Case C-300/04, M.*G. Eman and O.B. Sevinger v College van burgemeester en wethouders van Den Haag*, [2006] ECR I-08055.

discretion and the exceptions to the rights that European citizenship confers.[19] The function that the general principles of EU law are playing in this regard is, and will increasingly be, pivotal.

EU secondary law has also progressively affected and somehow expanded European citizenship. This has been especially the case after the entry into force of the Council Directive 2004/38 on the Rights of Citizens of the Union and their Family Members to Move and Reside Freely within the territory of the Member States.[20] By recognizing a new right of permanent residence in the receiving Member State, this directive has substantially revisited free movement rights and the status of European citizenship. According to Article 17 of the Directive, those EU citizens and their family members who have resided legally for a continuous period of five years in the host member state shall acquire a right of permanent residence there. Its adoption has in this way moved European citizenship further from the pure economic/market-oriented rationale that has traditionally characterized this supranational status. It has moved substantially toward the direction of consolidating the aspirations of citizens of the Union to achieve freedom in some important domains, i.e. permanent residence right (Groenendijk, 2006c).

The Directive 2004/38 has additionally brought a great simplification to previous regulatory framings, by merging into a single instrument all the sectoral legislation that previously existed on the right of entry and residence for Union citizens, and that consisted of two regulations and nine directives (Apap, 2002). It has also reduced the formalities that Union citizens and their family members must complete in order to exercise their European rights. However two important lacunae have been highlighted: the reluctance to recognize new forms of unions - homosexual and partnership – and the permanence of forms of "reverse discrimination" related to situations which are wholly internal and therefore excluded of the field of application of the protection of family life (Carlier and Guild, 2006).

3. European Citizenships resulting from the Processes of Enlargement

The 1 of May 2004 and 1 of January 2007 EU enlargement processes have implied the expansion of the status of European citizenship in an EU at 27. However, the expansion of the status has not always gone along with the enjoyment of all the rights and freedoms that the latter bestows. The Acts of Accession included two sets of *transitional provisions/measures*, respectively aimed at delaying free movement of persons among new and old Member States, and at allowing old Member States to apply restrictions to the practice of the free movement of workers principle in an enlarged EU[21] (right of access to the labour market). While this arrangement was made in order to allay the fears of existing Member States that their labour markets would be flooded with new migrant workers, the effective creation of a "second", or rather various classes of membership has given rise to several critical reactions (Craig & De Búrca, 2008; Carrera, 2005b; Adinolfi, 2005; etc). The extension of "the Community of European citizens", indeed, has led to the appearance of various degrees of European citizenries. It has provoked a cascade of diversified classes of European citizenships with different degrees

[19] De Groot, G.R. (2003), 'Loss of Nationality. A Critical Inventory', in D. A. Martin and K. Hailbronner (eds), *Rights and Duties of Dual Nationals. Evolution and Prospects*, Kluwer Law International: The Hague, pp. 201-299.

[20] 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 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, OJ L 158/77, 30 April 2004.

[21] Transitional provisions concerning the access to labour market only apply to 8 Eastern and European Central States, not to Cyprus and Malta.

of rights and, to some extent, a hierarchy of European statuses. However, it needs to be acknowledged that the different statuses are time-limited and will converge within 7 years from the dates of accession (2004 and 2007) in a common status which aims at grating full freedom of movement of workers within the enlarged EU.

According to the European Commission's Fifth Report on Citizenship of the Union, by May 2007 nine of the 15 Member States had opened their labour markets to nationals from the EU-8 Member States: Finland, Greece, Ireland, Italy, Portugal, Netherlands, Spain, Sweden and the UK.[22] As for Bulgaria and Rumania, currently the following Member States are applying partial or total restriction to the rules on free movement of workers: Austria, Belgium, Denmark, France, Germany, Greece, Hungary, Ireland, Italy, the Netherlands, Luxembourg, Malta, Portugal, Spain and the UK. This constitutes an expression of the ways in which the EU and the State still keep the capacity to limit the scope of the rights and freedoms attached to European citizenship. Actors such as the European Citizen Action Service (ECAS)[23] has urged the lifting up of the transitional measures due to their discriminatory nature and to the fact that restrictions are rather used as political tools and have little economic justification. This argument seems to be also supported by the Commission Communication issued at the end of the first phase of the first transitional regime.[24] This Communication highlighted a positive correlation between the States which opened their labour markets to workers of the new eight Member States immediately and their strong economic performance. Restrictive national rules on the free movement of workers lead to the fragmentation of the European idea of maintaining differential treatment on grounds of nationality (ECAS, 2008)[25]. Other voices have claimed that the restrictive transitional periods applied to workers coming from the CEECs should also be abolished in conformity with the right of equal treatment and non-discrimination on grounds of nationality, as enshrined by the EC legal framework and the Court of Justice jurisprudence (Carrera, 2005b). The discretion conferred to the Member States makes the Commission's role in monitoring the application of the derogations established by the Acts of accession, and the implementation of the Council Directive 2004/38, particularly relevant in an enlarged EU.

4. Third Country Nationals: Legality, Length of Residence and Integration

The competence over the field of immigration has also been subject to progressive processes of Europeanization especially after the transfer of this domain to Community competence with the entry into force of the Amsterdam Treaty in 1999.[26] Since then the political agenda structuring EU action has been organized in the shape of multi-annual (five-year) programmes offering the general orientations, specific objectives and timetables. The European Council meeting of 15 and 16 October 1999 adopted the so-called "Tampere Programme" (1999-2004), which

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[22] European Commission, Fifth Report on Citizenship of the Union (1 May 2004 – 30 June 2007), COM(2008) 85 final, Brussels, 15.2.2008.

[23] ECAS was created in 1990 as an international non-profit organization, independent of political parties, commercial interests and the EU Institutions. Its mission is to enable NGOs and individuals to make their voice heard with the EU by providing advice on how to lobby, fundraise, and defend European citizenship rights. www.ecas.org.

[24] Commission Communication, Report on the Functioning of the Transitional Arrangements set out in the 2003 Accession Treaty (period 1 May 2004–30 April 2006), COM(2006) 48 final, Brussels, 8 February 2006.

[25] See ECAS (2008).

[26] Title IV EC Treaty "Visas, Asylum, Immigration and Other Policies related to the Free Movement of Persons".

constituted the first step in this ongoing process.[27] The Tampere Programme also agreed a number of Milestones that would guide the overall agenda. Paragraph 21 stated that:

> The legal status of third country nationals should be approximated to that of Member States' nationals. A person, who has resided legally in a Member State for a period of time to be determined and who holds a *long-term residence permit*, should be granted in that Member State *a set of uniform rights which are as near as possible* to those enjoyed by EU citizens; e.g. the right to reside, receive education, and work as an employee or self-employed person, as well as the principle of non-discrimination vis-à-vis the citizens of the State of residence. The European Council endorses the objective that long-term legally resident third country nationals be *offered the opportunity to obtain the nationality* of the Member State in which they are resident. (Emphasis added)

EU law has traditionally focused on granting and extending residence and other related rights to the EU citizens and to very specific categories of TCNs.[28] As we will see below, until recently it has excluded all the rest of Others from enjoying the freedom to move and the principle of equal treatment and non-discrimination (Groenendijk, 2001). The academic literature offering an account of the origins and a study of the developments on European law on immigration has been extensive and rich.[29] While one of the dominant critical arguments has usually been the exclusion of TCNs from the scope of application of EU law, Guild and Peers (2006) have lately challenged the attempt to create an orthodoxy which, building on the premise that the treaties are designed to exclusively confer rights and impose obligations upon citizens of the European Union, limits in this manner the personal scope of the EU law. According to them, the exclusion of TCNs from the scope of the EC law is the exception, not the rule (Guild and Peers, 2006).

That notwithstanding, the following two connecting factors often apply to every person not holding the nationality of a Member State, and not falling within one of the categories of "privileged TCNs", at times of being recognized as a subject of rights able "to act" within the European context: First, legality of entry according to national immigration laws; and Second, length of residence, as gradual attainment of rights and security depending on the period of legal residence in the territory of a Member State of the EU. Indeed, the duration of "legal" residence has represented a key connecting factor in the attribution of rights and security of residence of TCNs in EU law. It has been only recently that non EU-nationals who are long-term residents are no longer invisible (Kostakopoulou, 2001a and 2002b), but are currently holders of a set of supranational civic and social rights recognized by EU immigration law. The adoption of the Council Directive 2003/109 on the status of LTRs who are third country nationals[30] has recognized and covered the status of those non-EU nationals who have resided for a period of time of five years in the territory of a Member State. It has also conferred the right to move to a second Member State and being treated equally there (e.g. Groenendijk, 2006d; Carrera, 2005a;

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[27] Presidency Conclusions of the Tampere European Council, 15-16 October 1999, SN 200/99, Brussels.

[28] These include for instance TCNs holding derivative rights from those enjoyed by EU citizenship, such as TCNs family members of EU citizens, employees of undertakings providing services in another member state, or TCNs who are beneficiaries of association and cooperation agreements signed by the Community and third country. See Staples, H. (1999), *The Legal Status of Third Country Nationals Resident in the European Union*, European Monographs 22, Kluwer Law International: The Hague; Guild, E. (2001), *Immigration Law in the European Community*, Kluwer Law International: The Hague.

[29] Among many others: E. Guild and J. Niessen (1996); E. Guild (1999); H. Staples (1999); K. Hailbronner (2000); E. Guild (2001); E. Guild and C. Harlow (2001); P. de Bruycker (2003); S. Peers and N. Rogers (eds) (2006).

[30] Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents. OJ L 16, 23.1.2004.

Guild, 2004; Peers, 2004, etc). The Directive 2003/109 provides a status that is "comparable", yet not equal, to the one enjoyed by European Citizens as nationals of the Member States. This evolution has brought closer the rights recognized to European citizen and those to long-term residents TCNs, even though "the gap between us and them" has not been fully bridged (Carlier, 2008). While this Directive has represented a unique opportunity to address the long standing criticism according to which the EU corresponds to an exclusionary organization concerned solely with the citizens of its Member States, there are also a wide variety of potential exceptions and conditions inside the Directive which limit the prospect of accomplishing its main objectives (Peers, 2004; Carrera, 2005a).

Furthermore, the creation of the EC status of long-term residents has posed several questions in relation to that of European citizenship. Groenendijk (2006a) has studied recent developments in the old EU Member States and the origins in EU law concerning what he denominates as "denizenship status".[31] This status follows in fact the concept of "denizen" first used by Thomas Hammar (1990) to describe the status of migrant workers who arrived to Western and Northern Europe in the 60s and 70s originally for temporary work but who then stayed as permanent residents in these countries.[32] In Groenendijk's view, the development of the denizens or "potential citizens" – half way between citizen and non-citizen - in most of the 'old' Member States and the adoption of the Council Directive 2003/109 have led to the emergence of two dilemmas to the concept of European citizenship: First, how to justify the differential treatment between the rights attached to both statuses? And second, how to justify the differences in treatment when comparing TCNs denizens and nationals of the country of residence, as the relevant rules applicable to nationals might be stricter than those for denizens?

In addition to the length of residence, another innovative connecting factor that has recently appeared in EU law and policy as a requirement for having access to the "denizenship status" in the scope of immigration law is the compliance with "conditions of integration" (Carrera, 2006a and 2006b; Guild, 2005). The conceptualization of integration of immigrants in contemporary Europe raises a series of critical factors as to the way in which this policy is currently used by the State as a tool for putting into practice a restrictive immigration policy (Carrera 2006c; Guild 2005; Joppke and Morawska, 2003). As highlighted by Groenendijk (2004), there are different perspectives on the relationship between law and integration which compete in the political debate at Member State and EU level. The first one supports the idea that securing a legal status will enhance the immigrant's integration in society; the second one, considers naturalisation or permanent resident status as the remuneration for a completed integration; and the third one considers the lack of integration as a ground for refusal of admission in the country. Cholewinski (2005) has also noticed that the third perspective is a recent innovation which represents a tendency by some Member States to construct a more exclusionary conception of integration and to infuse it into the EU law. Looking in particular at Directive 2003/109 on the long-term resident status, member states have been granted a wide discretion to ask TCNs to comply with mandatory integration requirements (language and civic dimensions). The literature has recently focused on a comparative analysis of integration programmes in the

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[31] J. Y. Carlier has used instead the one of "Incola" to qualify third country nationals who are long-term residents and whose status is in between citizens and foreigners, and to argue for a progressive building of residence citizenship. See J. Y. Carlier (2008).

[32] Hammar has derived the notion of "denizenship" from the legal status of denizen, which in English law since the 15th century applied to aliens to whom the sovereign granted the status of a British subject but who could not hold public office, inherit property or obtain a grant of land from the Crown (Hammar 1990). Hammar has reintroduced this concept to describe the contemporary tendency in democratic states to disconnect citizenship rights from formal nationality and to base them instead on residence. Bauböck, R (1994b) has argued that the term was first used by John Locke.

immigration laws at the Member States level, and the identification of national and European trends (Michalowski, 2004; Carrera, 2006d; Joppke, 2007). This has been accompanied with an analysis of the integration tests requiring minimum knowledge of language, culture of the host state, which in several countries have to be fulfilled by applicants applying for naturalisation (De Groot, 2006a).

As Castles and Davidson (2000) have emphasized, current configurations of the institution of citizenship continues being primarily based on traditional conceptions of the nation-state, and it is therefore incapable of providing an appropriate answer to deal with new forms of identities and plural feeling of belonging. Current global processes and movements have produced new subjects of law and action, new subjectivities and identities, new sites of struggle and new scales of identification which are transforming traditional conceptions and classical understandings of citizenship as status and habitus (Isin, 2008). Current citizenship studies have devoted wide attention to searching and exploring alternatives to the use of naturalisation and the acquisition of nationality as the mechanism for grating citizenship to TCNs, and especially to those denominated as "long-term residents" (Bauböck et al., 2006b). Various authors have studied the boundaries inherent to the organizing principles and nationalist logics of current membership normative regimes, as well as the ways in which the EU could play a key role in making them more open and compatible with current societal realities and practices (Bauböck, 1994b and 2004; Martiniello, 1994; Habermas, 1998; Rubio-Marin, 2000; Kostakopoulou, 2001b, 2002b and 2007; Shaw, 2007; etc).

For example, Kostakopoulou has addressed the potentials inherent to European citizenship in moving beyond, and superseding, firmly embedded nationalistic environments and normative logics. Contrary to the idea of a European citizenship based on a "European" sense of belonging and identity, she has proposed an alternative concept of "constructive European citizenship" as a paradigm of citizenship beyond the nation-state. Following this theory, citizenship would be detached from the essentialist conception of individual identity. In this community where members would be associated by virtue of their differences and engaged in collectively sharing the polity, those individual labelled as TCNs would have access to Union citizenship directly on the basis of the length of residence and domicile (Kostakopoulou, 2001a). A domicile-based paradigm of European citizenship would free the emerging European *demos* from the grip of state nationality and ensure the formal inclusion of long term resident TCNs in the European political process. However, there is at present not political will to develop such a model. Instead, European policy makers have so far shown grater propensity towards the idea of "civic citizenship" (Kostakopoulou, 2002a).

The concept of civic citizenship emerged from the European Economic and Social Committee Opinion,[33] the Commission communication on a Community Immigration Policy[34] of 22 November 2000 and the Commission communication on Immigration, Integration and Employment[35] of 3 June 2003. The main constitutive elements that these official responses have

[33] Opinion of the European Economic and Social Committee on Immigration, Integration and the Role of Civil Society, SOC/075, CES 365/2002, 21 March 2002, Brussels, rapporteur: Mr. Pariza Castaños.

[34] Commission Communication, on a Community Immigration Policy COM (2000) 757, 22.11.2000. COM(2000) 757 final: "*The legal status granted to third country nationals would be based on the principle of providing sets of rights and responsibilities on a basis of equality with those of nationals but differentiated according to the length of stay while providing for progression to permanent status. In the longer term this could extend to offering a form of civic citizenship, based on the EC Treaty and inspired by the Charter of Fundamental Rights, consisting of a set of rights and duties offered to third country nationals*".

[35] Communication from the Commission to the Council and the European Parliament, *on immigration, integration and employment*, COM(2003) 336, 3 June 2003, Brussels.

attributed to it can be summarized as follows: first, civic citizenship concerns long-term resident TCNs residing legally in a Member State; second, civic citizenship is a legal status with attached rights and responsibilities, which based on the EC Treaty and inspired by the Charter of Fundamental Rights; third, should be provided on a basis of equality with those of nationals but need to be differentiated according to length of stay with a progression towards permanent status; forth, these rights include the right to reside, receive education, work as an employee or self-employed person, as well as the principle of non-discrimination vis-à-vis the citizens of the State of residence; fifth, the opportunity for long-term legally resident third-country nationals to obtain the nationality of the State where they reside. According to Perching this concept could represent the missing link between Union citizenship, antidiscrimination policy and EU migration policy. In fact, it could become a tool to guaranteeing a common legal status for immigrants in all member states which would be gradually harmonized to those of Union citizens (Perching, 2006).

Indeed, it has been in the context of the EU Framework on Integration where these issues have been debated and are being currently developed in EU policy.[36] The EU Framework on Integration, whose origins can be identified in 2002,[37] makes use of a set of non-legislative modes of policy-making and soft-law governance techniques based on knowledge sharing, policy coordination, exchange of information, and which include benchmarking and indicators as central tools. It has constituted itself as a "quasi-Open Method of Coordination" (Carrera, 2008). This alternative policy framework emerged from the intergovernmental logic which considers the issue of TCNs integration as one of those areas of Member States exclusive competence. A set of eleven Common Basic Principles for Immigrant Integration Policy (CBPs)[38] has been agreed in order to provide a non-legally binding concept of "integration of immigrants" at EU level (Groenendijk, 2004; Cholewinski, 2005; Carrera, 2008). The CBP9 expressly states that "*The participation of immigrants in the democratic process and in the formulation of integration policies and measures, especially at the local level, supports their integration*". In the Communication "A Common Agenda for Integration: Framework for the Integration of Third-Country Nationals in the European Union" COM(2005) 389 of September 2005,[39] the European Commission recommended the elaboration of national preparatory citizenship and naturalisation programmes at the national levels. It also proposed to address at the European level

> … the value of developing a concept of civic citizenship as a means of promoting the integration of third-country nationals, including the rights and duties needed to give immigrants a sense of participation in society.

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[36] The Fifth European Commission Report on Citizenship of the Union COM (2008) 85 final underlined that "*the Tampere Council endorsed the objective that long-term legally resident third-country nationals should be offered the opportunity to obtain the nationality of the Member State in which they are resident'*, and made express reference to the EU Framework on Integration as the venue where these issues are being debated.

[37] Justice and Home Affairs and Civil Protection, Council meeting 2455, 12894/02, Luxembourg, 14 and 15 October 2002. The EU Framework on Integration includes a set of Common Basic Principles for Immigration integration policy (CBPs), two Handbooks on Integration for policy-makers and practitioners, three Annual Reports on Migration and Integration, the setting up of the National Contacts points on Integration and the upcoming European integration Forum, an Integration Website as well as a European Integration Fund.

[38] Council of the European Union, Justice and Home Affairs Council Meeting 2618th, Brussels. 'Common Basic Principles on Immigrants Integration', 14615/04, 19 November 2004.

[39] Commission Communication, A Common Agenda for Integration – Framework for the Integration of Third Country Nationals in the European Union, COM(2005) 389, Brussels, 1 September 2005.

In the Third Annual Report on Migration and Integration COM(2007) 512,[40]

> The Commission will explore various *concepts of participation and citizenship* and their influence on the integration process…and the added value of common *European modules for migrant integration* based on existing good practice to develop guidelines on various aspects of the integration process (introductory courses, promoting participation of immigrants and other citizens in local life, etc). (Emphasis added).[41]

5. Acts of Citizenship: Citizenship in Motion

The current legal and policy scenarios on citizenship in Europe remain limited and incapable of guaranteeing the desired level of equality, individual security and social inclusion. They do match with modern realities and dilemmas posed by transnational processes of convergence leading to international human mobility and diversity to the nation-State. A certain tension arises when putting in relation these social realities with exclusionary laws pretending to delimit the community of legitimate beneficiaries of protection and rights. The ENACT Project offers an alternative theoretical concept based on "acts of citizens", which offers a different approach to the investigation of citizenship. This conceptual framework represents a major move from the ways in which citizenship has been traditionally studied. It advocates for an understanding of citizenship not as a legal category and status, but as involving a whole range of differentiated practices or deeds of pluralistic nature. Isin and Nielsen (2008) have argued that

> To investigate citizenship in a way that is irreducible to either status or practice, while still valuing this distinction, requires a focus on those acts when, regardless of status and substance, subjects constitute themselves as citizens or, better still, as those to whom the right to have rights is due. But the focus shifts from subjects as such to acts (or deeds) that produce such subjects. The difference, we suggest, is crucial.

This innovative theoretical framing of citizenship stresses the need to shift the focus from the institution of citizenship (already-held status) and the citizen as an individual agent (embedded practice) to "acts of citizenship" understood as "*collective or individual deeds that rupture social-historical patterns*" containing overlapping and interdependent components and shifting "*established practices, status and order*". The theorization of "acts of citizenship" involves looking at ways of being of ethical, cultural, sexual and social nature which are called or become political, and which constitute the very conditions allowing "the acts" (Isin, 2008). It addresses the question of how subjects become claimants under surprising conditions or within a relatively short period of time has remained unexplored, and stresses that

> Without such creative breaks it is impossible to imagine social transformation or to understand how subjects become citizens as claimants of justice, rights and responsibilities. Thus the difference between habitus and acts is not merely one of temporality but is also a qualitative difference that breaks habitus creatively.[42]

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[40] Commission Communication, Third Annual Report on Migration and Integration, COM(2007)512, 11 September 2007, Brussels.

[41] It is worth underlying another recent concept that has been also developed at EU level and which has been denominated as "active participation and citizenship". According to the former FSJ Commissioner F. Frattini, this status would ensure TCNs' participation in society, and especially in the labour market (Frattini, 2006). The new idea put forward by the Commission is that "*rights and obligations*" of the third country nationals are not seen in the context of the length of residence, but rather on the basis of their 'economic life' and membership of the labour market through a work contract.

[42] Isin (2008), p. 18.

There is a need to assess the implications of the harmonisation of supranational freedoms and guarantees, as well as fundamental rights for third country nationals as regards the content and scope of "European" citizenship. Our research aims at providing empirical grounds for challenging current theoretical and political mechanisms determining the recognition of the individual as an actor at national and supranational levels. It focuses at the complexities emerging as a result from current legal and policy scenarios at EU level (the evolving nature – or in the process of being made - of European citizenship), and the potentials offered in this evolving transnational *status* and *habitus* for the liberalization of the subjects as claimants of rights, and the further development of sites and scales of resistance allowing for more inclusive conceptions of citizenship.

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II. State of the Art

1. Primary Sources: Key EU acts/documents and ECJ case law

1.1 Legally binding instruments

1.1.1 European citizenship

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 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, OJ L 158/77, 30 April 2004.

This directive merges into a single instrument all the legislation on the right of entry and residence for Union citizens, consisting of two regulations and nine directives. It aims at reducing to a minimum the formalities which the Union citizens and their families must complete in order to exercise their right of residence. According to Art.6 first paragraph, for stays of less than three months, the only requirement on Union citizens is that they possess a valid identity document or passport. Art.7 establishes the conditions concerning the right of residence for more than three months: applicant must either be engaged in economic activity, or have sufficient resources and sickness insurance, or be following a course of studies or vocational training, or be a family member of a Union citizen who falls into one of the above categories. As for the right of permanent residence, which is stated in Art.1, Union citizens are entitled to acquire it after a five-year period of uninterrupted legal residence. According to Art. 17:

> the right of permanent residence should therefore be laid down for all Union citizens and their family members who have resided in the host Member State in compliance with the conditions laid down in this Directive during a continuous period of five years without becoming subject to an expulsion measure.

The same right is also granted to their family members, who are not nationals of a Member State and who have lived with a Union citizen for five years. Union citizens qualifying for the right of residence or the right of permanent residence and the members of their family also benefit from equal treatment with host-country nationals in the areas covered by the Treaty. The Directive establishes that Union citizens or members of their family may be expelled from the host Member State only on grounds of public policy, public security or public health (never on economic grounds).

Regulation 883/2004/EC of the European Parliament and of the Council on the coordination of social security systems, 29 April 2004

The European Parliament and the Council have endorsed this regulation with the aim to simplify and clarify the Community rules governing the coordination of the Member States' social security systems. It is stressed that the adoption of Community legislation in the field of social security is an essential prerequisite for effective exercise of the right of free movement of persons enshrined in the EC Treaty. Rather than adopting measures designed to harmonise Member States' legislation, Community law provides for coordination of the national systems. This Regulation will repeal Regulation (EEC) No 1408/71. The main changes introduced by this new regulation are the followings:

- enhancement of the insured rights by extending the personal and material scope;

- extension of the scope to all Member State nationals covered by the social security legislation of a Member State and not just the active population;
- amendment of certain provisions on unemployment: maintenance for a certain time (three months, up to a maximum of six months) of the right to unemployment benefits for unemployed persons who go to another Member State to seek work;
- reinforcement of the general principle of equal treatment.

The Regulation applies to all Member State nationals who are or who have been covered by the social security legislation of one of the Member States, as well as to the members of their family and their survivors. This means that not only employees, self-employed persons, civil servants, students and pensioners, but also non-active persons will be protected by the coordination rules. According to Art. 3 the provisions of this Regulation apply to all the traditional branches of social security: sickness benefits; maternity and equivalent paternity benefits; invalidity benefits; old-age benefits; survivors' benefits; benefits in respect of accidents at work and occupational diseases; death grants; unemployment benefits; pre-retirement benefits; family benefits. Art. 4 states that persons to whom this Regulation applies shall enjoy the same benefits and be subject to the same obligations under the legislation of any Member State as the nationals thereof.

The Regulation also recognizes the principle of the aggregation of periods. It means that a Member State must take into account, for the purposes of the acquisition of the right to benefits, periods of insurance, employment, self-employment or residence in another Member State. Regulation (EEC) No 1408/71 will remain in force and its legal effects will remain valid for the purposes of other acts such as: Council Regulation (EC) No 859/2003 of 14 May 2003 for nationals of third countries who are not already covered by those provisions solely on the ground of their nationality; the Agreement on the European Economic Area, the Agreement between the European Community and its Member States, of the one part and the Swiss Confederation, of the other, on the free movement of persons and other agreements containing a reference to Regulation (EEC) No 1408/71.

Decision 2004/100/EC of the Council of 26 January 2004 establishing a Community action programme to promote active European citizenship (civic participation).

The purpose of this decision is to establish a Community programme to contribute to the operating costs of organisations working in the field of active European citizenship and to promote measures which help to achieve the Union's objectives in that field. The programme covers in particular the following bodies: "Our Europe" Association; Jean Monnet house; Robert Schuman house; Platform of European social NGOs; European Council on Refugees and Exiles (ECRE); Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union. In Art.1 the decision states the objectives that the programme shall have:

- to promote and disseminate the values and objectives of the European Union;
- to bring citizens closer to the European Union and its institutions and to encourage them to engage more frequently with its institutions;
- to involve citizens closely in reflection and discussion on the construction of the European Union;
- to intensify links and exchanges between citizens from the countries participating in the programme, notably by way of town-twinning arrangements;

- to stimulate initiatives by the bodies engaged in the promotion of active and participatory citizenship.

1.1.2 Immigration and Integration

Council of the EU, Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents, OJ L 16/44, 25 November 2003.

This Directive has established the new "long-term resident status" for third-country nationals legally residing in the territory of a Member State. It has also created the legal bases for the integration of immigrants from outside the EU into the societies of the Member States. It is stated that, third-country nationals with five years of lawful residence in a Member State, who fulfil the other conditions specified in Art.5 (stable and regular resources which are sufficient to maintain themselves and their dependant family members and sickness insurance), are entitled to the status. According to Art.8 the status as long-term resident shall be permanent, although it still remains subject to the cases of withdrawal or loss established by Art.9. The Directive has attached to the status of long-term residents the right to equal treatment with nationals in a whole range of fields are which are specified in Art.11. Moreover, it has been granted a conditional right to work, study or live in another Member State. According to Art.6, Member States may refuse to grant long-term resident status on grounds of public policy or public security; however the refusal shall not be founded on economic considerations. Art.14 has established the right of a long-term resident to reside in the territory of Member States other than the one which granted him/her the long-term residence status, for a period exceeding three months, and specifies the conditions which have to be met. According to Art.26 all Member states, excluding Denmark, Ireland and UK which have not participated in the adoption of the Directive and are therefore excluded from its application, had been obliged to implement the Directive in their national laws by the 23rd January 2006.

1.2 Non legally binding instruments

1.2.1 European citizenship

Council of the EU, The Hague Programme: Strengthening Freedom, Security and Justice, (2005/C 53/01), 4-5 November 2004.

The Hague programme is a five-year programme, whose aim is to attain closer co-operation in justice and home affairs at EU level from 2005 to 2010. It follows the Tampere Programme, which was approved by the European Council in October 1999. The Council reckons that the right of all EU citizens to move and reside freely in the territory of the Member States represents the central right of citizenship of the Union. It also underscores that the full implementation of Directive 2004/38, which codifies Community law in this field, will enact practical significance of citizenship of the Union.

According to the Hague programme, the Commission is asked to submit in 2008 a report to the Council and the European Parliament, together with proposals for allowing EU citizens to move between Member States on similar terms to nationals of a Member State moving around or changing their place of residence in their own country. Finally the European Council expresses its support the Union's institutions "*to maintain an open, transparent and regular dialogue with representative associations and civil society*".

European Commission (2008), Fifth Report on Citizenship of the Union (1 May 2004 – 30 June 2007), COM (2008) 85 final, Brussels, 15.2.2008.

This report focuses on the legal core of citizens' rights, namely the right to move and reside within the EU (Art. 18), the right to vote and stand as a candidate in European and municipal elections in the Member State of residence (Art. 19), the right to diplomatic and consular protection in third countries (Art. 20), the right to petition the European Parliament (EP) and the right to apply to the Ombudsman (Art. 21). As far as the promotion of the European citizenship is concerned, the report stresses Commission's commitment to make citizens aware of the benefits, rights and obligations which are attached to their status. The report also analyses the freedom of movement and the right of residence. In particular it focuses on the Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. The Commission states that the control of the correct implementation of the Directive is considered as an absolute priority. In this context, the report denounces the fact that-third country family members continue to encounter problems, not only with regard to authorisation of their entry but also with the issuing of residence cards. It is highlighted that while third-country family members have the right to reside with the Union citizens on the ground of their family link alone, some Member States require them to present documents or undergo procedures not allowed by the Directive. Furthermore, the report takes stock of advances in areas closely related to citizenship in the wider sense, such as equal treatment in terms of nationality and the protection of fundamental rights.

European Commission (2006), Communication, Report on the Functioning of the Transitional Arrangements set out in the 2003 Accession Treaty (period 1 May 2004–30 April 2006), COM(2006) 48 final, Brussels, 8.2.2006

This report points out that the migration flows following the enlargement have had positive effects on the economies of the EU-15 Member States. It is stated that EU-10 nationals positively contribute to the overall labour market performance, to sustained economic growth and to better public finances. The Commission recalls that freedom of movement of workers is one of the basic freedoms under the EC Treaty and highlights that, despite fears expressed on the occasion of the successive enlargements, free movement of workers has not led to disruption of national labour markets.

In this context the report states that:

> While recalling the right of the Member States set forth in the 2003 Treaty of Accession to maintain restrictions under the transitional arrangements, the Commission recommends that the Member States carefully consider whether the continuation of these restrictions is needed, in the light of the situation of their labour market and of the evidence of this report.

The Commission further stresses that Member States need to prepare to open their labour markets in order to fulfil their obligations under the treaties. It is stated that:

> the aim of the transitional measures is to allow Member States to prepare themselves to achieve this ultimate and irrevocable goal as soon as possible.

The Commission also adds that the Commission

> welcomes the positive experiences of the Member States that have reaped major benefits from successfully opening their labour markets fully to EU-8 nationals already during the first phase of the transitional arrangements.

European Commission (2005), Communication from the Commission to the Council and the European Parliament: The Hague Programme: Ten priorities for the next five years, COM (2005) 184, Brussels, 10 May 2005.

The Hague Programme sets out ten priorities for the Union with a view to strengthening the area of freedom, security and justice. An annex to this communication sets out specific measures and a timetable for their adoption. As far as the rights conferred by European citizenship - such as free movement within the Union and voting rights in European Parliament and local elections - are concerned, in this communication the Commission highlights that the way in which they are exercised must be improved. It is stated that "*full development of policies monitoring and promoting respect for fundamental rights for all people and of policies enhancing citizenship must be ensured*".

European Commission (2004), Fourth Report on Citizenship of the Union COM (2004) 695 final, Brussels, 26.10.2004.

The purpose of this fourth report on Union citizenship is to present developments relating to Union citizenship and to the rights attached to this status. It also aims at assessing the need for other provisions strengthening the rights of Union citizens. The report covers the period from 1 May 2001 to 30 April 2004. The Commission points out that, although Member States have implemented the secondary legislation concerning the Union citizenship, problems still remain due to incorrect application and practices.

As for the rights of freedom of movement and residence conferred on Union citizens, the Commission highlights the major innovations introduced by the Directive 2004/38/EC, which codifies in a single instrument the legislative corpus and the case-law on free movement and residence. The Commission emphasises the importance of information and communication concerning the rights conferred by Union citizenship. It is also underlined that proper interpretation of Community rules and the proper application of citizens' rights is crucial. With a view to strengthening the rights of Union citizens, the Commission reports that complaints have risen due to the fact that Union citizens who are not nationals of their Member State of residence do not have the right to vote or to stand as a candidate in national or regional elections in that Member State. Lastly, the Commission underlines the value of confirming the rights of Union citizens in the Constitutional Treaty by incorporating the Charter of Fundamental Rights with mandatory legal status.

European Commission (2001), Third Report on Citizenship of the Union, COM (2001) 506 final, Brussels, 07.09.2001.

This Third Report analyses developments in the field of Union citizenship and related rights. It focuses on the rights provided for in the second part of the EC Treaty: the right of freedom of movement and the right of residence; the right to vote and stand as a candidate in the Member State of residence at elections to the European Parliament, the right to vote and stand as a candidate at municipal elections; the right to diplomatic and consular protection, right of petition the European Parliament. The need to provide citizens with more information about their rights is stressed repeatedly in this report. The Report also deals with two important developments in the area of citizenship: the proclamation of the Charter of Fundamental Rights (at the Nice European Council in December 2000) and the adoption by the Commission of the proposal for a Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.[43] This report stresses the concept that nationality of a Member State is the only way to acquire citizenship of the Union. On the

[43] Directive 2004/38/EC was finally adopted on 29 April 2004 and published on 30 April 2004.

other hand, referring to the ECJ Judgment of 7.7.1992 in Case C-369/90 Micheletti, the report affirms that Member States cannot deny the status of citizen of the Union, even if the person concerned is also a national of a non-member country. It is further stated on this report that

> Citizenship of the Union is both a source which legitimates the process of European integration, by reinforcing the participation of citizens, and a fundamental factor in the creation among citizens of a sense of belonging to the European Union and of having a genuine European identity.

European Commission (1998), Communication to the European Parliament and the Council on the follow-up to the recommendations of the High-Level Panel of the Free Movement of Persons, COM (98) 0403 final.

This Communication aims to present the follow-up recommendations of the High-Level Panel on the Free Movement of Persons. These recommendations, which were requested by the commission in January 1996, are designed to identify the problems which were occurring in the area of the free movement of people, to evaluate these and to propose solutions. In this Communication the Commission focuses, in particular, on two aspects of free movement examined by the High-Level Panel: the rights of entry and residence; the need to improve citizens' knowledge about their rights. It is stated that

> free movement rights are becoming an integral part of the legal heritage of every citizen of the European Union and should be formalized in a common corpus of legislation to harmonize the legal status of all Community citizens in the Member States, irrespective of whether they pursue a gainful activity or not.

European Commission (1997), Second Report on Citizenship of the Union, COM (97) 230, Brussels, 27.05.1997.

In this report the Commission analysed the new rights introduced by the Maastricht Treaty in terms of European citizenship: first, the right to vote and stand for election in local and European elections; second, the right to diplomatic and consular protection; third the right to out-of-court methods for the protection of citizens' rights. Afterwards, the Commission highlights that citizens still face difficulties when exercising their right to freedom of movement and of residence. According to the report, those difficulties were particularly due to incorrect or excessively restrictive administrative procedures. Furthermore, the report denounced that right of residence was still subject to different provisions which applied to different categories of citizens. This was due to the fact that the secondary Community legislation consisted of two Regulations and nine Directives. However, the Commission pointed out that since the EC Treaty did not provide for a common legal basis and it was not possible to adopt a single set of rules, it would had been needed a revision of Article 8 A (now Article 18), upgrading it from a supplementary legal basis to a specific legal basis for free movement and right of residence. Finally the Commission stressed the need to improve citizens' awareness of and access to their rights. Accordingly, the Commission envisaged the necessity of a permanent effort to provide citizens with simple and factual information about their rights and a greater effort on the part of the Commission and the Member States in order to ensure effective enforcement of these rights.

European Commission (1993), First Report on Citizenship of the Union, COM(93)702 final, Brussels, 21.12.1993.

This first report was presented on 21 December 1993 in accordance with former Art. 8 E, shortly after the entry into force of the Maastricht Treaty on 1 November 1993. The aim of these reports on Union citizenship is to assess the application of Community rules on citizens' rights and to propose measures to further their implementation. Commission's reports on citizenship of

the Union are published every three years. This report specifies the concept and the definition of "citizenship of the Union" referring to Art.8 EC Treaty and to the already mentioned ECJ judgement in *Micheletti v Delegation de Gobierno de Cantabria*. The Commission states that *"the rights flowing from citizenship of the Union are in effect granted constitutional status, by being enshrined in the treaties themselves"*. It further states that "*these rights are to be construed broadly and exception are to be construed narrowly, in accordance with the general principles of Community law recognized by the Court of Justice"*. Moreover, the report emphasises that the provision of Part II of the EC Treaty, which is entitled "Citizenship of the Union" are not static, but are essentially dynamic in nature. As for the right of free movement stated in the Art. 8A(1), the Commission highlights that *"it was conferred on all nationals of Member States by virtue of their citizenship of the Union"*. The report also states that abolition of controls on persons at internal borders of the Member States, which was laid down by Art. 7A EC, it might prove to be a most suitable means of ensuring the free movement within the Union. As far as the rights of residence for the Union citizens is concerned, the report highlights that it is regulated by a number of different regulations and directives. It therefore expresses Commission intention to make Community law more accessible through the codification of these provisions.

1.2.2 Immigration and Integration

Council of the EU, The Hague Programme: Strengthening Freedom, Security and Justice, (2005/C 53/01), 4-5 November 2004.

One of the main focus of the Hague Programme on strengthening freedom, security and justice in the European Union is on setting up a common immigration and asylum policy for the 25 EU member states. The Council highlights the need of a comprehensive approach, involving all stages of migration, with respect to the root causes of migration, the entry and admission policies and integration and return policies. Acknowledging that stability and cohesion within our societies benefit from the successful integration of legally residing third-country nationals and their descendants, the Council stresses that it is essential to develop effective policies, and preventing the isolation of certain groups. Accordingly it envisages the development of common basic principles connecting all policy areas related to integration.

This set of principles according to the Council should include at least the following aspects of integration:

> is a continuous, two-way process involving both legally-resident third-country nationals and the host society"; it "includes, but goes beyond, anti-discrimination policy"; it "implies respect for the basic values of the European Union and fundamental human rights"; it "requires basic skills for participation in society; it "relies on frequent interaction and dialogue between all members of society within common"; it "extends to a variety of policy areas, including employment and education.

European Commission (2008), Communication to the European Parliament, to the Council, the European Economic and Social Committee and the Committee of the Regions, *A Common Immigration Policy for Europe: Principles, actions and tools*, COM (2008) 359, Brussels, 17.06.2008

In this Communication the Commission proposes ten common principles on which the common immigration policy will be articulated, grouped under the three headings of prosperity, security and solidarity. Under the first heading, it is stressed that integration is the key to successful immigration. Commission highlights the importance of making integration a "two-way-process": "*the integration of legal immigrants should be improved by strengthened efforts from*

host Member States and contribution from immigrants themselves". Afterwards the text indicates a list of actions to be pursued at either EU or Member State level, aiming at implement the principle in practice. Among these measures it can be highlighted:

> *first*, strengthen further the mainstreaming approach of the EU Framework for Integration including civic participation, integration into the labour market, social inclusion, anti-discrimination, equal opportunities, etc; *second*, develop mutual learning and exchange of best practices; *third*, support the development of specific integration programmes for newly arrived immigrants; *forth*, ensure a non-discriminatory and effective access of legal immigrants to health care and social protection; *fifth*, assess the implementation of Council Directive 2003/86/EC on the right to family reunification.

European Commission (2008), Fifth Report on Citizenship of the Union (1 May 2004 – 30 June 2007), COM (2008) 85 final, Brussels, 15.2.2008.

Focusing on the citizenship of the Union, this report reaffirms that, according to the Declaration No. 2 annexed to the EU Treaty, "*whether a person has the nationality of a Member State is to be determined solely by reference to the nationality rules of the Member State concerned*". However the Commission highlights the problems related to the acquisition and loss of nationality and the issue of the access to Union citizenship. The report brings as examples the case of the persons belonging to the Russian-speaking minority in Estonia and Latvia who are considered to be "non-citizens" and the situation of "erased persons" in Slovenia. In this report it is also underlined the fact that *the*

> Tampere Council endorsed the objective that long-term legally resident third-country nationals should be offered the opportunity to obtain the nationality of the Member State in which they are resident

and that in 2004 Common Basic Principles (CBPs) on integration to assist Member States in formulating integration policies were adopted.

European Commission (2007), Communication Towards a Common Immigration Policy, COM (2007)780 final, SEC (2007) 1632, Brussels, 5.12.2007

This communication is intended to kick-start a new European Union immigration policy. On the one hand, the Commission notes that progresses have been made towards a common immigration policy; on the other hand it also notes weaknesses, such as the failure to enforce expulsion orders and contradictory approaches to the recruitment of third-country workers in different Member States. That is why the Commission recommends building a new commitment that will lead to a common policy in which national and Community actions will complement each other. Firstly, the Commission highlights that during the last decade, the foundations of a common immigration policy have been gradually established under the Tampere and Hague Programme. The right of family reunification and the rights of third-country nationals who have been resident in a Member State for more than five years are brought as examples. Secondly, in this communication it is stressed that any policy of immigration must be developed together with a policy of integration, which "*has been the subject of a pragmatic approach sustained by strong political demand, symbolically reflected in the adoption of common basic principles"*. The communication underlines that effective and efficient integration policies are particularly needed in the areas of education, health, housing and the labour market, which fall within the direct competence of Member States. Moreover the Commission envisages the need to implement anti-discrimination and equal rights policies which are important in order to address some of the obstacles faced by immigrants and their descendents.

European Commission (2007), Communication, Third Annual Report on Migration and Integration, COM (2007) 512 final, Brussels, 11.9.2007.

As called for by the Thessaloniki European Council of June 2003, the Annual Reports on Migration and Integration analyse changes, describe actions taken on the admission and integration of third-country nationals at EU and national level. This report also informs about and examines the way the Common Basic Principles are being put into practice. First, the Commission highlights the need to constantly reinforce the link between legal migration policies and integration strategies. Than, it emphasises that legislative instruments are already in place concerning family reunification, long-term residents and qualification of third-country nationals.[44] The Communication states that the promotion of fundamental rights, non-discrimination and equal opportunities have a central role in the context of integration. It also strengthens the integration dimension in social inclusion and social protection policies. According to the Commission, the monitoring of these policies "*contributes to driving efforts to reinforce integration measures filling in remaining gaps between immigrants and citizens"*.

Moreover it is underlined that, in the framework programme *Solidarity and Management of Migration Flows 2007-2013*, the European Fund for the Integration of Third-Country Nationals will "*support Member States' efforts in enabling immigrants to fulfil conditions of residence and to facilitate their integration"*. While assessing the implementation of the Common Basic Principles, the Commission underlines that

> most Member States consider basic knowledge of the host society language as an essential element of integration". *Therefore*, many countries focus their integration strategies on introduction programmes, including (sometimes compulsory) language and civic orientation courses for newly-arrived.

Finally, according to the report, the participation of immigrants in the democratic process is increasingly perceived as a significant aspect of successful integration. In particular, it is stated

> there is a growing interest in active citizenship and naturalisation processes as elements to strengthen opportunities for involvement in the host society.

The Commission, therefore, affirms its intention to explore various concepts of participation and citizenship and their influence on the integration process.

European Commission (2006), Communication, Second Annual Report on Migration and integration, SEC (2006) 892, Brussels, 30.6.2006.

The Annual Reports serve as a tool to review the development of the common immigration policy. They aim to provide an overview of migration trends in the European Union through the analysis of the changes regarding the admission and integration of immigrants at national and EU level. This Second Annual Report should be seen in the light of the recently adopted Hague Programme, which has set a five years agenda on Freedom, Security and Justice in the European Union.

While analysing the trends in admission policies, the Commission highlights that the diversity across the EU is growing. It is stated that certain number of Member States now require new

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[44] Council Directive 2003/86 on the right to family reunification, Council Directive 2003/109 concerning the status of third-country nationals who are long-term residents and Council Directive 2004/83 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. A legislative proposal to extend rules on long-term residence to beneficiaries of international protection is adopted, COM(2007) 298.

immigrants to fulfil certain integration obligations. It is showed that there is a new emphasis on obligatory integration courses, concerning in particular language instruction and civic orientation. The report brings the case of the Netherlands, where it is planned that immigrants coming for reasons of family formation or reunification will need to meet certain pre-departure standards. Moreover, according to the Commission, several countries are envisaging possible sanctions in case of non-compliance with obligations arising from compulsory integration measures, rather than incentives in case of compliance.[45] The report states that

> usually the successful completion of compulsory integration courses is more or less directly linked to the granting or extension of residence permits or is intended to be so in the future.

It is also stated that

> the integration measures, as well as integration conditions authorised under Directive 2003/86 on family reunification and Directive 2003/109 on the status of third-country nationals who are long-term residents, should be applied without any discrimination.

The Commission underlines that basic rights such us access to education, housing, healthcare and social have to be provided to migrants in order to successfully integrate them. Conversely, according to the report, at present the level of rights varies greatly among the Member States and migrants may acquire them only after a certain period of time and under certain conditions. It is pointed out that

> in certain Member States, even after 5 years of legal residence, immigrants are not provided with full legal rights in some of the fields mentioned above.

Finally, the report emphasises that

> Member States are obliged to transpose into their legal systems the Council Directive concerning the status of third-country nationals who are long-term residents" and that "third-country nationals who acquire a long-term resident status have to be guaranteed equal treatment in all the above-mentioned areas.

European Commission (2005), Communication, Policy Plan on Legal Migration, COM (2005) 669 final, Brussels, 21.12.2005.

In this Policy Plan the Commission proposes initiatives to develop common EU rules in the field of legal migration and emphasises the importance of creating a level playing field of clear and well-defined rights for legal migrants. As far as the initiatives aiming at the integration of migrants are concerned, the Commission suggests, in particular, providing introduction programmes and activities for newly arrived legal immigrants and their dependants. In view of that, the Commission envisages the utility of information packs, language courses and civic orientation, but also of education, training and cultural initiatives. In this policy plan it is stated that to fund these and other projects the Commission proposed the creation of a European fund for the integration of third-country nationals under the financial perspectives 2007-2013.

European Commission (2005), Communication from the Commission to the Council and the European Parliament: The Hague Programme: Ten priorities for the next five years, COM (2005) 184, Brussels, 10 May 2005.

[45] These sanctions comprise cuts in financial support or welfare aid, the issuing of fines or the refusal of compensation for the costs for integration courses.

This communication highlights the need of defining a new balanced approach to migration management as well as the need to develop of a common immigration policy addressing the situation of legal migrants at Union level. It is stated that

> an area of free movement demands a common immigration policy, covering admission procedures and criteria and delivering a secure legal status and a guaranteed set of rights to assist the integration of those who are admitted.

In order to reach greater immigrant communities integration, the Commission encourages Member States to push ahead with their integration policies in order to help improve mutual understanding and dialogue between religions and cultures. It also intends to set up a European framework for integration and to promote a structural exchange of experience and information on integration. According to the Commission, the integration of third-country nationals requires the involvement of a range of mainstream policies, also including employment and education.

European Commission (2005), Communication, A Common Agenda for Integration – Framework for the Integration of Third Country Nationals in the European Union, COM (2005) 389 final, Brussels, 1.9.2005

This Communication represents the Commission's first response to the invitation of the European Council to establish a coherent European framework for integration. The main elements of such a framework are proposals for concrete measures to put into practice the Common Basic Principles adopted by the JHA Council of 19 November 2004 to underpin a European framework on integration of third-country nationals. The Communication provides new suggestions for action both at EU and national level. In particular the Commission envisages the following measures: first, strengthening the integration component of admission procedures, for example through pre-departure measures such as information packages and language and civic orientation courses in the country of origin; second, organising introduction programmes for newly arrived third-country nationals to acquire basic knowledge about language, cultural life, fundamental values, etc.; third, exploring the value of developing a concept of civic citizenship as a means of promoting the integration of third-country nationals, including the rights and duties needed to give immigrants a sense of participation in society; forth, elaborating national preparatory citizenship and naturalisation programmes and initiating a study of the level of rights and obligations of third-country nationals in the Member States.

It is also analysed the legal framework concerning the admission and stay of third-country nationals. It is stated that directives such as those concerning family reunion and long term residence

> create a legal framework, prescribing equality of treatment and according rights of access to employment, and to education/training, all of which elements are necessary components not only for a credible immigration policy but also for any successful integration of third-country nationals as part of that policy. In addition, EU legislation on anti-discrimination supports and develops this legal framework on the conditions for the admission and stay of third-country nationals.

The Commission also calls for a more coherent EU approach to integration, which "would consist of consolidating the legal framework on the conditions for the admission and stay of third-country nationals, including their rights and responsibilities". Finally, in this communication it is emphasised the importance of voting rights for immigrants and are suggested ways to achieve this. In particular, the Communication states that: "the participation of immigrants in the democratic process, particularly at the local level, enhances their role as residents and as participants in society."

European Commission (2004), Communication, First Annual Report on Migration and Integration, COM (2004) 508, Brussels, 16.7.2004.

In June 2003 the Thessaloniki European Council invited the Commission to present an Annual Report on Migration and Integration in Europe, in order to map EU-wide migration data, immigration and integration policies and practices. "*This Report, which should contain an accurate and objective analysis of the above issues, will help develop and promote policy initiatives for more effective management of migration in Europe".* This first annual report examines the migration trends in the EU-25, the trends in national policies on integration, the situation of migrants in the labour market and assesses the economic and public finance aspects of immigration. The Commission identifies the lack of access to employment as the greatest barrier to integration. Also language skills and the improvement of educational attainment are identified as other key challenges. This report also highlights Member States increasing focus on immigrants' language abilities, which lead many countries to provide specific language tuition for newly arrived immigrants and refugees. Besides, it is shown that in Member States increasing emphasis has been put on civic education for new immigrants. The report states that

> admission and integration policies are inseparable and should mutually reinforce each other. *Moreover, it is stated that* the establishment of a common legal framework setting out the rights and obligations of third country nationals, underpins the EU approach to the integration of immigrants.

Finally, this report confirms that in the context of an ageing and shrinking working-age population, increased immigration flows are likely and increasingly necessary to meet the needs of the enlarged EU. In the light of that, it is stressed that Europe must prepare for this. The report calls for a level-playing field in terms of admission policies for economic migrants across the EU to be able to respond to labour gaps successfully and in a more transparent and coherent manner.

European Commission (2003), Communication on *immigration, integration and employment,* COM (2003) 336, Brussels, 3 June 2003.

This Communication responds to the Tampere conclusions by reviewing current practice and experience with integration policy at national and EU level. It examines the role of immigration in relation to the Lisbon objectives in the context of demographic ageing and outlines, on this basis, policy orientations and priorities, including actions at EU level, to promote the integration of immigrants. The Communication's purpose is to setting out in a single document on both what has already been done to promote better integration and ideas for further action needed. It is stated both the need to monitor and evaluate EU immigration policy and the Commission intention to prepare annual reports on the developments of common immigration policy. Moreover, it is envisaged the need for greater convergence with respect to concepts and policy objectives as a consequence of the establishment of a common legal framework on the admission and status of third country nationals.

The Commission proposes, besides the integration of immigrants into the labour market, the following priority areas: introduction programmes for newly arrived immigrants; language training, participation of immigrants in civic, cultural and political life**.** This communication also highlights the relevance of the concepts of civic citizenship and naturalisation as tools to facilitate integration. It is stated that

> the Commission underlines the importance of confirming the rights and obligations of legally resident third country nationals in the framework of the new Treaty by the incorporation of the Charter of Fundamental Rights with a legally binding status.

As for the naturalization issue, the Commission considers it as a strategy to promote integration. Therefore, it invites Member States to consider naturalization when granting residence to immigrants and refugees. Furthermore it is stated that the Commission welcomes the relaxation of the conditions to be fulfilled by applicants for nationality and promotes the exchange of information and of best practices concerning the implementation of nationality laws of Member States.

European Commission (2001), Communication, on a Open Method of Coordination for the Community Immigration Policy, COM (2001) 387, Brussels, 11.7.2001.

The purpose of this Communication is to set out proposals for the adaptation of the open method of co-ordination to the field of migration policy. It is stated that the use of an open method of co-ordination, specifically adapted to the immigration field, and as a complement to the legislative framework, will provide the necessary policy mix to achieve a gradual approach to the development of an EU policy. This would be based, in a first stage at least, on the identification and development of common objectives to which it is agreed that a European response is necessary. The Commission establishes the following guide lines concerning the development of integration policies for third country nationals residing legally on the territories of the Member States: identifying priorities and resources a comprehensive policy to ensure the integration of migrants into society; setting up a framework to ensure the involvement of local and regional actors, civil society and migrants themselves in developing and implementing the national strategy; promoting the integration of migrants through information and awareness campaigns; developing specific measures aimed at the social and economic integration of women and second generation migrants; developing settlement programmes for new migrants and their families (language training, information on the fundamental European values, on cultural, political and social of the Member State concerned); developing measures to provide social, health and economic support to victims of smuggling and/or trafficking; exploring the validity of the concept of civic citizenship by identifying the rights and responsibilities, which would ensure the fair treatment of third country nationals legally resident in the Member State concerned.

European Commission (2000), Communication, on a Community Immigration Policy COM (2000) 757, 22.11.2000.

This communication mainly constitutes a first response to the specific request of the European Council for a clear definition of the conditions of admission and of residence of third country nationals. It calls for the adoption, in consultation with the Member States, of a common legal framework for admission of third country nationals which would be based on the principles of transparency, rationality and flexibility. Referring to the Tampere programme, in this communication highlights the importance to ensure fair treatment of third country nationals residing legally on the territories of the Member States through an integration policy aimed at granting them rights and obligations comparable to those of EU citizens. Accordingly the Commission states its intention to make proposals concerning the rights to be granted, the conditions under which the status may be lost, protection against expulsion and the right to reside in another Member State. Moreover it is estbished that the legal status granted to third country nationals should provide a sets of rights and responsibilities differentiated according to the length of stay while providing for progression to permanent status. Building on the EC Treaty and on the Charter of Fundamental Rights the Commission also envisages the development of the concept of “civic citizenship” consisting of a set of rights and duties offered to third country nationals. It is concluded that

> enabling migrants to acquire such a citizenship after a minimum period of years might be a sufficient guarantee for many migrants to settle successfully into society or be a first step in the process of acquiring the nationality of the Member State concerned.

Justice and Home Affairs Council, 2618th Meeting, Annex: Common Basic Principles on Immigrants Integration, 14615/04 (Presse 321), 19 November 2004.

The adoption of Common Basic Principles (CBPs) on immigrants' integration policy in European Union is based on previous European Council conclusions, particularly on the Brussels European Council conclusion of 4/5 November 2004 on The Hague Programme and the Thessaloniki European Council conclusions of June 2003 which called upon the importance to establish common basic principles. In this text integration is defined as a dynamic, two-way process of mutual accommodation by immigrants and residents of Member States. Than, it is stated that integration "*implies respect for the basic values of European Union*" and that "*basic knowledge of the host society's language, history, and institutions is indispensable to integration"*. In this context it is also emphasized the importance of education for immigrants and their descendants in order to make them active participants in the society. Moreover the Council affirms that immigrants are to be allowed to participate fully within the host society and that they must be treated equally and fairly and be protected from form of discrimination. As far as the issue of naturalization is concerned, it is stated in the last paragraph of the point N° 6, that "*the prospect of acquiring Member State citizenship can be an important incentive for integration"*. Finally, in the text it is emphasised the need to involve immigrants in the formulation of policies that directly affect them and, wherever possible, in all facets of the democratic process; *"immigrants could even be involved in elections, the right to vote and joining political parties"*.

Council of European Union, Presidency Conclusions, Tampere, 15 and 16 October 1999.

On 15 and 16 October 1999, in application of the Treaty of Amsterdam, the Tampere (Finland) European Council adopted a series of measures with a view to the establishment of an area of freedom, security and justice within the European Union. The European Council specified that this freedom should not be regarded as the exclusive preserve of the Union's own citizens, because this would be in contradiction with Europe's traditions. Accordingly, the European Council highlighted the need for the Union to develop common policies on asylum and immigration and stated that

> a common approach must be developed to ensure the integration into our societies of those third country nationals who are lawfully resident in the Union.

Moreover, in paragraph 18, it was stated that

> the European Union must ensure fair treatment of third country nationals who reside legally on the territory of its Member States. A more vigorous integration policy should aim at granting them rights and obligations comparable to those of EU citizens.

In paragraph 21, the European Council also established that "*the legal status of third country nationals should be approximated to that of Member States' nationals*". It further stated that the rights attached to a long term resident person who has legally resided for a period of time to be determined should be "*as near as possible to those enjoyed by EU citizens*". Paragraph 21 brought as examples: the right to reside, receive education, and work as an employee or self-employed person, as well as the principle of non-discrimination vis-à-vis the citizens of the State of residence. Concluding, the European Council declared its support to the objective to offer the opportunity to long-term legally resident third country nationals to obtain the nationality of the Member State in which they are resident.

1.3 Other instruments

Declaration on nationality of a Member State attached to the final Act of the Treaty on European Union, OJ C 191, 29 July 1992

In the Declaration on nationality of a Member State attached to the final Act of the Treaty on European Union, the Conference established that

> wherever in the Treaty establishing the European Community reference is made to nationals of the Member States, the question whether an individual possesses the nationality of a Member State shall be settled solely by reference to the national law of the Member State concerned. Member States may declare, for information, which are to be considered their nationals for Community purposes by way of a declaration lodged with the Presidency and may amend any such declaration when necessary.

F. Frattini (2006), 'A Common Approach for European Policy on the Integration of Migrants – European Debate', Speech/07/295, Informal Meeting of EU Integration Ministers, Postdam, 10 May, 2006.

In this speech the European Commissioner responsible for Justice, Freedom and Security Franco Frattini emphasises the need to take a number of measures to consolidate the EU approach to integration. He proposes, inter alia, the following measures: developing of *European Modules for Migrant Integration* (EMMI); developing of benchmarks and indicators so as to evaluate integration policies more effectively; promoting inter-cultural understanding within diverse societies; encouraging initiatives relating to inter- and intra-faith dialogue; and investigating the concept of active participation and citizenship. As far as this last measure is concerned, Frattini suggests launching a new, structured package, to be called *Active Participation*, which has to be set up and anchored in the legal system of EU Member States. The rights and obligations of immigrants could be derived from this new package. Fundamental rights of immigrants will not be linked to their length of stay, whereas obligations can vary on the basis of the duration of the work contract. In this way, according to Frattini, it would be possible to establish a dynamic set of rights and obligations that would evolve with the expectations of migrants around their length of stay and their changing family circumstances.

1.4 Selection of ECJ case law

1.4.1 European citizenship

Joined Cases Rhiannon Morgan v Bezirksregierung Köln (C-11/06) and Iris Bucher v Landrat des Kreises Düren (C-12/06), 23 October 2007, not yet reported.

- **Facts** Case C-11/06:

Ms Morgan is a German national who, having completed her secondary education in Germany, spent one year working as an au pair in the United Kingdom. Here she began studies in the University of the West of England in Bristol (United Kingdom). She applied to the Bezirksregierung Köln for an education or training grant for her studies in the United Kingdom, claiming in particular that courses in genetics were not offered in Germany. That application was rejected on the ground that Ms Morgan did not meet the conditions for an education or training grant for studies at an education or training establishment outside Germany. In particular because she was not continuing, in another Member State, studies pursued in Germany for at least one year.

- **Facts** Case C-12/06:

Ms Bucher is a German national, who began studies in ergotherapy in Heerlen (Netherlands), very close to the German border. She moved to accommodation in Düren (Germany), which she registered as her principal residence and from which she travelled to Heerlen for study purposes. She applied to the Landrat des Kreises Düren for an education or training grant for her studies in the Netherlands. That application was rejected on the ground that Ms Bucher had established her residence in a border area for the sole purpose of pursuing her professional education or training.

- **Findings**

The Court recognized that the restrictive effects created by the first-stage studies condition would be only justified in the light of EU law if it was based on

> objective considerations of public interest independent of the nationality of the persons concerned and if it is proportionate to the legitimate objective pursued by the provisions of national law.[46]

It was held in para. 43 that it may be legitimate for a Member State, in order to ensure that the grant of assistance to cover the maintenance costs of students from other Member States does not become an unreasonable burden which could have consequences for the overall level of assistance which may be granted by that State, to grant such assistance only to students who have demonstrated *a certain degree of integration* into the society of that State. (Emphasis added).[47] However, the ECJ considered that

> (…) the degree of integration into its society which a Member State could legitimately require must, in any event, be regarded as satisfied by the fact that the applicants in the main proceedings were raised in Germany and completed their schooling there.

In those circumstances, it is apparent that the first-stage studies condition is too general and exclusive in this respect. It unduly favours an element which is not necessarily representative of the degree of integration into the society of that Member State at the time the application for assistance is made. "It thus goes beyond what is necessary to attain the objective pursued" and cannot therefore be regarded as proportionate.[48]

Case C-192/05, K. Tas-Hagen and R.A. Tas v Raadskamer WUBO van de Pensioen- en Uitkeringsraad, [2006] ECR I-10451

- **Facts**

Two Dutch nationals living in another Member State challenged the refusal of a financial benefit for civil victims of war. The benefit was refused because it was available only for Dutch nationals residing in the Netherlands on the date on which the application for the benefit was submitted.

- **Findings**

The ECJ in paragraph 31 held that:

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[46] Para. 33. See in this regard Case C-406/04, *Gérald De Cuyper v Office national de l'emploi*, [2006] ECR I-6947, para. 42.

[47] Case C-209/03, Bidar, [2005] ECR I-2119, para. 56 and 57. Also, in para. 59 the ECJ stated that "*the existence of a certain degree of integration may be regarded as established by a finding that the student in question has resided in the host Member State for a certain length of time*".

[48] See para. 45 and 46 of the ruling.

> National legislation which places at a disadvantage certain of the nationals of the Member State concerned simply because they have exercised their freedom to move and to reside in another Member State is a restriction on the freedoms conferred by Article 18(1) EC on every citizen of the Union.

In paragraph 33 the Court further specified that

> Such a restriction can be justified, with regard to Community law, only if it is based on objective considerations of public interest independent of the nationality of the persons concerned and is proportionate to the legitimate objective of the national provisions.

The ECJ concluded that the setting of a residence criterion based solely on the date on which the application for the benefit is submitted is not a satisfactory indicator of the degree of attachment of the applicant to the society and therefore fails to comply with the principle of proportionality.

Case C-258/04, Office national de l'emploi v Ioannis Ioannidis. [2005] ECR I-8275

- **Facts**

Mr. Ioannis Ioannidis is a Greek national. Having completed his secondary education in Greece, he went to Belgium where, after three years, he obtained a graduate diploma in physiotherapy. After a vestibular course in France, he returned to Belgium and applied for a tide over allowance. The Office national de l'emploi refused a tideover allowance on the sole ground that the applicant completed his secondary education in another Member State.

- **Findings**

First, the ECJ affirmed that nationals of a Member State who are seeking employment in another Member State fall within the scope of article 39 EC Treaty and therefore can rely on the right to equal treatment. Second, it stated in Paragraph 26 that:

> According to settled case-law, the principle of equal treatment prohibits not only overt discrimination based on nationality but also all covert forms of discrimination which, by applying other distinguishing criteria, lead in fact to the same result.

In conclusion the ECJ stated that

> it is contrary to Article 39 EC for a Member State to refuse to grant a tideover allowance to a national of another Member State seeking his first employment who is not the dependent child of a migrant worker residing in the Member State granting the allowance, on the sole ground that he completed his secondary education in another Member State.

Case C-406/04, Gérald De Cuyper v Office national de l'emploi, [2006] ECR I-06947.

- **Facts**

Gérald De Cuyper, a Belgian national who had declared that he was unemployed and living in Belgium, was receiving an unemployment benefit. This benefit was subject to a residence requirement. When Belgian authorities discovered that he was residing in France they stopped the benefit and demanded for repayment of benefits already paid.

- **Findings**

The ECJ examined the compatibility of Belgian legislation on unemployment with the freedom of movement and residence rights, conferred on EU citizens by Article 18 EC Treaty. It stated, paragraph 39, that

> national legislation such as that in this case which places at a disadvantage certain of its nationals simply because they have exercised their freedom to move and to reside in

> another Member State is a restriction on the freedoms conferred by Article 18 EC on every citizen of the Union.

However, the ECJ further ruled that

> restrictions, such as those on object, can be justified, with regard to Community law, only if it is based on objective considerations of public interest independent of the nationality of the persons concerned and proportionate to the legitimate objective of the national provisions.

Therefore, a residence clause such as that applied in the case was not precluded by article 18 EC Treaty.

Case C-403/03, Egon Schempp v Finanzamt München V, [2005] ECR I-06421

- **Facts**

Following his divorce, Mr Schempp, a German national who resided in Germany, was paying maintenance to his former spouse resident in Austria. In his tax declarations Mr Schempp sought to deduct the maintenance payments, but the Finanzamt refused him the deduction. Since he considered that the German legislation in question was incompatible with Articles 12 EC and 18 EC, Mr Schempp lodged objections against the Finanzamt's assessments, but those were rejected. Mr Schempp then appealed to the Federal Finance Court, which decided to address the ECJ for a preliminary ruling.

- **Findings**

In this case the ECJ denied to the German taxpayer the right to deduct from his income tax the maintenance support to his divorced wife who lived in Austria, where the maintenance is not taxable. In Paragraph 20 the ECJ affirms that

> (…) it follows from the case-law that citizenship of the Union, established by Article 17 EC, is not intended to extend the material scope of the Treaty to internal situations which have no link with Community law.

Nevertheless, in paragraph 22 of the judgment, the ECJ affirmed that

> a national of a Member State who, like Mr Schempp, has not made use of the right to freedom of movement cannot, for that reason alone, be assimilated to a purely internal situation".

The ECJ concluded that

> since the exercise by Mr Schempp's former spouse of a right conferred by the Community legal order had an effect on his right to deduct in his Member State of residence, such a situation cannot be regarded as an internal situation with no connection with Community law.

However the ECJ did not accept the alleged breach of Article 18 EC Treaty (free movement and residence rights) invoked by the applicant. The ECJ ruled that the disadvantage experienced by the taxpayer, Mr Schempp, because he has exercised his free movement right, and thus he is subjected to a more disadvantageous tax system, does nor represent a prohibited restriction.

Case C-224/02, Heikki Antero Pusa v Osuuspankkien Keskinäinen Vakuutusyhtiö, [2004] ECR I-5763.

- **Facts**

Mr. Pusa, a Finnish national, exercised his free movement right after retirement and moved to Spain. His pension was subject to tax in Spain, however since he had debts in Finland, the

Finnish collector had seized part of his Finnish old age pension. The European Court of Justice had to examine whether the Finnish tax legislation on pensions could be applied at a disadvantage its nationals only because they had exercised their right to free movement and residence in another Member State, and hence leading to inequality of treatment.

- **Findings**

First the ECJ stated that Mr. Pusa, being an EU citizen, was entitled to the right of free movement within the Member States without being discriminated. Second, it was stated that the Finnish regulations were not in conformity with EU legislation, because they do not take into account the tax paid or payable in another EU Member State. The ECJ concluded that

> Community law in principle precludes legislation of a Member State under which the attachable part of a pension paid at regular intervals in that State to a debtor is calculated by deducting from that pension the income tax prepayment levied in that State, while the tax which the holder of such a pension must pay on it subsequently in the Member State where he resides is not taken into account at all for the purposes of calculating the attachable portion of that pension;

in the other hand,

> Community law does not preclude such national legislation if it provides for tax to be taken into account, where taking the tax into account is made subject to the condition that the debtor prove that he has in fact paid or is required to pay within a given period a specified amount as income tax in the Member State where he resides.

Case C-148/02, Carlos Garcia Avello v État belge, [2003] ECR I-11613

- **Facts**

Mr. Garcia Avello, a Spanish national, resided in Belgium with his Belgian wife and his two children. Under Belgian law, children take the surname of their father, whereas under Spanish law children take the first surname of each of their parents. The case, therefore, concerns a dispute between Mr. Avello and the Belgian State relating to the application to change the surname of the children who were dual Belgian and Spanish nationals.

- **Findings**

In paragraph 25 the ECJ expressly acknowledged that the rules governing a person's surname fall within the exclusive competence of the Member States rather than the Community. Nevertheless,

> Member States, when exercising that competence, must comply with Community law, in particular the Treaty provisions on the freedom of every citizen of the Union to move and reside in the territory of the Member States.

According to the ECJ the fact that the EU citizen's children were residing in another Member State provided them with a sufficient link to Community law enabling them to be afforded protection under article 12 EC Treaty, even though they also have Belgium nationality. Paragraph 28 states that:

> It is not permissible for a Member State to restrict the effects of the grant of the nationality of another Member State by imposing an additional condition for recognition of that nationality with a view to the exercise of the fundamental freedoms provided for in the Treaty.

Paragraph 45 stated that:

> Articles 12 EC and 17 EC must be construed as precluding, in circumstances such as those of the case in the main proceedings, the administrative authority of a Member

> State from refusing to grant an application for a change of surname made on behalf of minor children resident in that State and having dual nationality of that State and of another Member State, in the case where the purpose of that application is to enable those children to bear the surname to which they are entitled according to the law and tradition of the second Member State.

Case C-135/99, Ursula Elsen v Bundesversicherungsanstalt für Angestellte, [2000] ECR I-10409.

- **Facts**

Mrs Elsen is German national who, in 1981 moved from Germany to France. Untill 1985 she had a gainful occupation subject to compulsory insurance in Germany, and after transferring her residence to France she acquired the status of frontier worker. Her occupational activity was interrupted owing to maternity leave for the birth of her child. After a period of time Mrs Elsen no longer engaged in an occupational activity. When Mrs Elsen requested the Bundesversicherungsanstalt to take into consideration, as periods of insurance for the purpose of an old-age pension, the periods spent rearing her son, her request was refused by the Bundesversicherungsanstalt decision. Mrs Elsen's complaint was also rejected on the ground that the child-rearing had taken place abroad and the conditions on which it might be treated as child-rearing in Germany had not been fulfilled.

- **Findings**

In paragraph 33 the Court stated that

> although Member States retain the power to organise their social security schemes, they must none the less, when exercising that power, comply with Community law and, in particular, the Treaty provisions on freedom of movement for workers (…)49 or again the freedom of every citizen of the Union to move and reside in the territory of the Member States.

Then in paragraph 36 it stated that Articles 18 EC, 39 EC and 42 EC

> require that, for the purpose of the grant of an old-age pension, the competent institution of a Member State take into account (…) periods devoted to child-rearing completed in another Member State by a person who (…) was a frontier worker employed in the territory of the first Member State and residing in the territory of the second Member State.

Case C-413/99, Baumbast and R v Secretary of State for the Home Department, [2002] ECR I-07091 8.

- **Facts**

German national, Mr. Baumbast, after having pursued an economic activity in the UK, was employed by German companies outside the Community. The UK authorities refused to renew Mr. Baumbast's residence permit on the ground that he did not qualify anymore in the UK as a migrant worker and did not satisfy the conditions for a general right of residence. Since his family lived in the UK and his children went to school there, the main question was whether persons admitted into the UK as members of the family of an EC migrant worker continue to enjoy the protection of Community law when he or she is no longer a migrant worker.

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[49] The ECJ refers to the following rulings: Case C-120/95 Decker v Caisse de Maladie des Employés Privés [1998] ECR I-1831, paragraph 23, and Case C-158/96 Kohll v Union des Caisses de Maladie [1998] ECR I-1931, paragraph 19

- **Findings**

The European Court of Justice stated that the Treaty does not require that citizens of the Union pursue a professional or trade activity in order to enjoy the rights provided in the EC Treaty. In paragraph 84 of the judgment it is ruled that:

> As regards, in particular, the right to reside within the territory of the Member States under Article 18(1) EC, that right is conferred directly on every citizen of the Union by a clear and precise provision of the EC Treaty. Purely as a national of a Member State, and consequently a citizen of the Union, Mr Baumbast therefore has the right to rely on Article 18(1) EC.

By establishing the direct effect of article 18(1) EC Treaty, the ECJ has created directly effective rights enforceable in national courts.

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

- **Facts**

Mr Grzelczyk is a French national, who took up residence in Belgium where he began a course of university studies in physical education at the Catholic University of Louvain-la-Neuve. During the first three years of his studies, he defrayed his own costs by taking on various minor jobs and by obtaining credit facilities. At the beginning of his fourth and final year of study, he applied to the CPAS[50] for payment of the minimex. This was first allowed and then withdrawn when the competent federal minister refused to reimburse the CPAS on the ground that the legal requirements for the grant of the minimex, and in particular the nationality requirement, had not been satisfied.

- **Findings**

In this ruling, the ECJ stated that

> 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.

Further the ECJ specified that

> A citizen of the European Union, lawfully resident in the territory of a host Member State, can rely on Article 6 of the Treaty (now, after amendment, Article 12 EC) in all situations which fall within the scope ratione materiae of Community law.

According to the Court, those situations include those involving the exercise of the fundamental freedoms guaranteed by the Treaty and those involving the exercise of the right to move and reside freely in another Member State, as conferred by Article 18 EC. In the case under consideration the Court stated 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 in Article 6 of the Treaty.

[50] Centre public d'aide sociale

Case C-85/96, María Martínez Sala v Freistaat Bayern, [1998] ECR I-02691

- **Facts**

Mrs Martínez Sala is a Spanish national who has lived in Germany since May 1968. She is resident in Germany, unemployed and claiming a German child-raising allowance. However, because she did not possess a valid residence permit at that time, the authorities refused her request under the German social security law.

- **Findings**

In this ruling, the ECJ did not agree with this limiting condition applicable to access to child allowance. Building on articles 17 and 18 EC Treaty on EU citizenship, in conjunction with article 12 EC Treaty on non-discrimination, it extended the protection against discrimination based on nationality to every citizen of the Union. On paragraph 54 the ECJ stated that

> for a Member State to require a national of another Member State (…) to produce a document which is constitutive of the right to the benefit and which is issued by its own authorities, when its own nationals are not required to produce any document of that kind, amounts to unequal treatment.

The ECJ concluded that as a national of a Member State lawfully residing in the territory of another Member State, the appellant comes within the scope ratione personae of the provisions of the Treaty on European citizenship and is entitled to the rights and duties laid down by the Treaty, including the right not to suffer discrimination on grounds of nationality.

1.4.2 Nationality

Case C-300/04, M.G. Eman and O.B. Sevinger v College van burgemeester en wethouders van Den Haag, [2006] ECR I-08055.

- **Facts**

Messrs Eman and Sevinger, two Netherlands citizens resident in the island of Aruba, applied to be entered on the electoral register kept in the Netherlands, in order to take part in the European Parliament elections. The College van burgemeester en wethouders van Den Haag rejected that application on the basis of the national law which required at least 10 years of residence in the Netherlands. Messrs Eman and Sevinger, therefore, instituted proceedings against that decision claiming that the Netherlands electoral law infringed the Treaty provisions on Union citizenship. In this case the Court of Justice had to establish whether a Member State must grant the right to vote in European elections to persons who, although possessing its nationality, reside in an overseas territory which is covered by special association arrangements with the Community.

- **Findings**

First, in paragraph 29 the ECJ ruled that

> a persons who possess the nationality of a Member State and who reside or live in a territory which is one of the overseas countries and territories (OCTs) referred to in Article 299(3) EC may rely on the rights conferred on citizens of the Union in Part Two of the Treaty.

Second, paragraph 61 of the judgement states that

> while, in the current state of Community law, there is nothing which precludes the Member States from defining, in compliance with Community law, the conditions of the right to vote and to stand as a candidate in elections to the European Parliament by reference to the criterion of residence in the territory in which the elections are held,

> the principle of equal treatment prevents, however, the criteria chosen from resulting in different treatment of nationals who are in comparable situations, unless that difference in treatment is objectively justified.

Case C-145/04, Kingdom of Spain v United Kingdom of Great Britain and Northern Ireland, [2006] ECR I-7917

- **Facts**

In Case C-145/04 the Kingdom of Spain accused the United Kingdom of Great Britain and Northern Ireland of having infringed Community law by virtue of the arrangements made by it for the inhabitants of Gibraltar to vote in European Parliament elections. In particular, it was criticized the fact that those arrangements allowed people residing in Gibraltar to vote for the European parliament even though they do not possessed the nationality of a Member State or, therefore, citizenship of the Union. Spain claimed that by enacting the European Parliament (Representation) Act 2003, the United Kingdom has failed to fulfil its obligations under Articles 189, 190, 17 and 19 EC and under the 1976 Act concerning the Election of the Representatives of the European Parliament by Direct Universal Suffrage annexed to Decision 76/787/ECSC, EEC, Euratom of 20 September 1976 relating to the Act concerning the election of the representatives of the Assembly by direct universal suffrage. Therefore, the case called for an interpretation of the Treaty provisions on citizenship of the Union and on elections to the European Parliament, with particular reference to voting rights and the exercise of such rights.

- **Findings**

The Court in its Judgment affirmed that each Member State has competence in compliance with Community law to define the persons entitled to vote and to stand as a candidate in elections to the European Parliament. It has also added that Articles 189 EC, 190 EC, 17 EC and 19 EC do not preclude the Member States from granting that right to vote and to stand as a candidate to certain persons (with whom they have close links) other than their own nationals or citizens of the Union resident in their territory.

As regards the possible existence of a clear link between citizenship of the Union and the right to vote and stand for election, the Court pointed out that no clear conclusion can be drawn in that regard from Articles 189 EC and 190 EC which state that the European Parliament is to consist of representatives of the peoples of the Member States. The Court therefore concluded that the United Kingdom did not infringe Articles 189 EC, 190 EC, 17 EC and 19 EC by adopting a law which provides, in relation to Gibraltar, that Commonwealth citizens resident in Gibraltar who are not Community nationals have the right to vote and to stand as a candidate in elections to the European Parliament.

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

- **Facts**

Mrs Chen and her husband, both of Chinese nationality, worked for a Chinese undertaking established in China. Mrs Chen's husband travelled frequently to various Member States, in particular the United Kingdom. Mrs Chen entered the United Kingdom when she was about six months pregnant. Then she went to Belfast, where she gave birth to Catherine Zhu. Irish law on Nationality and Citizenship allows any person born on the island of Ireland to acquire Irish nationality if he or she is not entitled to citizenship of any other country. Catherine Zhu was not entitled to obtain either British nationality or Chinese nationality. Afterwards Mrs Chen and her daughter moved to United Kingdom. Here they did not dependent on United Kingdom public funds and they were covered by sickness insurance. Having been refused a long-term residence

permit, Mrs Chen and her daughter lodged an appeal. The Immigration Appellate Authority asked the Court of Justice to give a ruling as to whether Community law confers on Catherine and her mother a right to reside in the United Kingdom.

- **Findings**

In this case law, the European Court of justice ruled that the UK had an obligation to recognise a minor's (Catherine Zhu) Union citizenship status even though her Member state nationality had been acquired in order to secure a right of residence to her mother Chen, a third country national, in the UK.

In paragraph 39 of the judgment the ECJ stated that

> it is not permissible for a Member State to restrict the effects of the grant of the nationality of another Member State by imposing an additional condition for recognition of that nationality with a view to the exercise of the fundamental freedoms provided for in the Treaty.

Since Catherine Zhu had legally acquired Irish Nationality under the jus soli principle which is established by the Irish law, and had both sickness insurance and sufficient resources (provided by her mother), which are the conditions and limitations provided by Article 1(1) of Directive 90/364, she was entitled to reside for an indefinite period in UK. In such circumstances, those same provisions allow a parent who is the minor's primary carer to reside with the child in the host Member State. The ECJ stated that such a right is granted directly to every citizen of the Union by a clear and precise provision of the Treaty. As for the case in exam the ECJ concluded that

> purely as a national of a Member State, and therefore as a citizen of the Union, Catherine Zhu is entitled to rely on Article 18(1) EC.

Case C-192/99, The Queen v. Kaur, [2001] ECR I-1237

- **Facts**

Ms Kaur, who born in Kenya in 1949 in a family of Asian origin, became a Citizen of the United Kingdom and Colonies under the terms of the British Nationality Act 1948. The British Nationality Act 1981 conferred on her the status of a British Overseas Citizen. As such, she has, in the absence of special authorisation, no right under national law to enter or remain in the United Kingdom. Ms Kaur entered for the first time in the United Kingdom in 1990. In 1996 she applied for leave to remain as she already had done on several occasions before. This time Ms Kaur stated that she wished to remain and obtain gainful employment in the United Kingdom and periodically to travel to other Member States in order to make purchases of goods and services and, if necessary, to work there. The High Court of Justice of England and Wales referred several questions on the interpretation of Community law to the Court for preliminary ruling.

- **Findings**

The Court of Justice in its ruling reaffirmed the principle, already held in the *Case Michaletti and others*, according to which:

> under international law, it is for each Member State, having due regard to Community law, to lay down the conditions for the acquisition and loss of nationality.

It stated also that:

> in order to determine whether a person is a national of the United Kingdom of Great Britain and Northern Ireland for the purposes of Community law, it is necessary to refer to the 1982 Declaration by the Government of the United Kingdom of Great

> Britain and Northern Ireland on the definition of the term nationals which replaced the 1972 Declaration by the Government of the United Kingdom of Great Britain and Northern Ireland on the definition of the term nationals.

This last declaration was annexed to the Final Act of the Treaty concerning the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the European Communities. The Court highlighted that although unilateral the 1972 Declaration was intended to explain to the Contracting Parties the important issues of delimiting the scope ratione personae of the Community provisions. Therefore, according to the Court, this declaration should be considered as an instrument for the interpretation of the Treaty and for determining its ratione persone scope.

Case C-369/90, *M. V. Micheletti and others v Delegacion del Gobierno en Cantabria* [1992] ECR I-4239

- **Facts**

Michaletti is an individual with dual Argentinean and Italian nationality who arrived in Spain with a view to profit from his right to freedom of establishment as an orthodontist, which established by Article 52 of EEC Treaty. The Spanish authorities refused to grant him a residence permit as in such instances Spanish legislation refers to the last or effective residence, which in this case was Argentina.

- **Findings**

The Court of Justice ruling on the one hand confirmed that determination of nationality falls within the exclusive competence of the Member States, on the other, it went on to add that this competence must be exercised with due regard to Community law.

Paragraph 10 of the judgment stated that

> Under international law, it is for each Member State, having due regard to Community law, to lay down the conditions for the acquisition and loss of nationality. However, it is not permissible for the legislation of a Member State to restrict the effects of the grant of the nationality of another Member State by imposing an additional condition for recognition of that nationality with a view to the exercise of the fundamental freedoms provided for in the Treat.

Therefore, the principle established in this Case law is that a Member State can define the concept of national only if it has due regard to Community law and, consequently, only if it observes the fundamental rights which form an integral part of Community law.

1.4.3 Rights of TCNs

Case C-540/03, *European Parliament v. Council*, 27 June 2006, [2006] ECR I-5769

- **Facts**

On 22 September 2003, the Council adopted Directive 2003/86/EC on the right to family reunification. The European Parliament's challenge to parts of the Directive - namely Art. 4(1) final subparagraph, Art. 4 (6) and Art. 8 - argued that the provisions, which create derogations to the right to family reunification granted by the directive, would violate fundamental rights, in particular the right to family life and the principle of non discrimination.

- **Findings**

The Court of Justice ruled against the EP's arguments on all three points.

First: Art. 4(1) of Directive 2003/86 on the right to family reunification imposes precise positive obligations, with corresponding clearly defined individual rights, on the Member States, since it requires them, in the cases determined by the directive, to authorise family reunification of certain members of the sponsor's family, without being left a margin of appreciation. By way of derogation to that right its final subparagraph, partially preserves the margin of appreciation of the Member States, by permitting them, before authorising entry and residence of the child aged over 12 years, who arrives independently from the rest of the family, to verify whether he or she meets a condition for integration provided for by the national legislation in force on the date of implementation of the directive. In paragraph 62 of the judgement tha Court stated that:

> the final subparagraph of Article 4(1) of the Directive cannot be regarded as running counter to the right to respect for family life. In the context of a directive imposing precise positive obligations on the Member States, it preserves a limited margin of appreciation for those States which is no different from that accorded to them by the European Court of Human Rights, in its case-law relating to that right, for weighing, in each factual situation, the competing interests.

Second: Art. 4 (6) states that,

> by way of derogation, Member States may request that the applications concerning family reunification of minor children have to be submitted before the age of 15, as provided for by its existing legislation on the date of the implementation of this Directive. If the application is submitted after the age of 15, the Member States which decide to apply this derogation shall authorise the entry and residence of such children on grounds other than family reunification.

On this point, the Court stated in paragraph 85 that:

> It does not appear that the contested provision infringes the right to respect for family life set out in Article 8 of the ECHR as interpreted by the European Court of Human Rights" because "this provision cannot, however, be interpreted as prohibiting the Member States from taking account of an application relating to a child over 15 years of age or as authorising them not to do so.

However, the Court added in paragraph 88 that:

> while Article 4(6) of the Directive has the effect of authorising a Member State not to apply the general conditions of Article 4(1) of the Directive to applications submitted by minor children over 15 years of age, the Member State is still obliged to examine the application in the interests of the child and with a view to promoting family life.

As regard the allegation of discrimination, the the Court stated in paragraph 89 that:

> it does not appear, a fortiori, that the choice of the age of 15 years constitutes a criterion contrary to the principle of non-discrimination on grounds of age.

Third: Art. 8 of the directive provides that Member States may require maximum two years of lawful residence in the territory for the sponsor before having family members. However by way of derogation, it establishes the possibility for Member State, when the national law takes into account its reception capacity, to expand to three years the waiting period between the application for family reunification and the and the issue of a residence permit. In paragraph 98 the Court stated that this provision does not run counter to the right to respect for family rights because

> it does not have the effect of precluding any family reunification, but preserves a limited margin of appreciation for the Member States by permitting them to make sure that family reunification will take place in favourable conditions, after the sponsor has

> been residing in the host State for a period sufficiently long for it to be assumed that the family members will settle down well and display a certain level of integration.

Case C-157/03, Commission v Spain, ECR [2005] I-2911.

- **Facts**

The proceedings originated from two complaints submitted to the Commission by Community nationals exercising the right of freedom of movement conferred on them by the EC Treaty. Their spouses, who were third-country nationals, were refused a residence permit in Spain. The reason given was that they should first have applied for a residence visa at the Spanish consulate in their last country of domicile.

- **Findings**

At paragraph 38 of the judgment, the Court reiterated that the right to enter the territory of a member state by a third-country national who is the spouse of a national of a member state derives from the family relationship alone. It is stated that

> the refusal to issue such a permit to a third-country national who is a member of the family of a Community national (…) constitutes a measure contrary to the provisions of Directives 68/360, 73/148 and 90/365.

Further, the Court stated that the Kingdom of Spain also failed to fulfil its obligations under Directive 64/221 which established that that a residence permit should be issued as soon as possible and in any event not later than six months from the date on which the application for that permit was submitted.

Case C-60/00, Mary Carpenter v Secretary of State for the Home Department, [2002] ECR I-6279.

- **Facts**

Mrs. Carpenter is a national of the Philippines married to a British citizen. She applied for a permit to stay in the UK but her application was rejected and a deportation order was issued. In this case Mrs. Carpenter was unable to benefit from a right to reside in the UK based on Directive 73/148 as it was an internal situation which had no link with Community law. In fact, since her husband was from the UK the cross border dimension was absent.[51]

- **Findings**

According to the ECJ Mrs. Carpenter deportation would have represented an obstacle to her husband's right to provide and receive services in other member states, since Mrs. Carpenter was looking after their children. In paragraphs 29 and 30 the Court stated that since

> a significant proportion of Mr Carpenter's business consists of providing services, for remuneration, to advertisers established in other Member States, (…) such services come within the meaning of `services' in Article 49 EC (…) Mr Carpenter is therefore availing himself of the right freely to provide services guaranteed by Article 49 EC.

Further, in paragraph 39 the ECJ ruled that:

> It is clear that the separation of Mr and Mrs Carpenter would be detrimental to their family life and, therefore, to the conditions under which Mr Carpenter exercises a fundamental freedom. That freedom could not be fully effective if Mr Carpenter were

[51] According to art. 49 EC "restrictions on freedom to provide services within the Community shall be prohibited in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended".

> to be deterred from exercising it by obstacles raised in his country of origin to the entry and residence of his spouse.

Case C-459/99, Mouvement contre le racisme, l'antisémitisme et la xénophobie ASBL (MRAX) v Belgian State, [2002] ECR I-6591

- **Facts**

The Movement Against Racism, Anti-Semitism and Xenophobia (MRAX) challenged the legality of a Circular of the Ministry of Interior and Justice of 28 August 1997 concerning the procedure for publication of banns of marriage and the documents which must be produced in order to obtain a visa for the purpose of contracting a marriage in the Kingdom of Belgium or to obtain a visa for the purpose of reuniting a family on the basis of a marriage contracted abroad. This circular was contested on the ground that it contravened the community Directives on the rights of movement and residence and the principle of respect of family right which is protected by community law.

- **Findings**

On the bases of Carpenter's case, the European Court of Justice highlighted the relevance of ensuring protection of family life of community nationals. In this judgment the Court ruled that a number of state practices are disproportionate and unlawful under Community law. It steted in paragraph 61 that:

> it is in any event disproportionate and, therefore, prohibited to send back a third country national married to a national of a Member State where he is able to prove his identity and the conjugal ties and there is no evidence to establish that he represents a risk to the requirements of public policy, public security or public health.

In the following paragraph, the ECJ further ruled that according to the principle of proportionality, a Member State is not allowed to send back at the border a third country national who is married to a national of a Member State and attempts to enter its territory without being in possession of a valid identity documents if he may prove his identity and the conjugal ties and there is no evidence to establish that he represents a risk for of public policy, public security or public health. Paragraph 91 states that

> … a Member State may neither refuse to issue a residence permit to a third country national who is married to a national of a Member State and entered the territory of that Member State lawfully, nor issue an order expelling him from the territory, on the sole ground that his visa expired before he applied for a residence permit.

Finally the ECJ established that:

> … a foreign national married to a national of a Member State has the right to refer to the competent authority …a decision refusing to issue a first residence permit or ordering his expulsion before the issue of the permit, including where he is not in possession of an identity document or where, requiring a visa, he has entered the territory of a Member State without one or has remained there after its expiry.

1.5 List of primary sources

1.5.1 Key EU Acts/Documents

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Case C-503/03, [2006] ECR I-1097 – Commission v Spain;

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Case C-274/96, [1998] ECR I-7637 – Bickel und Franz;

Case C-416/96, [1999] ECR I-1209 – Nour Eddline El-Yassinin v Secretary of State for the Home Department;

Case C-43/93, [1994] ECR I-3803 – Van der Elst;

Case C-369/90 [1992] ECR I-4239 – Mario Vicente Micheletti and others v Delegación del Gobierno en Cantabria

2. Secondary Sources: Books and articles

2.1 European Citizenship and Nationality

A /

Apap, J. (2002), *Freedom of movement of persons: A practitioner's handbook*, The Hague: Kluwer Law International.

In this book the author interpret the legislation at EU level dealing with free movement of those persons who reside in European Union for more that three months. First, she highlights that in order to benefit from the right of free movement within the EU for a period in excess of three months one must firstly be a national of a Member State. Than she remarks that the acquisition and loss of nationality remains under the competence of the Member States, although they must carry this out "in respect of the EC law".[52] Moreover EU citizens must belong to one of the following categories which who can clime such rights: workers, self-employed seeking establishment, service provider and receivers, students, retired persons, and residual category of those capable of financially supporting themselves. The author points out that even thought the right of residence has ceased to be reliant on the status of worker it is still dependent by financial self-sufficiency. She then analyses the basic provisions on the free movement of persons which are laid down in Art. 39 EC Treaty. Focussing on Art. 39(2), she underscores that it prohibits any discrimination on the ground of nationality and that according to the ECJ it covers both direct and indirect discrimination. However, Art. 39 (4) provides that Member States may exclude certain posts from the non discrimination principle, i.e. employment in the public sector.

The author addresses a chapter of her book to the issue of the status of third country nationals. According to her the treaty of Amsterdam, since its entry into force in 1999, represents a major development in overall JHA policy. She considers that in the provisions of the treaty of Amsterdam, third country nationals have finally found their place in community law. She refers to TCNs which do not belong to the "privileged categories of TCNs who already benefited from the protection of community law: family members of EU national; nationals of states connected to the EU by association of cooperation agreements; workers of companies on whose behalf they carry out services in another Member State. Building on the analysis of the material scope of Articles 61, 62 and 63, the author concludes that despite the significant progress that the treaty of Amsterdam represents for the European Union, it is only the beginning of a move towards a genuine European immigration policy. Moreover, taking as example the fact that TCNs are excluded from political rights, she highlights that inequality of treatment between EU citizens and TCNs (in particular non-privileged TCNs), even if it is far from being a general rule, is established by the treaty of Amsterdam as a fundamental characteristic of Community law.

Adinolfi, A. (2005), Free Movement and Access to Work of Citizens of the New Member States: The Transitional Measures, 42 *CMLRev*.469

In this article the author focuses on the two sets of transitional provisions which were included in the Act of Accession in 2003[53]. One set of transitional provisions aimed at delaying free movement of persons among new and old Member States, the other set aimed at allowing old

[52] This principle was established in Case C-369/90 [1992] ECR I-4239 – Mario Vicente Micheletti and others v Delegación del Gobierno en Cantabria.

[53] Act of Accession of Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and the Slovak Republic, Athens, 16 April 2003, in O.J. 2003, L 236.

Member States to restrict access to their labour markets on the part of nationals of the acceding Central and Eastern European[54] countries for a period not exceeding 7 years from the date of accession[55].

As for the first set of transitional measures the author explains that although new Member State are required to apply the Schengen *acquis* in full from the date of accession, the lift of border controls with old Member States is subordinate to the attainment of adequate control of external borders. Consequently, during the transitional period citizens of new Member States will be subject to entry controls at the borders with other Member States. However, the author highlights that from the date of accession citizens of new Member States are entitled to free movement under the conditions laid down in the EC Treaty and in the secondary Community legislation. She points out that Art. 18, granting the right to move and reside freely within the territory of the Member States, is not subject to any derogation by the Act of Accession. She stresses that citizenship of the Union implies that only strict limits apply to the free movement of persons and makes reference to the ECJ ruling in Baumbast case[56].

With regard to the free movement of workers, the Annex concerning the eight Central and Eastern European countries laid down provisions designed for progressively reducing the old Member States power to adopt restrictive measures. The author offers a detailed analysis of those provisions, commonly referred as "2+3+2 arrangement". She underscores that no co-ordination is established in the Act of Accession between derogations concerning the free movement of persons and that regarding access to work. According to her, this may cause an increase in illegal employment if internal borders are lifted before the attainment of the liberalization of access to labour market. Moreover, according to the author, old Member States' wide powers in deciding whether to close their labour markets to job seekers of new Member States conflict with the building of a Community migration policy.

The author concludes that the wide discretion conferred on old Member States makes the Commission's role in monitoring the application of the derogation established by the Act of accession particularly relevant. She stresses that infringement proceedings should be inflicted against Member States which make an unjustified recourse to the derogation clause. She highlights that a relevant contribution might derive from the ECJ interpretation of the scope and content of derogations admitted by the Act of Accession. The Court would need to balance the need for transitional measures and the right of free movement conferred to all citizens of the Union.

B /

Balibar, E. (2004), We People of Europe? Reflection on transnational citizenship. Princeton University Press. Princeton and Oxford.

In the first chapter of this book the author addresses the question whether Europe as future political, economic, and cultural entity needs a "fictive identity". He has used the expression "constitution of a fictive ethnicity" to designate the nationalization of societies and peoples and thus of cultures, languages, genealogies. In particular, he answers the question whether Europe, through this kind of construction, can give meaning to its own citizenship (that is, to the new

[54] Transitional provisions concerning the access to labour market only apply to 8 Eastern and European Central States, not Cyprus and Malta.

[55] 1 May 2004

[56] Case C-413/99, [2002] ECR I-7091 – Baumbast und R v Secretary of the State for the Home Department, para. 91.

system of rights that it must confer on the individuals and social groups it includes). According to him, on the one hand, the answer is "probably yes", in the sense that Europe must construct a representation of its identity capable of becoming part of both objective institutions and individuals' imaginations; on the other hand the answer is not, in the sense that the closure characteristic of national identity is as profoundly incompatible with the reality of globalization as it is with the idea of a "European right to citizenship". The author highlights that today every possible development of the project of a democratic European state is obstructed by the emptiness of every European social movement and of all social policies and the authoritarian establishment of a border exclusion for membership in Europe.

In the second chapter the author conduct a critical examination of the relation between nation, "nation-form" (or national social formation), and nationalism. He emphasizes that Nations and nationalities are institutions that last a certain time, that span at least several generations. It is stressed that they are unified by sentiments, collective memories, political ideologies economic interests, ect. The nation-form is a type of "social formation", that is, a mode of combination of economic and ideological structures. The author underscores that the nation-form is not itself a community, but the concept of a structure capable of producing determinate "community effects". As for the nationalism, the author defines it as the organic ideology that correspond to the national institution, and this institution rests upon the formulation of the rule of exclusion, of visible and invisible borders, materialized in laws and practices. He concludes that exclusion is the very essence of nation-form.

In the third chapter the author emphasizes how foreigners are directly concerned by the direction that the evolution of the status of "citizen" can take at national and transnational level. Taking the case of France as model, he focuses on the repressive practices and discourses which he calls "national republicanism". He points out the several domains in which the effects of national republicanism are direct felt; i.e. the functioning of the justice, where there has come to be a practice of "double jeopardy", consisting in the addition of measures of expulsion to penal condemnations falling upon individuals of foreign nationality. The author also highlights the feature of nationalism which demands a specific stigmatization of the foreigner. Accordingly, he underscores that the equation instituted by modern states between citizenship and nationality begins to function against the grain of its democratic signification. Nationality, it is stressed, does no longer appear as the historical form in which collective liberty and equality are constructed, but is build on the essence of citizenship, the absolute community that all others must reflect.

He brings the example of France to explain the recent general phenomenon of "recolonization of immigration". It is emphasized that whereas the colonial subject was considered as a national who did not enjoy the plentitude of rights of the citizens, the immigrant worker is considered an alien more or less integrated into French society, partially shearing rights and duties of citizenship, only on the condition of respecting the terms of a "contract" whose term he can not negotiate by himself (as the way in which the establishment of naturalization and residence provision demonstrates). The author concludes with a discussion of the criterion that the inclusion of immigrant workers in an enlarged and reinvented citizenship represents for democracy. He proposes the alternative of a "droit de cite", which is a right of entry and residence of foreigners and, in particular, of immigrants. "Droit de cité" subtends and prepares citizenship; it corresponds to a resolute liberalization of rights of residence and labor. As a way of conclusion the author emphasizes that "droit de cité" and, beyond it, citizenship are constructed from below. In this context, the struggles of *sans-papiers* are interpreted as privileged moments in the development of *active citizenship.*

Bauböck, R., E. Ersboll, K. Groenendijk and H. Waldrauch (eds) (2006), ***Acquisition and Loss of Nationality, Volumes I and II: Comparative Analysis – Polices and Trends in 15 European Countries*****, IMISCOE Research, Amsterdam University Press.**

The two volumes collect the results of a study conducted in the framework of the EU-funded project NATAC (the acquisition of nationality in the EU Member States). A network of thirty researchers conducted an in-depth analysis of nationality laws in all fifteen pre-2004 member states of the European Union. In the Volume I detailed comparisons of the citizenship laws of all fifteen nations are presented. It consists of, comparative reports, which focus on specific modes of acquiring and loosing nationality, on nationality statistic, on European trends concerning nationality legislation and the status of "denizenship" and "quasi-citizenship". Both statuses relate to non citizens who are treaded almost as citizens, but do not enjoy full citizenship in the country of residence.[57] Volume II contains individual studies of each country's laws. Here the chapters collected analyse the internal dynamics of nationality policy in each Member State.

While some authors consider that the legal status of nationality has lost in importance, as a result of the European Citizenship and of the rights to third country nationals, this study found that naturalization and loss of nationality are still at the core of sovereignty of the nation state. Moreover, the right to vote and an unrestricted right to family reunification and free movement in the European Union are still a privilege of nationals of the Member States. The authors highlight that acquiring permanent residence status has become more difficult in several Member States mainly as result of longer residence requirements, new of tougher integration conditions (such as language requirements) and the imposition of other barriers.[58] Furthermore it is emphasized the fact that holding the nationality of one Member State is a precondition to access to the Union citizenship and to the rights which are related to it. The lack of common standards concerning the conditions for access across Member States causes several problems. Since residence period for naturalization vary greatly across Member States and are not added up, access to Union Citizenship by mobile individuals may even be impeded.

In the concluding chapter of the first Volume, the authors present recommendations in matters of nationality addressed to Member States and European Union, which are grounded in few basic principles. The first one is the principle of democratic inclusion. In view of that, to the authors affirm that long-term and their descendants should have access to nationality in order to promote their overall integration into society. The second principle, proposed by the authors, is that of stakeholding; states should recognise that most of migrants are stakeholders in two different countries and therefore dual nationality should be tolerated not merely when it emerges at birth but also through naturalisation. Thirdly, nationality laws should fully take into account human rights principles, which also require that the rule of law and provisions of due process be fully applied to naturalisation and loss of nationality.

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[57] Further specification of the categories of "denizen" and "quasi-citizenship" see description of chapter 9: Groenendijk, K. (2006), 'The Legal Integration of Potential Citizens: Denizens in the EU in the final years before the implementation of the 2003 directive on long-term resident third country nationals'

[58]The authors pointed out that: in the Netherlands and UK the fees to be paid for an application for the permit have been raised considerably; in France and the Netherlands it has been made more difficult for family members of nationals and for family member of third country national with permanent residence status to obtain the permanent status.

Bauböck, R., A. Kraler, M. Martiniello and B. Perchinig (2006), Migrants' Citizenship: Legal Status, Rights and Political Participation, in R. Penninx, M. Berger and K. Kraal (eds), *The Dynamics of International Migration and Settlement in Europe: A State of the Art,* IMISCOE Joint Studies, Amsterdam University Press, pp. 65-98.

In this contribution the authors address the main steps that have been developed toward the emergence of citizenship as an important topic on migration and migrant integration research and legal literature. They provide a 'state of the art' and research agendas as regards citizenship status, rights and obligations, access to nationality and migrant citizenship in the EU. They identify large gaps in research on migrants' citizenship and a number of fields calling for further research.

As regards what they denominate as "migrant citizenship in the European Union", it is stressed the way in which social scientists have been fascinated by the question how

> ..a supranational union of states engaged in building an area of free movement deals with member states prerogatives in determining the admission and rights of third country nationals.

Three main research tasks are identified in this area: First, the evolution of EU citizenship as a bundle of rights for EU citizens; Second, access of third country nationals to this status; and third, the benefits inherent to a harmonisation of fundamental rights and anti-discrimination legislation for immigrants and "the emergence of an alternative status of residential or civic citizenship for long-term resident third country nationals disconnected from their nationality".

In 1992 the Treaty of Maastricht established citizenship of the Union as one of the three pillar of European political union. According to the authors, these provisions created a new type of citizenship which is in somehow related to the pattern of nested citizen in federal states. They focus on a broad political conception of citizenship that refers to individual membership, rights and participation in a polity. Union citizenship does not recognize the full range of political rights, since voting rights in another member state are only granted at European and local level. The authors remark that the content of rights attached to the EU citizenship, has remained unchanged since 1992. However, the say, it should be devoted more attention to the role that the ECJ is playing in the development of Union citizen. For instance, they see in the *Grzelczyk ruling*[59] the indication that in the absence of consensus at the political level, the ECJ's interpretations of Union citizenship might trigger a further evolution of the concept.

It is also highlighted how in migration contexts citizenship marks a distinction between members and outsiders, according to their relations with different states. In this way, citizenship is seen as a discriminating concept based on quasi-contractual relation between an individual and a collectivity. They examine how citizenship at European level has affected the status of third-country nationals. Three major research tasks are underlined in this field: a first one focuses on the evolution of the EU citizenship itself as a bundle of rights for Union citizens who exercise their rights of free movement; a second one is about the access to third-country nationals to this status; a third one concerns the benefits of a general harmonization of fundamental rights and anti-discrimination policies for third-country nationals and about the coming out of an alternative status of civic citizenship for long-term third-country nationals detached from their nationality.

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[59] Case C-184/99, [2001] ECR I-6193 – Rudy Grzelczyk v CPAS. In paragraph 31 it is stated that: *"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".*

As far as the access to Union citizenship is concerned the authors stress that this falls outside the Union competence. Indeed the acquisition and loss of the EU citizenship is indirectly regulated by member states' nationality laws, which, it is remarked, differ dramatically from each other. However the author emphasize that in cases such as *Micheletti*[60] or *Chen*[61] the ECJ has stated that the competence of each member state in this field should be exercised with due regard to community law. As far as the harmonization of the legal status and rights of third-country national is concerned, the authors emphasize its importance, since they consider that the EU failed to use its own citizenship as an instrument for political integration of third country nationals. In this context they focus on the new concept of "civic citizenship" which was introduced for the first time in 2000 by the European Commission[62]. They conclude that so far civic citizenship remained an aspiration more than a manifest development.

C /

Carlier, J.Y. and E. Guild (eds) (2006), *The Future of Free Movement of Persons in the EU*, Collection du Centre des Droits de L'Homme de la'Université Catholique de Louvain, Brussels: Bruylant.

Building on the idea that to predict the future of free movement of persons it is necessary to understand its past, this book opens with an overview on the development of free movement from the Treaty of Rome in 1957. The authors stresses that this development has been characterised by considerable quantitative and qualitative enlargement brought about by revisions of the texts and their interpretation by the European Court of Justice.

This book focuses on the future of free movement of persons in the European Union in particular in light of Directive 2004/38 on the right of citizens of the union and their family members to move and reside freely within the territory of the Member States. On the one hand, the examination of the provisions of the directive shows many positive developments which are the result of the codification of the jurisprudence of the Court of Justice. On the other hand it highlights two lacunae: the reluctance to recognize new forms of union (homosexual and partnership) and the permanence of forms of "reverse discrimination" related to situations which are wholly internal and therefore excluded of the field of application of the protection of family life. However, the overall assessment of the directive, made by Costança Urbano de Sousa (one of the author of this book), is positive. First, it is shown that the directive, by codifying the existent Community law, has created a more transparent set of provision of one of the main Union citizenship fundamental right: the right of free movement and residence in the union territory. Second, it is pointed out that the personal scope of the free movement right is extended to family member who are third country nationals. Third, that the directive has brought a simplification of the procedures concerning the issuance of a permanent residence permit to family members.

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[60] Case C-369/90 [1992] ECR I-4239 – Mario Vicente Micheletti and others v Delegación del Gobierno en Cantabria.

[61] Case C-200/02, [2004] ECR I-9925 – Zhu and Chen v Secretary of the State for the Home Department.

[62] COM (2003) 336 final:22: "*The legal status granted to third country nationals would be based on the principle of providing sets of rights and responsibilities on a basis of equality with those of nationals but differentiated according to the length of stay while providing for progression to permanent status. In the longer term this could extend to offering a formof civic citizenship, based on the EC Treaty and inspired by the Charter of Fundamental Rights, consisting of a set of rights and duties offered to third country nationals*".

In the chapter titled "Citizenship and Fundamental Rights" the author, Elspeth Guild, offers an analysis of citizenship of the European Union from the perspective of its relevance to the ambitions and struggles of those upon whom it has been conferred. The author therefore looks at the at the cases which have come before the European Court of Justice in which individuals have sought to rely on their citizenship. This approach allows an understanding of the points of friction which arise between the authorities of the Member States and the citizens of the Union. The author highlights that often the right to move and reside is intertwined with the right to access to benefits. Among the key decisions of the ECJ on social benefits as citizenship rights the author examines the following ECJ rulings: Grzelczyk[63], D'Hoop[64], Collins,[65] Trojani[66], Bidar[67]. In these cases the right that citizens of Union seek is equal treatment with nationals of the host Member State as regards social rights. By presenting the key cases Baumbast[68] and Chen[69], the author highlights a second field of struggle as regards the contents of citizenship rights between Union citizens and Member States, which concerns the right to move and reside itself where third country national family members are involved.

In this contest she emphasizes that until the entry into force of the Directive 2004/38, third country national family members of EU citizen principals had no way to secure an independent residence right in the event of divorce or the departure of the principal from the host Member State. The directive itself will solve this lacuna though the provision that third country national family members will only acquire independent residence right after five years residence. From the analysis of the above mentioned rulings the author highlights, inter alia, that the ECJ has shown itself most clearly favourable to citizens vis-à-vis the exclusionary ambitions of the Member States in the case of third country national family members than in respect of social benefits.

Carrera, S. (2005), "What does free movement mean in theory and practice in an enlarged EU?", *European Law Journal,* Vol. 11, No. 6, November, pp. 699-721.

The purpose of this article is to review the main challenges to the principle of free movement of persons in theory and practice in an enlarged European Union. The right to move freely represents one of the fundamental freedoms of the internal market as well as an essential political element of the package of rights linked to the very status of EU citizenship. The scope ratione personae and the current state of the principle of free movement of persons is assessed by looking at the most recent case law of the Court of Justice and the recently adopted Directive on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States. The author analyses the hidden and visible obstacles to free movement of persons in Europe and proposes possible measure to overcome to overcome these barriers and to make free movement and residence rights more inclusive. This article addresses these issues along with the following questions: Who are the beneficiaries of the free movement of persons in an enlarged Europe? What is the impact of the recent legal developments in the freedom of movement dimension, such as the European Court of Justice case law and the new Directive? And to what extent are pro-security policies such as the Schengen Information

[63] C-184/99, Grzelczyk, [2001] ECR I-6193

[64] C-224/98, D'Hoop, [2002] ECR I-6191

[65] C-138/02, Collins, [2004] ECR I-27/03

[66] C-456/02, Trojani, [2004] ECR I-7573

[67] Case C-209/03, Dany Bidar, [2005] ECR I-2119

[68] Case C-413/99, Baumbast, [2002] ECR I-7091

[69] Case C-200/02, Zhu and Chen, [2004] ECR I-9925

System II and an enhanced interoperability between European databases fully compatible with the freedom of movement paradigm?

From this analysis, the author concludes that the general rules on free movement rights under EC law continue to be developed largely by the proactive jurisprudence of the Court of Justice as well as by the EU legislative machine. However, it is noticed, the free movement of persons is still economically linked to a great extent. He envisages that a correct and rapid transposition at the national level of the new Directive 2004/38/EC would be a very positive step towards the achievement of a full right to move throughout the EU. However, the author considers that it would be also needed a full transition from EU common-market citizen to Union citizen. Finally, he states that the restrictive transitional periods applied to workers coming from the CEECs should also be abolished in conformity with the right of equal treatment and non-discrimination on grounds of nationality, as enshrined by the EC legal framework and the proactive case law of the Court of Justice.

Castles, S. and Davidson, A. (eds) (2000), *Citizenship and Migration: Globalization and the Politics of Belonging*, Routledge: New York.

"The membership of individuals in modern democratic societies is marked by the status of citizenship". Those falling within the juridical category of "citizens" enjoy a package of civil, political and social rights which are balanced with a series of obligations to the Community and the state. The authors highlight that even though the democratic state needs the participation of all its members, most nation-states have had groups not considered as "capable" of belonging. Therefore, those groups were either excluded from privileges and rights attached to citizenship status or "*forced to go through a process of cultural assimilation in order to belong*". The author also point out that discrimination, based on race, ethnicity, gender, class, religion or other criteria, has on represented another barrier preventing the achievement of a full citizenship. Because of a series of "modern challenges" linked with globalization, the nation-state feels that its power over national culture is being eroded. "*Porous boundaries and multiple identities undermine ideas of cultural belonging as a necessary accompaniment to political membership. There are increasing numbers of citizens who do not belong*".

The authors argue that basing the institution of citizenship on singular and individual membership in a nation-state is no longer adequate, since the nation-state itself is being dramatically eroded. They call for "new approaches to citizenship" which take duly into consideration new forms of identities and plural feelings of belonging. It is emphasised that in order to ensure democracy belonging cannot be only based on "being part of the national community". Then, the book identifies as a fundamental challenge towards that goal being able to find the necessary conditions for "*cross-cultural communication and the development of a new sense of community*". "*One aim must be to dissolve the nation part of the nation-state and to replace it with a democratic state based on open and flexible belonging*". The authors underline the need to develop new approaches to citizenship which may achieve both individual equality and the recognition of collective difference. These new approach are also in need to rethink the rights attached to this status. While considering how immigrants can become citizens, that is the rule for naturalization and for access to citizenship through birth and residence, the authors analyse the emergence of forms of "quasi-citizenship" or "denizenship". Through these two ways immigrants gain many of the rights of citizenship without formal membership.

According to the authors, while there are signs of convergence of rules for access to citizenship in western countries, yet actual practices still differ significantly. Finally, the authors look at what it means to be a citizen using T. Marshall's theory about civil, political and social rights. The situation of various groups varies considerably and is strongly linked to processes of

racialization. It is emphasized that “globalization leads to increasing inequality and to new forms of social exclusion that affects to a great extent mainly “minorities”. The authors argue that it is necessary to add two additional categories of rights (gender and cultural rights) in order to achieve full citizenship for members of “minorities” and address the way in which “marginalized groups” (immigrant and ethnic minorities) hold rights in formal terms as well as in practice.

Cordini, G. (2003), "*La cittadinanza europea: profili di diritto costituzionale comunitario e comparator*" In: Il Politico 2003, v. 68, n. 1, gennaio-aprile, p. 65-101.

The author in the first part of the essay reconstructs the gradual development of "European citizenship" from freedom of movement to EU citizenship status. The author focuses on the distinction between "EU citizen" and "non-EU citizen" as this bears on free movement and the right of settlement. In the second part of this paper, the notion of "EU citizenship" is examined in the light of certain key steps: the recognition of fundamental rights as a foundation for European integration; the subscription of most of the member states to the Schengen agreement and the consolidation of the common external border; and the inclusion of "EU citizenship" in the European Treaty and the European charter on fundamental rights. The author considers the current phase as transitory, given that the Convention on the future of Europe has seen the setting in motion of a constitutional basis of the Union, bringing in questions concerning the concept of "European citizenship".

Craig, P., and De Búrca, G. (2008), EU LAW, Text, Cases, and Materials, forth edition, Oxford University Press.

The authors address in one of the chapters of this really exhaustive book on EU law the citizenship of the European Union. They highlight that the concept of European citizenship introduced by the Maastricht Treaty represented a key part of the symbolic move from an economic community to a political union. The authors offer an analysis of citizenship provisions which are contained in articles 17-22 EC. Moreover they present a detailed examination of the significant ECJ rulings which show a progressive interpretation of some of the rights of citizenship by the ECJ. For instance they focus on: *Baubast* and *Chen* rulings through which the ECJ established that the rights of free movement and residence deriving from Art. 18(1) EC Treaty are directly applicable and that the conditions and limitations that States may impose on these rights must be interpreted and applied in a proportionate manner which does not unduly restrict their exercise; the cases of *Sala* and *Trojani* (non workers), *Grzelczyk* (student), and *Collins* (job seeker) where the ECJ interpreted articles 17 and 18 EC in a way which has created new substantive rights for EU nationals, in particular for those who are neither economically active nor economically self-sufficient.

Notwithstanding the relatively progressive interpretation of some of the right of citizenship offered by the ECJ, the authors highlight that the limits of the EU citizenship as it has been formalized in the Treaty have been the subject of adverse comment: i.e. objection to the symbolism of super statehood; concern over the Member State reluctance to enforce the which have been created; disappointment at the limited take-up of the newly created electoral rights, etc. However, they underscore that there are other aspect of EC law which are potentially significant dimension of citizenship such as the non-discrimination clause in Art. 13 EC Treaty. Furthermore they conclude that it is important to look beyond the formal provision on citizenship to see how and to what extent EU citizens are constituted as member of the EU political entity.

The authors address central legal issues that arise in the context of the free movement of workers such as the scope of Art.39 - the meaning accorded to “worker”, the right of

intermediate categories such as "job seeker", the kind of restriction which Member States may justifiably impose of workers and their families - and the rights which family members enjoy under Community law. They highlight the tensions between the economic and social dimension of the free movement of workers: the former looking at workers as mobile units of production of the EU single market; the latter focusing on the fact that EU workers are human beings, exercising a personal right to live in another State and to enjoy equality of treatment for themselves and their families.

The development of the law governing the free movement of persons has been influenced by the creation of the EU citizenship. They present an analysis of the Directive 2004/38 on the rights of movement and residence of EU citizens, which includes worker and self-employed persons, and their families, as well as students and all other kinds of non-economically active EU nationals. It is underscored that the directive has consolidated, simplified, and replaced most of the prior legislation on the subject. According to the authors, the Directive reflects the general approach of the ECJ in that it strengthens the substantive rights and procedural protection for migrant workers, expands slightly on the category of the protected family members, and tightens up the circumstances in which states may derogate from or restrict free movement rights[70]. They emphasize that the Directive has introduced the right of permanent residence for EU citizens and their families (including TCNs) who have resided lawfully for a continued period of five years in the host state. Another the innovation of Directive 2004/38, which replaced Directive 64/221, is to introduce three different level of protection against expulsion on these grounds: a general level of protection for all individual covered by EU law; an advanced level of protection for all individuals who have already gained the right of permanent residence on the territory of a Member States; a super-enhanced level of protection for minors of for those who have resided for ten years in a host state.

D /

De Groot, G.R. (2004), Towards a European Nationality Law – Vers un droit européen de nationalité, Inaugural lecture delivered on 13 November 2003 on the occasion of the acceptance of the Pierre Harmel chair of professeur invité at the University of Liège, Unigraphic, University of Maastricht.

The core part of this inaugural lecture addresses the question whether the introduction of European citizenship has consequences for the autonomy of the Member States in matters of nationality. The Draft Treaty establishing a constitution for Europe states that "*Every national of a Member State shell be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship; it shall not replace it*". The author highlights that this provision repeats, in slightly different wording, Art. 17 (1) EC Treaty, which states: "*Citizenship of the Union shall complement and not replace national citizenship*". De Groot analyses the precise relationship between the terms "nationality" and "citizenship", even through a comparison of the different language versions of the EC Treaty and the Draft Constitution. He explains that "*in the context of the EC Treaty and the Draft Constitution 'nationality' refers to the formal link between a person and a state, irrespective of how this link is called under national law, whereas 'citizenship of the Union' refers to the newly created status in Community law"*.

Afterwards, it is argued that the statement of Art. 17 EC Treaty and Art. 8 of the Draft Constitution that "all nationals of a Member State are European citizens" is incorrect, because some nationals of Member States do not have this status. As demonstration, the author brings

[70] Articles 27-33 of the Directive 2004/38 govern the restrictions on the right of entry and residence which Member States may impose on grounds of public policy, security, or health.

the case of United Kingdom, who already in occasion of its accession to the EC in 1972 issued a special declaration defining who is British for the Community purposes. He specifies that according to this declaration,[71] some categories of British nationals - in particular most 'British Dependent Territories Citizens', 'British Overseas Citizens', 'British Subjects without Citizenship' and 'British Protected Persons' - are excluded from European citizenship.

Concluding, De Groot highlights that European Union's influence on matters of immigration law is growing. According to him, as the relationship between immigration regulations and nationality law is very close, it is quite likely that the Union will be tempted to influence naturalisation policies as well. If that is the case, the author suggests that, the European Union it should cooperate with the Council of Europe, taking advantages from its experience and achievements (in particular the European Convention on Nationality, which was concluded in Strasbourg on 6 November 1997).

G /

Guild, E. (2007) ***Citizens Without a Constitution, Borders Without a State: EU free Movement of Persons,*** **in A. Baldaccini, E. Guild, H. Toner (eds),** ***Whose Freeedom Secuity and Justice? EU Immigration and Asylum Law and Policy,*** **Hart Publishing: Oxford, pp 25-55**

In this chapter the author examines the consequences of the failure to provide a strong constitutional base for developments on three aspects of EU law on movement of persons: the rights and complaints of citizens of the Union; the legal relationship of citizens and third country nationals; the transformation of the law on the control of borders. The author highlights the degree of movement which there is the in EU law on free movement of persons. In this chapter the key issues which have arisen as points of conflict between the individual seeking to move and the Member States' authorities are underlined. Guild analyses important new case law from ECJ, which are indicative of the dynamism of the free movement of persons' field and of the uncertainties which surround the transfer of sovereignty from Member States to the EU. The author emphasises that also the relationship of citizens and third country nationals is in transition. In some field they are converging, in others drifting apart, but, throughout, this process is complicated by the mechanisms by which third country nationals become citizens of the Union, very important enlargement.

Guild, E. and Peers, S. (2006), Out of the Ghetto: The personal scope of EC Law, in EU Immigration and Asylum Law, Text and Commentary, Peers S. and Rogers, N. (Eds.), Martinus Nijhoff Publishers, Leiden, Boston.

In this paper the authors examine the extension of the personal scope of EU law to third country nationals. They challenge the attempt to create an orthodoxy limiting the personal scope of the EU law, which is based on the premise that the treaties are designed to exclusively confer rights and impose obligations upon citizens of the European Union. In the light of this, TCNs are affected by community law only as family members or employee of EC companies. The Treaty of Amsterdam allows adoption of measure addressed to TCNs, but only in the limited context of the Title IV of the EC Treaty, which is defined by authors as an "institutional ghetto" within the EC Treaty. This notwithstanding, according to the authors the exclusion of TCNs from the scope of the EC law is the exception, not the rule.

[71] The first Declaration was replaced by another in 1981 as a consequence of the adoption of the British Nationality Act 1981,

They analyse the content of the Art.17 (1)(2) EC, which create the citizenship of the Union and states that Union citizens "shall enjoy the rights conferred by the Treaty and shall be subject to the duties imposed hereby", in the light of Articles 61 EC, 63 (4) EC[72], and 62 (3) EC[73]. Accordingly, they stress that Art. 17 (2) EC cannot logically be interpreted to mean that EC secondary legislation can never confers rights on TCNs. More over, the highlight, that Articles 194, 195, 225 EC, which refer to rights explicitly addressed to citizens or residents of the Union, exclude the interpretation that the rights and duties conferred directly by the Treaty are limited to EC nationals. In the authors' view only a detailed examination of the treaty provisions and case law can determine the correct approach to personal scope. Guild and Peers conclude by saying that there are only exceptional parts of community law, primarily relating to free movement of workers as agents of their own movement, from which TCNs are excluded. According to them such exclusion it is not structural to the EC Treaty itself, but rather a result of the choice of implementation through secondary legislation.

Guild, E. (2004), ***The Legal Elements of European Identity: EU Citizenship and Migration Law*****, Kluwer Law International, European Law Library, The Hague.**

The main question which this book addresses is how a European identity is being created through the adoption and interpretation of immigration and citizenship law by the European Union. In the second chapter it is analysed the meaning of citizenship and the rights related to this status, in the context of constitutionalism, including the EU constitution. The author offers a detailed study of the provisions as originally inserted into the EC Treaty in the light of citizenship norms which were developing simultaneously within the Council of Europe. The issue of citizenship of the Union and in particular the EU constitution's treatment of citizenship rights is also analysed in the wider framework of international human rights conventions. The author highlights the fact that, from the perspective of fundamental freedoms, the rights attached to the citizenship of the Union are attributed only to the union citizens who are outside their State of nationality.

The third chapter further examines the content of citizenship of the Union. Building on the work of T H Marshall[74], the author examines the link between equality and citizenship focusing on civil rights, political rights and social rights. In chapter four the author looks at the residence-citizenship nexus, while in chapter five deals with the central concerns of the citizen/migrant: the right to security of residence and protection against expulsion or exclusion and the family reunification. First it is examined how migrant nationals of Member States have acquired a right to migrate so substantial to become known as free movement of persons and the extent to which this right has become incorporated into the legal structure of citizenship. Guild also assesses in this chapter the continuing power of Member States to expel or exclude citizens of the Union who are nationals of another Member State both from the territory and from certain economic activities. Finally, chapter twelve offers a detailed analysis of the directive on long term resident third country nationals adopted in November 2003. The author sets out the provisions of the directive and their context.

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[72] Art. 61(b) EC expressly gives the Community power to adopt measures pursuant to Art. 63 "safeguarding the rights of nationals of third countries".

[73] Art. 62 (3) EC confers powers to the Community to the freedom to travel for TCNs.

[74] T H Marshall, Citizenship and Social Class, CUP, Cambridge, 1950 p 9.

H /

Habermas, J. (2001), The Postnational Constellation, Political Essays, The MIT Press, Cambridge, Massachusetts.

In this book the author addresses, inter alia, the question whether political communities form a collective identity beyond national borders, and thus whether they can meet the legitimacy conditions for a post national democracy. According to him, the transformation of the European Union into a federation, which means strengthening the governing capacity of the European institutions, is unthinkable without an expansion of their formal democratic basis of legitimacy. He highlights that if Europe is to be able to act on the bases of an integrated and multileveled policy, then European citizens will have to learn to reciprocally recognize one another as members of a common political existence beyond national borders. However, he admonishes, it is neither possible nor desirable to level out the national identities of member nations, nor melt them down into a "nation of Europe". He stresses that the form of civil solidarity that has been limited to the nation-state has to expand to include all citizens of the Union and that positively coordinate redistribution policies must be implemented. As a way of conclusion, the author underscores that the expansion of Europe political capacity needs to be accompanied by the expansion of the basis legitimating European Institutions. This would imply a further shift of nation-state' sovereign rights to a European government. Accordingly, he suggests, the European Union must be repositioned from its previous bases of international treaties, to a "charter" in the form of basic law. Moreover, it is highlighted that this legitimating process should be supported by a European party system.

Habermas, J. (1998), The Inclusion of the Other, Studies in Political Theory, Cronin, C. and De Greiff, P. (eds), The MIT Press, Cambridge, Massachusetts.

The nation-state model which emerged from the French and American revolutions has achieved global dominance. The author highlights that the nation-states political composition of today world society can not solve the problems which the process of globalization poses. He emphasises that the nation-state framework and the traditional methods of agreements between sovereign states are not any more adequate. The nation-state find itself challenged from within by the explosive potential of multiculturalism and from without by the pressure of globalization. Today's pluralistic societies are moving further and further away from the basis of nation-state based on culturally homogeneous population. According to the author there is no alternative to this development. He highlights that the democratic process can serve as a guarantor for the social integration of an increased differentiated society. He further stresses that multicultural societies can be held together by a political culture only if democratic citizenship pays off not only in terms of liberal individual rights, but also in the enjoinment of social and cultural rights.

Habermas recalls that in the favourable post-war period, the development of the welfare state satisfied the aspiration of a demanding and intelligent population; the economic dynamic was fostered by the modern state system and in turn had the effect of reinforcing the nation-state. Today these two developments no longer reinforce one another, mainly due to the denationalization of economic production and to the fact that global economic imperatives are less and less susceptible to political influence. The author points out that the social consequence off this "abdication of politics", which is evidenced by unemployment and welfare state dismantling, is the emergence in the First World of a new "underclass". He foresees that the problem of the "underclass", which is composed by those pauperized groups who are abandoned by the societies, will have in the long term serious political consequences: i.e. social tensions; influence of the ghettos in the society as a whole, which would create social erosion; impossibility to create integration through political participation.

As a way of conclusion, the author envisages the necessity of founding and expanding political institutions on the supranational level. He highlights that an alternative to the abdication of politics would be if politics were to follow the lead of markets by constructing supranational political agencies. He brings as en example the European Union, but underscores Member States opposition to a vertical expansion of the EU that would confer essential characteristics of a state on the Union. Habermas considers that politics, still operating within the framework of nation-state, should construct political institutions, connected to the process of democratic-will formation, capable of acting at supranational level.

I /

Isin, F., E. and Nielsen Greg M. (2008), *Acts of Citizenship*, Zed Books London Ltd: London.

This book introduces the alternative theoretical concept based on "acts of citizens", which offers a different approach to the investigation of citizenship, which in view of the authors represents a major move from the ways in which citizenship has been traditionally studied. Such a conceptual framework advocates for an understanding of citizenship not as a legal category and status, but as involving a whole range of differentiated practices of pluralistic nature. Isin and Nielsen continue by arguing that

> To investigate citizenship in a way that is irreducible to either status or practice, while still valuing this distinction, requires a focus on those acts when, regardless of status and substance, subjects constitute themselves as citizens or, better still, as those to whom the right to have rights is due. But the focus shifts from subjects as such to acts (or deeds) that produce such subjects. The difference, we suggest, is crucial.

In the light of this, it is argued to shift the focus from the institution of citizenship (already-held status) and the citizen as an individual agent (embedded practice) to "acts of citizenship" understood as "*collective or individual deeds that rupture social-historical patterns*" containing overlapping and interdependent components and shifting "*established practices, status and order*". The theorization of act of citizenship involves looking at ways of being of ethical, cultural, sexual and social nature which are called or become political, and which constitute the very conditions allowing the acts. This book is divided into three main sections: Politics, Ethics and Aesthetics; Citizens, Strangers, Aliens and Outcasts; and Sites and Scales of Answerabilities. A majority of the contributions look at acts of citizenship on the basis of key concepts put forward by theoreticians, while some of the chapters present an analysis of current debates surrounding citizenship-related issues. The conceptual discussions put forward by some of the contributions of the book facilitate an understanding of the moment when citizenship occurs and the ways in which it shapes itself through audibility and visibility.

The chapters of the first section explore the philosophical background of the political, ethical and aesthetic field and the way they apply to acts of citizenship. The chapters of the second sections investigate acts of citizenship as the production of subjects: citizens, strangers, aliens and outcasts. In this section it is examined, inter alia, how migrant activists are presently demanding and, in some places, constructing a world where "no one is illegal". It is also emphasised that "when acts of citizenship produce stranger, aliens and outcast, they emerge not as beings already defined but as active and reactive ways of being with the others". In the third section it is analyzed how citizenship can articulate itself simultaneously in the public domain and everyday ethical sites where specific climes or counter-climes are made about rights, responsibilities, identity, recognition and redistributions.

Chapter 1: Isin, F. E., 'Theorizing Acts of Citizenship'

This chapter outlines an alternative perspective on the question of how subjects of the new overflowing rights and responsibilities enact themselves as citizens. It studies the contribution of theorizing acts of citizenship in citizenship studies. It presents the view according to which "*citizenship is (not only) a legal status but it also involves practices of making citizens – social, political, cultural and symbolic*." He argues that the question of how subjects become claimants under surprising conditions or within a relatively short period of time has remained unexplored, and stresses that

> Without such creative breaks it is impossible to imagine social transformation or to understand how subjects become citizens as claimants of justice, rights and responsibilities. Thus the difference between habitus and acts is not merely one of temporality but is also a qualitative difference that breaks habitus creatively.

A number of questions are posed as necessary in order to address adequately the conceptualization of acts of citizenship and the ways in which "*subjects become claimants when they are least expected or anticipated to do so*" (the processes of making subjects into citizens). Questions that cannot be answered without constituting acts as an object of investigation, and which demand going beyond the field of citizenship studies. Isin then puts this debate in relation to a wider philosophical debates and 'interdisciplinary thinkers' who have investigated the concept of the act, and who include for instance A. Reinach, M. Heidegger and M. Bakhtin.

The Chapter moves into explaining the methodological implications of acts of citizenship and demonstrates the way in which this concept perform a function of political mediation between two sides of answerability including the requirement to respond to challenges "with a creative and unique performance that can claim no alibi, yet also defend a general idea that is immanent rather than transcendent". It concludes by pointing out three core principles laying at the heart of any theoretical investigation on acts of citizenship: First, to interpret them through their grounds and consequences, which includes subjects becoming activist through scenes created; second, to recognize that acts produce actors that become answerable to justice against injustice; and third, to recognize that acts of citizenship do not need to be founded in law or enacted in the name of law.

J /

Jacobs, F. G. (2007), 'Citizenship of the European Union – A Legal Analysis', European Law Journal, Special Issue on EU Citizenship, Vol. 13, Issue 5, pp. 591-622.

In this article the author presents a legal analysis of the concept of citizenship of the EU. This concept was considered by some to be embryonic in the original Community Treaties, but was first expressly incorporated into the Treaties by the Treaty on European Union, signed at Maastricht on 7 February 1992. The author analysis the ECJ rulings which have given citizenship a content going beyond the express Treaty provisions. In order to show how the use by the ECJ of the concept of citizenship adds to the status quo, the author suggests the two following classifications: first, jurisprudential techniques; second, restrictions prohibited by the treaty: discrimination and non-discriminatory restrictions. As for the first classification, the author highlights: first, how the ECJ has used citizenship to broaden the scope of the non discrimination principle[75] (rulings: Bickel and Franz,[76] Martinez Sala[77] and in

[75] The non discrimination principle is stated in the first paragraph of Art. 12 EC: 'Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited'.

[76] Case C-274/96, Criminal proceedings against Bickel and Franz [1996] ECR I-7637.

Grzelczyk[78]);second, how the court has used citizenship to broaden the scope of non discrimination principle in the context of market freedoms stated in Art. 39 EC (rulings: Collins[79], Ioannidis[80]) third, how the ECJ has used citizenship as an independent source of right of free movement and residence, building on Art. 18 EC (rulings: Baumbast[81] and Chen[82]).

The second classification, relates to the nature of obstacles to the exercise of citizenship rights and the justification for that obstacle. The author highlights that for instance in the Schempp case[83] the court examined the question of an 'obstruction' of the right to move and reside in another Member State independently of any discrimination. She considers that such an approach, which aligns the right to freedom of movement or residence to the other fundamental freedoms, corresponds to the 'fundamental status' of Union citizenship established by the court and the new EU citizenship directive. In the conclusions the author gives three examples of possible areas where the concept of citizenship might be deployed in the future: voting rights in national elections, prohibiting reverse discrimination, and free movement at internal frontiers and the abolition of automatic passport controls.

K /

Kostakopoulou (2007), 'European Citizenship: Writing the Future', European Law Journal, Special Issue on EU Citizenship, Vol. 13, Issue 5, pp. 623-646.

The establishment of EU citizenship by the Treaty on European Union (1992) represented a unique historical moment. However this historical unprecedented moment did not capture the political imagination to a large extent. Most scholars and policy makers saw the European citizenship as a decorative and symbolic institutions which added little new to the pre-Maastricht regime of free movement rights. The author critically examines those minimalist approaches. In her article she argues that European citizenship constituted a unique experiment for creating a political community which goes beyond national boundaries. In this "community of communities", as the author defines it, diverse people become associates in a collective experience and institutional designers. The EU has changed the relation that linked the individual to the Nation State: "multiple memberships in various overlapping and interlocking communities formed on various level of governance".

The author analyses the interactions between "old" (national) and new (European) citizenships and the resulting process of transformative change. She highlights the impact of European citizenship, which it is seen as an institutional and conceptual challenge, on national political systems. On the one hand, European citizenship provisions have invalidated ethnicity as a boundary marker and diluted the traditional link between citizenship rights and possession of state nationality. On the other hand European citizenship "has the capacity to change our understanding of citizenship and membership with a view to opening up new forms of political community". The author also examines a number of rulings where the European Court of Justice has showed significant interventions and proactive interpretations of the limits of the

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[77] Case C-85/96, *Martínez Sala v Freistaat Bayern* [1998] ECR I-2691.

[78] Case C-184/99, Grzelczyk v Centre Public d'Aide Sociale d'Ottignes-Louvain-la-Neuve [2001] ECR I-6193

[79] Case C-138/02, Collins v Secretary of State for Work and Pensions [2004] ECR I-2703.

[80] Case C-258/04, Office national de l'emploi v Ioannidis [2005] ECR I-8275.

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

[82] Case C-200/02, *Zhu and Chen v Secretary of State for the Home Department* [2004] ECR I-9925.

[83] Case C-403/03, *Schempp v Finanzamt München V* [2005] ECR I-6421.

status of European citizen. Accordingly, she considers that European citizenship should not be regarded as a finished institution. Its contest is flexible and dynamic. However, this article also points out that this process of transformation has been accompanied by the reinforcement of the dichotomy of citizens and "aliens", be them resident third country nationals, migrants, asylum seekers and refugees. The author warns to not see the exclusion of non-national residents from the rights and benefits of citizenship as a necessary consequence of community's process of self definition.

Kostakopoulou, T. (2001), *Citizenship, Identity and Immigration in the European Union: Between Past and Future*, Manchester University Press: Manchester.

Whit the aim of contributing to the literature on the theory and practice of European political integration, this book provides a systematic theorisation of institutional reform. The author launches a debate on the position of third-country nationals and immigration policy within the EU. She argues that democratic theory and practice can no longer avoid confronting questions of membership and identity of the political community. Building on the fact that democracy requires the involvement of the demos (which include all adult members of the society) in the making of political decision, the author highlights the "civic inclusiveness deficit of the Union". According to her, this is represented by the exclusion of third-country nationals, who have been residing on a lawful and permanent basis in the Union, from the rights attached to the Union citizenship. Believing that "*citizenship is the only project that could address the problem of unjust exclusion*" the author seeks to articulate a framework for democratic citizenship beyond the nation which is inclusive and respectful. The author sees a direct relationship between the constructivist concept of European citizenship she proposes and the development of a positive and open approach to immigration within the EU. In the chapter titled "Constructive citizenship in the European Union" the author suggests an alternative theoretical perspective on Union citizenship based on evolving ideas of community membership and the institutional dynamics of the EC/EU. Acknowledging the fact that citizens have multiple identifications the author suggests alternative conception of "community of concerns and engagements", which respects *the others*. She sees such a community as formed by members which are associated by virtue of their differences and are engaged in collectively sharing the polity. Accordingly the author considers a new paradigm of citizenship based on domicile. She stresses that "*a domicile paradigm of citizenship would free the emerging of European demos from the grip of state nationality and lay the foundations for an inclusive European identity"*.

M /

Martiniello, M. (1994), 'Citizenship of the European Union. A Critical View', in R. Bauböck (ed), *From Aliens to Citizens: Redefining the Status of Immigrants in Europe*, Avebury: Aldershot, pp. 29-48

This article addresses the extent to which the post-Maastricht Europe is more democratic than pre-Maastricht Europe. In particular he aims at spreading some light on the concepts of "Citizenship of the European Union" and "European identity" within the debate concerning the dynamics of exclusion and inclusion affecting migrants and ethnic categories. The author examines, inter alia, two central issues: the question of the connection between the citizenship of the European Union and the renewal of nationalism; and the "Citizenship of the Union" in relation to the process of construction of the "European identity". These two last items respectively discuss the short and long-term implications of the citizenship of the European Union with particular attention to its implications on the inclusion/exclusion processes affecting migrants.

The author considers that in legal terms the Citizenship of the Union represents only "a minimal novelty". He highlights that even though Art. 8 of the Maastricht Treaty mentions the possibility to the extension of the Citizenship of the Union it seems more concerned with an expansion of the rights granted to the citizens of the European Union than an extension of the Citizenship to other categories of individuals established in Europe, such us third country nationals.

Martiniello then analyses the short term implications of the Citizenship of the European Union. According to him, three level of citizenship in the European Union can be distinguished, depending on the civil rights, social rights and political rights which are enjoyed. The first level citizenship (full citizenship) is enjoyed by citizens of a Member State of the European Union living within the border of their nationality. At a lower level there are there are the citizens of a Member State of the European Union who are living in an other Member State than their own and have, in comparison with the former group, less political rights (only at local and European level). Then there is the third category of citizens living in the European Union which can be divided in the subcategories of "denized" and "margizens". The first refers to third-country nationals legally settled in the EU. They are to a certain extent involved in the civic and socio economic European society but normally excluded by political rights. The second sub-category refers to people living illegally in the territory of the European Union and having almost no right at all. The author groups together denizen and margizens because according to him they suffer analogous mechanisms of exclusion from the cultural and political "Europeanity". From a long-term analysis perspective, in the authors view, only a successful mobilization of the denizens and margizens together with the nationals could bring about an extended breach in the nationalist logic and open the way towards post-nationalism in Europe.

As regards the long-term, Martiniello concludes that

> …, only a successful mobilization of the denizens and margizens together with the nationals, that is a significant pressure "from below" for a new Citizenship of the European Union, could bring about an extended breach in the nationalist logic and open the way towards post-nationalism in Europe.

O /

O'Leary, S. (1992), Nationality Law and Community Citizenship: A Tale of Two Uneasy Bedfellows, in Yearbook of European Law, 12, 1992, Barav, Wyatt, (eds.), Clarendon Press – Oxford 1993.

This article analyses the role which the nationality laws of Member States play in fixing the parameters of the free movement of persons and Community citizenship. She points out the fact that, on the one hand, the Member States nationality law delimits the personal scope of these two supranational concepts, on the other, nationality is determined quasi-exclusively by Member States. The Author highlights that the rights and duties of Union Citizenship, incorporated in Art. 8 of the Maastricht Treaty, have been confined to "every person holding the nationality of a Member State". From the statement it follows that third-country nationals do not qualify for either free movement or Union Citizenship, unless they can derive their rights from a relationship with a community worker, of from association or cooperation agreements established by their countries and the EU.

Taking into account the creation of a community legal order and the transfer of sovereignty from Member State to the Community, the author addresses the question whether the Community could affect Member States competence to determine who are its nationals for the purposes of Community law in general and the free movement in particular. She underscores that, on the one hand, the Declaration on nationality of a member state attached to the final Act of the Treaty on European Union seems not leaving margins of intervention for Community law

in the issue of nationality[84]. Nevertheless, on the other hand, she envisages that the *Michaletti* case[85] reveals a means by which the Court may finally be prepared to assert a degree of Community competence. In fact, in this case law the Court of Justice, on the one hand, confirmed that determination of nationality falls within the exclusive competence of the Member States, on the other, it went on to add that this competence must be exercised with due regard to Community law.

O'Leary concludes by saying that even thought at present the Member States remain competent to determine their nationals, both the dynamics of free movement and Community citizenship could have a further significant influence on the rule of nationality in community law. However, she calls for a specific legislative action at Community level to harmonize nationality law for the purposes of free movement. Otherwise, it is said, the relationship between nationality, free movement, and community citizenship, given the former delimitation of the latter two, will continue to be difficult and subject to considerable diversity.

S /

Shaw, J. (2007), The Transformation of Citizenship in the European Union, Cambridge University Press.

This book explores the relationship between the contested concepts and practices of citizenship and membership, of nation and nationality, and of state and "state-like" polities, such as the European Union. She will study these relationships, through the analysis of the case of electoral rights of non nationals. Art.19 EC on citizens of the Union provides that: *"every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State"*. The author highlights the limits of the recognized electoral rights: first, they cover only a limited range of elections, i.e. local and EU Parliament elections; second, they are extended only to the "privileged non-nationals" who are covered by the definitions of citizens of the Union as provided by Art.17 (all nationals of Member States), excluding the most larger group of third country nationals. Shaw emphasizes that the only circumstances in which TCNs will derive certain equal treatment rights is indirectly from a citizen of the Union if the TCN is a member of the family of that Union citizen, who has exercised his/her right of free movement.

Shaw considers that the inclusion of citizens' provisions in the EC Treaty in 1993 marked a codification of existing legal and judicial approaches to the rights and status of persons under EC law rather than a major constitutional innovation for the European Union. She underscores that under the modern states system, there has been a tendency to prioritise the linkage between state and citizen above all else and that citizenship is commonly used as a means of delineating the inside from the outside. According to the author the problem with alien citizenship and indeed any form of semi-citizenship for aliens concerns: duties and lack of reciprocity. Referring to Held definition of citizenship,[86] which base citizenship on reciprocity of rights and

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[84] According to Declaration on nationality of a member state attached to the final Act of the Treaty on European Union: "… the question whether an individual possesses the nationality of a member state shall be settled solely by reference to the national law of the member state concerned. Member states may declare, for information, who are to be considered their nationals for Community purposes…".

[85] Case C-369/90, M. V. Micheletti and others v Delegacion del Gobierno en Cantabria [1992] ECR I-4239.

[86] "Citizenship has meant a reciprocity of rights against, and duties towards, the community. Citizenship has entailed membership, membership of the community in which one lives one's life".

duties, she asks how the state should react to the fact that the primary polity to which an alien owns her duties is another one. She highlights that this problem is brought into focus by the general trend among member states to set tests, requiring minimum knowledge of language, culture of the host state, as prerequisites for naturalization.

W /

Wiener, A. (1997), Assessing the Constructive Potential of Union Citizenship – A Socio-Historical Perspective, European Integration online Papers (EIoP) Vol. 1 (1997) N° 017; http://www.eiop.or.at/eiop/pdf/1997-017.pdf

In this paper the author highlights that in the European integration studies literature has predominantly focussed on legal assessment of Union citizenship, while citizenship policy as a practice has not received much attention. This paper aims to demonstrate that a constructive perspective on the *practice* of citizenship facilitates valuable information about the creation of the institutionalised terms of citizenship over time. Building on the analysis of the discourse on citizenship practice in the early 1990's the author emphasizes that the focus was sifted from creating a feeling of belonging of belonging to establish the legal ties of belonging. According to her, the legal ties of belonging are one necessary condition for access to participation, but do not automatically imply it. Indeed, she says, citizens participation depends on what citizens are able to make of this right.

Wiener highlights that on the one hand the institutionalized terms of citizenship have facilitated a progressive narrowing of the gap between "economic included and politically excluded Europeans". However, on the other hand, has also generated political tension brought by the problem of inclusion and exclusion among member state nationals and "other" European residents, namely third country nationals. Accordingly, she concludes by saying that the problem of the long democratic deficit in the EU is therefore twofold. It involves both a procedural aspect, which is related to the problem of the lack of appropriate channels for democratic participation, and a normative aspect which is expressed by the problem of the growing diversity of residents in Europe.

2.2 Migration and Integration Issues

A /

Apap, J. and S. Carrera (2003), *Towards a Proactive Immigration Policy for the EU?*, CEPS Working Document No. 198, CEPS, Brussels, December 2003.

This report involves an assessment of the legislative progress achieved towards a *proactive immigration policy* regarding those described as 'third country nationals' (TCNs) entering into and residing legally in the European Union (EU). Two aspects are central to the immigration policy currently under development at European level: *control* and *openness*, representing two sides of the same coin.

Convergence of policy seems to have been achieved much faster on *control*, while various reservations still exist on *openness*, especially by certain member states. This paper focuses on this latter aspect - *openness* - of the European immigration policy by assessing the extent to which key legislative measures are going to confer on and foster a status for third country nationals that is "as near as possible" to that enjoyed by EU citizens. It also evaluates the extent to which the attacks of 11 September 2001 in the US had a real impact on the legislative developments and policy agenda in relation to this area.

The main points of analysis of this report thus include: First, the evolution of immigration policy at the European level; second, the study of the key legal instruments dealing with TCNs, and their potential effects and consequences: Do they guarantee a closer position to the EU citizens' status? What level of rights and protection do they confer to foreigners? Do they truly contribute to the current political desire for the integration of immigrants within the host country?; third, a comparison with EU citizens' status, particularly looking at the similarities and differences between them; forth, an assessment of the extent of the influence the events of 11 September had in the policy priorities relating to the development of a European immigration policy?

Atikcan E. O. (2006), ***Citizenship or denizenship: the treatment of third country nationals in the European Union*****, Brighton: Sussex European Institute.**

The Treaty on European Union (TEU) of 1993 constitutionalised European citizenship. The paper will firstly present an introductory chapter to define and critically evaluate the legal concepts of citizenship and "denizenship" in a nation-state. The term "denizen" stands for foreign citizens with a legal and permanent resident status in the host state, but who are not naturalized. According to the author, this term "*symbolises limited membership to a polity and access to the rights and services that membership provides, as opposed to the full membership represented by citizenship*". This paper focuses on the formal aspect of citizenship which concerns the concepts of inclusion/exclusion. In other words the author analyses to which individuals and under what conditions the status of citizenship will be awarded. While analysing the emerging membership structure of the European Union, the author concentrates on its implications for the permanently resident Third Country Nationals (TCNs). It is pointed out that the decisive qualifying factor for European citizenship is set as the acquisition of Member State nationality, which resulted in the exclusion of approximately 12-13 million TCNs from the benefits of European citizenship.

In the third chapter the author describes the membership status of the permanently resident Third Country Nationals in the EU in relation to the Union citizenship. This forms the core theme of the paper. The author highlights the difficulties related to the current body of law governing the treatment of TCNs and attempts to demonstrate how their treatment can be improved, through a critical assessment of the recent developments and the legal alternatives for the inclusion of TCNs in the Union citizenship framework. Therefore, in the conclusion the author proposes that TCNs should be granted Union citizenship, but such a reform should in any case be coupled by the creation of Union denizenship, as this would give them the option to stay as denizens and would still confer them rights respecting their free choices.

B /

Balzacq, T. and S. Carrera (2006), 'The Hague Programme: The Long Road to Freedom, Security and Justice', in T. Balzacq and S. Carrera (eds.), ***Security versus Freedom: A Challenge for Europe's Future*****, Ashgate Publishing, pp. 1-34.**

This chapter puts the developments in the "Area of Freedom Security and Justice" in context. First, it examines the main achievements in the field. Second, it discusses the level of policy convergence reached in these three dimensions as well as some of the most relevant policies being proposed or expected to come on the agenda during the Hague Programme mandate. The development of a common immigration and asylum policy has been constantly referred to at official level as a decisive priority for the Union's future. However, these are areas where political statements and goals do not necessarily match the policy reality at hand. The lack of a truly common immigration and asylum policy continues to dog the EU. While it is true that Member States continue to exercise the main competences in immigration and asylum fields,

and that the Europeanization process in these is in its infancy, some substantial legislative steps have nonetheless been taken at EU level. The low level of policy convergence in the field of regular immigration has often been criticised. In addition to the restricted number of policy measures adopted, the quality of some of these acts has been seriously challenged.

An in-depth examination of some of their provisions reveals surprisingly low minimum standards (which might put international and European human rights commitments at risk), wide discretion for Member States' application and substantial exceptions even to core elements (rights and freedoms), which allow for wide practical differences between Member States. Among the few EU legal measures adopted by the Council of Ministers the article underlines the following as the more relevant: Council Recommendation 2005/762/EC of 12 October 2005 to facilitate the admission of third-country nationals to carry out scientific research in the European Community, Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, Council Directive 2004/38/EC 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, Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

The book concludes that fair and equal treatment between EU citizens and third-country nationals should be the real goal pursued in any immigration and asylum-related measure. The authors plead for a higher level of policy convergence that recognises and facilitates equal treatment. The Tampere European Council Conclusions (1999) insists that it is necessary to establish a common EU framework by which legally resident, third-country nationals would have a status as near as possible to that of the nationals of EU member states. Indeed, facilitating equality of treatment and full access to economic, social, cultural, religious and political rights and freedoms should be the focus of efforts.

Balzacq, T. and S. Carrera (2005), *Migration, Borders and Asylum: Trends and Vulnerabilities in EU Policy*, CEPS, Brussels, July 2005.

What level of policy convergence has been achieved by EU member states on immigration, borders and asylum? Although this question may sound rather theoretical, in practice it has profound consequences on the everyday life of individuals and the very nature of the EU. Common action in this field is exacerbated by the significant obstacles that negatively impact the quality of policies and the success of their implementation. Together with the tense EU struggle between the intergovernmental and community method of governing, these factors are detrimental to an EU-wide policy for promoting freedom, justice and stability in an enlarging Union. In response, authors Thierry Balzacq and Sergio Carrera undertake a critical analysis of the most recent policy developments in this politically sensitive domain. They investigate persistent barriers to harmonisation and suggest how the EU may achieve policy optimalisation. Their work progressively develops a set of recommendations, aimed at overcoming current vulnerabilities in policy approximation and achieving the most appropriate action to ensure equal treatment and social cohesion in the EU.

Bertozzi, S. (2007), *Integration: An Ever Closer-Challenge*, CEPS Working Document No. 258, February 2007, Centre for European Policy Studies: Brussels.

In this article the author highlights how migration in Europe has become a very complex issue, not only in terms of the number of immigrants, but above all in terms of the multifaceted cultural, social and economic dynamics of immigrants who live in Europe. Therefore, he

considers necessary to develop integration policies that reflect the complexity of migration flows in Europe.

This article argues for closer integration to be a key part of the EU's migration policy. It accepts that migration is necessary for a prosperous Europe and looks at the role of the EU and how best to integrate immigrants. The author examines countries' experiences and the need for better-aligned policies among Member States. The European Commission's role in sharing experiences and best practices is considered, as well as the need for the many stakeholders involved to work together. He concludes by saying that integration is a complex and delicate process, and ultimately the EU must be bolder in its promotion of integration if it is to benefit from migration.

Bigo, D., S. Carrera, E. Guild and R.B.J. Walker (2007), *The Changing Landscape of European Liberty and Security: Mid-Term Report on the Results of the CHALLENGE Project*, CHALLENGE Research Paper No. 4, February 2007, Centre for European Policy Studies, CEPS: Brussels.

This paper reports on the results achieved by the CHALLENGE project for the period June 2004 through December 2006. The CHALLENGE project seeks to provide a critical assessment of the liberties of citizens and others living within the EU and how they are affected by the proliferation of discourses about insecurity and the exchange of new techniques of surveillance and control. Five years after 9/11, no one doubts that liberal polities have resorted to many illiberal practices, or that these practices have been legitimised by sweeping claims about global dangers. In this way, it is concerned to facilitate a re-conceptualisation of the transformation of the international order and the place of the EU within it, and especially to enable a broader range of perspectives about the conditions under which we are asked to make judgements about the need for severe limits on liberty and the rule of law and the legitimacy of new forms of institutional authority and technologies of social control.

The project has reviewed, inter alia, integration programmes and legislation for immigrants in a selected group of EU member States. Here the main trends and similarities are assessed and compared. The authors highlight that in the national arena there appears to be a distinct move towards integration programmes with a mandatory character. They points out that obligatory participation in such programmes is now a regular feature of both immigration and citizenship legislation, and a precondition for having access to a secure legal status. Further, the report underlines that the link made between the social inclusion of immigrants and the juridical framework on immigration and integration may at times conflict with human rights considerations, and endanger the interculturalism and diversity that are inherent to the nature of the EU as recognised in Art. 151.1 EC Treaty. Concluding, the authors present, inter alia, the following policy recommendations: first, the traditional EU approach to integration as the right of the immigrant to equal treatment provides the only legitimate approach for the EU to adopt in this field; second, social cohesion in the Member States depends on an understanding of integration as a right for the migrant to equality rather than the obligation to abandon her/his identity.

Brubaker, R. (2003), 'The Return of Assimilation? Changing Perspectives on Immigration and its Sequels in France, Germany and the United States', in C. Joppke and E. Morawska (eds), *Toward Assimilation and Citizenship: Immigrants in Liberal Nation-States*, Basingstoke: Palgrave Macmillan, pp. 39-58.

The author specifies that assimilation in a general and abstract sense means increasing similarity, it is the process of becoming similar. In a specific sense it means incorporation and implies absorption by the system. He highlights that when used intransitively in the general

sense, assimilation does not seem morally and politically objectionable, because it does not suggest programmes of "forced assimilation". Referring to this intransitive understanding of "assimilation", the author argues that in the recent years it has been "returning". He brings, inter alia, the case of public discourse in France to highlight what he considers a "marked return" of assimilation. First, he underscores that in France the long tradition of assimilation had been interrupted during the 1970's and early 1980's by the *differentialist* turn which called for a "droit à la difference". Then he notices that the changes in the political arena brought by Le Pen and other intellectuals of from "the right" determined a swift turn from in the political discourse from the "droit à la difference" to the "droit à la resemblance". This political conjuncture set the stage for the return of assimilation.

The author highlights that "the return of assimilation" has involved a change in perspective which has determined a shift from a focus on persisting difference to a broader focus which includes emerging commonalities. Normatively, it has shown a renewed concern with "civic integration". According to the author, the return of assimilation does not mean a return of its "assimilationist" connotation, because of the transformation of the concept itself (shift from organic to abstract understanding of assimilation; shift from transitive to intransitive understndig of assimilation; shift from thinking in terms of homogeneous units to heterogeneous units; shift from cultural to socio-economic matters; shift from a holistic approach to a disaggregated approach which considers multiple reference populations). The author concludes that reformulated in this manner the concept of assimilation is indispensable because it enable us to assess the degrees of emergent similarities and persisting differences among multigenerational populations of immigrant origin and particular reference of population.

C /

Carrera, S. (2006), ***A Typology of Different Integration Programmes in the EU,*** **Briefing Paper, DG Internal Policies, European Parliament, January 2006.**

This Briefing Paper presents a typology of integration programmes for immigrants in selected Member States of the European Union. It first looks at the concept of 'integration of immigrants' and its inherent vulnerabilities. It then provides a typology of integration strategies and policies in Austria, Belgium, Denmark, France, Germany and the Netherlands. The cases of Spain, Poland and the UK are also taken into consideration. The main tendencies and common elements are assessed and broadly compared. As the paper shows, there appears to be a move towards a restrictive integration policy for immigrants in the EU. Mandatory participation in integration programmes has become a constituent element of immigration and nationality legislation, as well as precondition to having access to a secure status. A nexus between immigration, integration and citizenship is also becoming the norm in a majority of the national legal systems assessed in this paper. The link between the social inclusion of immigrants and the juridical framework on immigration, integration and citizenship may raise human rights considerations, and endanger the inter-culturalism and diversity that are inherent to the character of the EU.

Carrera, S. (2005), 'Integration as a process of inclusion for migrants? The case of long-term residents in the EU', in H. Schneider (ed.), ***Migration, Integration and Citizenship: A Challenge for Europe's Future,*** **pp. 109-138.**

At a time when the development of a common EU immigration policy remains far from a reality, the integration of migrants has been placed at the very top of the EU agenda. In this report the author critically assesses what integration may involve at the EU and national levels. Although the Council has agreed on a set of common basic principles underlying a coherent European framework on integration, the bulk of directives so far adopted on regular migration

have not followed the two-way approach, where both the state and the migrant have a role in successful integration. The way in which integration conditions have been included by the Council of Ministers in these legal measures may be considered restrictive. Looking in particular at Directive 2003/109 on the long-term resident status, member states will have overly wide discretion to ask migrants to comply with mandatory integration requirements. Immigrants will first need to pass an integration test and cover the financial costs of it before having secure access to the benefits and rights conferred by the status of long-term resident. According to the author these provisions should hence be revised. Otherwise, by using this restrictive conditionality, such provisions may negatively affect social cohesion and inclusion, and undermine the fundamental rights of immigrants. Integration is by nature an elusive concept. As this report shows instead of worrying about the need to conceptualise this term, any policy intending to frame this field should instead look at it as a compendium of processes of inclusion tackling social exclusion. These processes should seek to guarantee equal rights and obligations to those not holding the nationality of the receiving society. Facilitating equality of treatment and full access to a set of economic, political, social and cultural rights and duties should be the real goal pursued.

Carrera, S. (2006), 'Integration of Immigrants versus Social Inclusion? A Typology of Integration Programmes in the EU', in T. Balzacq and S. Carrera (2006), *Security versus Freedom? A Challenge for Europe's Future*, Ashgate: Hampshire, pp. 87-112.

This chapter examines the philosophies hiding behind the notion of 'integration of immigrants'. What does integration of immigrants mean in liberal democracies? The vulnerabilities and uncertainties inherent to the nature of this concept will be critically addressed. It then provides an overview of integration programmes for immigrants in a selected group of EU Member States: Austria, Belgium, Denmark, France, Germany, Poland, Spain, the Netherlands and the United Kingdom. The main tendencies and common elements are widely assessed and broadly compared. The article argues that in the national arena there appears to be a distinct trend towards a 'restrictive integration policy for immigrants'. Mandatory participation in integration programmes is now a regular part of immigration and citizenship legislation, and a precondition for having access to a 'secure juridical status'. A nexus between immigration, integration and citizenship is becoming 'the norm' in a majority of the national legal systems. The artificial link between 'the social inclusion of immigrants' and 'the juridical framework on immigration, integration and citizenship' may at times raise human rights considerations, and endanger the inter-culturalism and diversity that are inherent to the nature of the EU.

Carrera, S. (ed) (2006), *The Nexus between Immigration, Integration and Citizenship in the EU*, CHALLENGE Collective Conference Volume, Centre for European Policy Studies, CEPS: Brussels.

What is the nexus between immigration, integration and citizenship in the EU, and what are the effects emerging from that relationship? This collection of papers presented at the CHALLENGE seminar of 25 January 2006 addresses these questions and offers an overview of the main trends, issues, uncertainties and vulnerabilities surrounding these contested issues. These papers analyze the increasing tendency to link 'integration' with immigration policy and law (in terms of admission, residence and length of stay) as well as to citizenship as an ingredient of the naturalisation process for having access to nationality. While this nexus finds its natural habitat in the national arena, it is also taking on a supranational character with profound implications for the development of a common immigration policy in the EU.

Taking into account the complexity of the issues related to immigration an social cohesion, the papers presented in this collection provide different visions and understandings of integration,

immigration and citizenship, and their nexus. The aim is to bring these approaches together under the same umbrella to have a multifaceted vision and global understanding of the issues at stake.

The volume is structured into two parts: the first dealing with the connection between "Integration and Immigration" and the second focusing on the existing link between "Integration and Citizenship". While trying to provide an answer to the key question of what is the nexus between immigration, integration and citizenship in the EU, and what are its effects, the papers also offer an overview of the main trends, uncertainties and vulnerabilities surrounding the issue. Therefore, additional topics are broadly addressed:

1) What are the implications and the nature of the nexus?

2) Does the EU have a juridical competence conferred by the Treaties to legislate on policies concerning the integration of immigrants?

3) What does integration mean in liberal democracies? What is the philosophy behind the concept of the integration of immigrants (at the national and EU levels)?

4) What is the dividing line between an efficient integration policy and a respect for cultural, ethnic and religious diversity, and the multiculturalism that is inherent to the very nature of the EU?

Castles, S., Schierup and P. Hansen. (2006) *Migration, Citizenship, and the European Welfare. State. A European Dilemma.* Oxford: Oxford University Press

The main argument proposed by authors is that Europe is suffering from a dual crisis brought about by the continuing 'restructuring of the modern welfare state' and 'transformation of the nation and established national identities'. They consider that the first crisis has been largely addressed in EU countries by the incremental and permanent exclusion of substantial population groups, in particular immigrants and ethnic minority, from the established social rights of citizenship in liberal democratic states. The second crisis is reflected by the emergence of nationalist and populist movements which aim at excluding those who do not belong to the nation. The authors highlight the major moral-political dilemma emerging across the Europe out of the discourse between declared ideals of citizenship and the actual exclusion from civil, political and social rights. It is emphasised that on the one hand, the very future of the European Union is dependent on the successful framing of new inclusive mode of citizenship and broad forms of social solidarity. On the other hand, the EU must confront powerful political and economic interest and cope with its new global economic role.

In the third chapter, the authors examine the efforts in the realm of "immigrant integration" together with the EU's assumptions and interventions in the area of immigration and asylum. In the first part of the chapter it is analysed the changing conditionality posed by the neoliberal turn and changing framework of citizenship with regard to the inclusion of resident denizen and citizens with migrant background. In the second part of the chapter the authors shift their focus to the topic of changing conditions for becoming (or not becoming) a citizen framed by a new supranational political economy of border control, migration management, and asylum. The authors conclude by highlighting that, on the whole, the primacy of market requirements in the EU policy discussion on new labour immigration leaves very little room for the type of "civic citizenship" and rights dimension that is still endorsed in policies addressing the situation of the EU's legally and permanently settled TCN's.

Cholewinski, R. (2005), Migrants as Minorities: Integration and Inclusion in the Enlarged European Union, *Journal of Common Market Studies*, Vol. 43, No. 4, November 2005, pp. 695-716.

This article argues that while the immigration law and policy at EU level has rapidly developed since the transfer to community competence, the principles of minority protection are still absent and has received little attention in EU law. The increasing EU attention to the "integration of immigrants" might provide a venue where migration policy and minority protection may engage together and intersect more directly. Focussing on the integration issue, the author emphasises that Member States still retain the main competence over it. However, he points out that the integration of third-country nationals has now become a relevant aspect of the EU migration policy. First, he brings as example the conclusions of the Tampere European Council in October 1999. These conclusions, referring to the position of third country nationals who are lawfully resident in the Union, called for a common approach to ensure their integration into our societies; called for their fair treatment; stated that their status should be approximate to that of Member States' nationals and that an uniform set of rights, which are as near as possible to those enjoyed by Member States Nationals, should be granted to them; endorsed the objective to offer them the opportunity to obtain the nationality of the Member State where they are resident.

Then the author analyses the directives on the right to family reunification and the status of third-country nationals who are long-term residents building on the three perspectives on the relationship between law and integration which were identified by Groenendijk[87]: a secure legal status will enhance the immigrant's integration in society; naturalisation or permanent resident status should be the remuneration for a completed integration; the lack of integration is a ground for refusal of admission in the country. The author stresses the disparity between the first and the third perspectives. Accordingly, he highlight how the first appears supported by the Hague programme's section on integration and the Council conclusions, while the third perspective is a recent innovation which represents a tendency by some Member States to construct a more exclusionary conception of integration and to infuse it into the EU law.

D /

De Groot, G. R. (2006), 'Reflections on Integration and Access to Nationality/Citizenship through Naturalisation: A Comparative Perspective', in S. Carrera (ed.), *"The Nexus between Immigration, Integration and Citizenship in the EU"*, Collective Conference Volume, April 2006, pp. 21-27.

In this paper the author focuses on the so-called 'integration requirements', which in several countries have to be fulfilled by applicants for naturalisation, i.e. for the grant of the nationality of the receiving country and which in turn gives access to full citizenship rights. Many countries require that the applicant for naturalisation has to be integrated in order to qualify. In this regard the author analyses and compares the practices of two main countries: the Netherlands and the UK. Since an important issue is the assessment of integration as a requirement for naturalization, the author offers a comparison of the "integration tests" in the two countries. In the Netherlands the test assesses the individual's knowledge of both Dutch language and society/constitutional order in the Netherlands. These tests for naturalization have to be undertaken both by applicants for naturalization already living in the Netherlands and by applicant who are living abroad. The author highlight that particularly for the last group it will

[87] Groenendijk, K. (2004), Legal Concepts of Integration in the EU Migration Law, European Journal of Migration and Law, 6: 111-126.

be extremely difficult to acquire the required level of knowledge. The British Nationality Act requires those seeking naturalization in the UK to demonstrate that they have a sufficient understanding of English and knowledge of life in the UK.

Firstly, the author underlines that, while in the Netherlands the information available about the content of the tests is extremely poor, in the UK information is well detailed[88]. Secondly, he presents a common remake which concerns the fact of controlling the command of national language (and knowledge of the society) in the context of integration conditions. In fact, he points out that if a third-country national acquires the nationality of a Member State s/he is entitled to move to another member state even if s/he does not know the language.

Building on the results of its analysis, the author concludes that at the EU level it would not make sense to develop tests on the command of the different European languages. Nevertheless he envisages the need to indicate the required level of these language tests; to develop a common EU rule to substitute, in certain situation, a deficient knowledge of the language of the state in which a person applies for naturalization with that of another Member State. Finally he raises the question whether the development of European integration tests ("Life in Europe") would be desirable. He argues that good European tests would be better than bad national tests. However, according to the author, it would be reasonable to apply integration tests only in case of short periods of residence.

G /

Groenendijk, K. (2007), 'The Long-Term Residents Directive, Denizenship and Integration', in A. Baldaccini, E. Guild and H. Toner (eds*), Whose Freedom, Security and Justice? EU Immigration and Asylum Law and Policy*, Hart Publishing: Oxford, pp. 429-450;

In 2003 the Council of Ministers adopted the Directive 2003/109/EC which has created the new "long-term resident status". The author emphasises that the directive has codified the so called "denizen status" in Community Law and has created the legal bases for the integration of immigrants from outside the EU into the societies of the Member States. This chapter offers an overview of the Directive and describes its central elements. The author compares the new status with the status of Union citizens under Article 18 EC Treaty and Directive 2004/38/EC on the free movement. According to him, as far as the acquisition of the status is concerned, the main difference with the rights of Union citizens is that those migrants acquire their rights automatically while long term residents, who are entitled for the status, have to apply for it. Afterwards, he highlights the two sets of rights which the Directive grants in the country of residence: a secure residence right and equal treatment with nationals in a whole range of fields (employment, education, social security, and others).

After having remarked the positive effects of the Directive, the author discusses in details two points which are considered as the main Achilles' heels of the Directive: the clause on integration in Article 5 and the rules on access to employment. He points out how according to Article 5 a long term resident may be required to comply with integration conditions. It is stressed that the term integration "conditions", instead of integration "measures", covers more far reaching obligations, such us passing an examination or a test. As for the access to employment and self-employment in the first Member State a long resident with the new status

[88] A book for the preparation for the tests concerning the life in the UK has been published and the UK Home Office's web site offers the topics the questions concern.

will enjoy equal treatment with nationals. [89]In Articles 11, 14, and 21 and there are relevant rules which concern the mobility of long term resident nationals within the EU. The author highlights that admission to employment in the second Member State may be refused on the bases of a labour market test. The conclusion addresses the question as to whether the Directive represents emblematically the contradictory ideas about integration of immigrants, both in the member States and in recent EU migration law. He highlights two competitive perspectives in the relationship between law and integration: the first, which uses the concept of integration in an inclusive way, maintains that secure legal status will enhance immigrants' integration; the second, who exemplifies the exclusive use of the concept of immigration, considers it as remuneration for completed integration.

Groenendijk, K. (2006), 'The Legal Integration of Potential Citizens: Denizens in the EU in the final years before the implementation of the 2003 directive on long-term resident third country nationals', in R. Bauböck, E. Ersboll, K. Groenendijk and H. Waldrauch (eds), ***Acquisition and Loss of Nationality, Volume I: Comparative Analyses: Policies and Trends in 15 European Countries,*** **Amsterdam University Press: Amsterdam, pp. 385-410;**

This chapter offers a detailed description of the concept of "*denizenship"* and of the rights attached to this status. The introduction presents a historical overview of the concept and the term of "denizen", which describes the status more or less halfway between a citizen and a non citizen, a status that could be obtained by a foreigner on the basis of his residence in the country. Afterwards, the author analyzes the key passages which have regulated the denizen status in the European law and the post-Amsterdam developments, i.e.: the European Convention on Establishment in 1955, which represents the first European instrument that codified certain elements of the denizenship status; the 1992 Treaty of Maastricht, which has instituted the citizenship of the Union; the European Council held in Tampere in 1999; the Directive 2003/109/EC of 25 November 2003, which has created the new "long-term resident status".

In the subsequent sections Groenendijk answers the following research questions. What are the main changes in the national law and practice of the Member states? Have the changes increased or reduced the rights of third country nationals? Has there been a trend of convergence or divergence between the national laws of the Member States since 1999 and, if so, how can this trend be explained? Do the changes relate to policies on the integration of immigrants? Have the negotiations on Directive 2003/109/EC and the need to implement that Directive by January 2006 produced visible effects at the level of the Member States so far? The analysis of changes in national law and practice during the period under review (2000-2004) highlights the extension of the rights attached to the denizenship status in some Member States (Germany and Austria), and the reduction in the rights of third country nationals with permanent resident status occurred mainly as a result of new restrictions on the right to family reunifications especially in Denmark and the Netherlands. However, in the majority of Member States the package of rights attached to the status remained almost constant. What altered significantly, after 2000, are the possibilities for acquiring the status and the chances of loosing it altered significantly. It is shown by the author how in many Member States either access to permanent residence status became more difficult with the introduction of new conditions and practical barriers, or new grounds for loosing the status were introduced.

In the conclusions the author highlights that recently in some Member States the correlation between secure status and integration has been turned around: integration has become a

[89] Article 11 establishes only two exceptions: activities which relates even occasionally with public authority or activities which are reserved to nationals.

condition for the denizen status. He points out how in Germany for instance the language test can effectively block access to secure residence status for the majority of long-term immigrants. He also observes that so far Directive 2003/109/EC on the status of third-country nationals who are long-term residents has had the effect of making access to the status more difficult rather than rather then levering up the protection of third-country nationals. Moreover the author stresses that the status of denizen in most of the "old" Member States create two dilemmas for the concept of Union citizenship. The first one concerns the differences between the rights attached to the two statuses; "*why are certain rights granted to Union citizens but withheld from third-country nationals"?* The second dilemma relates to differences in treatment between third-country nationals denizen and nationals of the country of residence. Since certain rights under Community law are only attached to citizens who have exercised their right of free movement it may happen that the treatment for Union citizens - whose rights depend on national rules which may be stricter than EC rules for denizen - is worst than that one for denizen.

Groenendijk, K. (2006), 'Integration Policy and Community Law', in S. Carrera (ed.), *"The Nexus between Immigration, Integration and Citizenship in the EU",* Collective Conference Volume, April 2006, pp. 9-11.

In this paper the author presents and assesses two different approaches to integration policy. On the one hand it is highlighted the approach of German minister of interior who said at the seminar "Integration Infrastructure" in Berlin on 19 December 2005 that "Successful integration requires that immigration is not perceived as a threat but as enrichment." On the other hand it is examined the bill for a new Dutch Integration Act which was introduced in parliament in September 2005. In this paper the author explains why according to him these measures are unlawful, unfair and counterproductive. He emphasizes that existing international and Community law set clear limits to the recent trend seen in some member states to use integration tests as an instrument for the selection and exclusion of immigrants. According to the author, it would be important to see the way Member States will implement the Directive on the status of long-term resident of third-country nationals, the Directive on the right to family reunification and the Directive on the free movement of EU citizens and their family members in their national law. This would offer a good indication of the extent to which member states seriously do want to further the integration of immigrants in their societies.

Groenendijk, K. (2006), "Citizens and Third Country Nationals: Differential Treatment or Discrimination?", in J.Y. Carlier and E. Guild (eds), *The Future of Free Movement of Persons in the EU*, Collection du Centre des Droits de L'Homme de la'Université Catholique de Louvain, Brussels: Bruylant, pp. 79-101.

In this chapter the author deals with three main questions: first, is there still a justification for differences in treatment on the basis of nationality?; second, what are the essential differences between the status of EU nationals under the Directive 2004/38/EC and the status of third country nationals under Directive 2003/109/EC and how these differences have been justified?; third, has the introduction of the concept of citizenship of the Union added to the general tendency to distinguish between "us" European and "them" strangers from outside Europe?

In order to answer the first question, the author proposes an analysis of number of distinctions on the bases of nationality made by EC migration law and national law. As far as the difference in treatment between nationals and Union citizen is concerned, the author highlights that the introduction of the citizenship of the Union (Maastricht Treaty in 1992) and the proactive interpretation of Union citizens' rights operated by the ECJ, starting with the Martinez Sala

judgement,[90] have considerably reduced the differences in treatment. He also highlights that an important step further is represented by the Directive 2004/38/EC on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

Then the author focuses his analysis on the distinction between Union citizens and third country nationals. He examines the differences between the status of EU nationals under the Directive 2004/38/EC and the status of third country nationals under Directive 2003/109/EC in the light of the main issues characteristic of citizenship: right to reside in the country, equal treatment, political rights, access to employment and minimum social assistance. From this comparison it emerges that the rights attached to the status of long-term residents third country nationals are less on three of the five issues: no right to vote in local elections; Member States may restricted their access to public service job and to equal treatment in social assistance.

Through the examination of the statuses created by the recent developments of the EC migration law, the author draws the following conclusions. Residence is supplementing and even replacing nationality as the main criterion in the determination of rights of non-nationals. He highlights that five years of lawful residence has become an essential threshold for a permanent residence right and equal treatment for Union citizens and their family members irrespective of their nationality and for other third-country nationals. To support this argument the author brings the two examples. First, the ECJ ruling in Bidar case, where the Court held that the right of an Union citizen to a grant could be made conditional to the level of integration and therefore length of residence.[91] Second, with regard to expulsion, Art. 28 of directive on free movement, Art.12 (3)(a) of the long residence directive and Art. 17 of the family reunion directive mention the duration of residence in the Member States as relevant circumstance.

Groenendijk, K. (2004), Legal Concepts of Integration in the EU Migration Law, *European Journal of Migration and Law*, 6: 111-126.

This article intends to demonstrate that there are three different perspectives on the relationship between law and integration which compete in the political debate at Member State and EU level. They are the following: 1. a secure legal status will enhance the immigrant's integration in society; 2. naturalisation or permanent resident status should be the remuneration for a completed integration; 3. the lack of integration is a ground for refusal of admission in the country. The author analyses to what extent these three perspectives on integration are present in recent (post 2002) EC migration law, particularly in the Directive 2003/86/EC on the right to family reunification; the Directive 2003/109/EC on legal status of third-country nationals; 2004/38/EC on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

Focusing on the Directive on the legal status of third-country nationals, the author highlights that its subject is closely related to immigration. He points out that the Directive's preamble refers to the idea that *"the integration of third-country nationals with long residence enhances the economic and social cohesion"* and that *"the special status is defined as an instrument for the social integration of long-term residents"*. Accordingly, the author says that both references to integration are a clear expression of the first perspective: a secure legal status will enhance the immigrant's integration in society. However, the author further points out that during the negotiations other two explicit references to integration were inserted in the Directive by Member States. In Art. 5(2) to the two original conditions for the acquisition of the secure

[90] Case C-85/96, Martínez Sala v Freistaat Bayern, [1998] ECR I-2691.

[91] Case C-209/03, Dany Bidar, [2005] ECR I-2119, paras. 37 and 59.

status (stable income and health insurance) a third one was added: compliance with the integration conditions provided for in the national law". A similar clause was added in Art. 15(3): a third country nationals with the status who wants to move in another Member State may be required to comply with the integration measures in accordance with the national law of the second Member States.[92] The author emphasises how these integration measures clearly reflect the second and the third perspective on integration. Concluding, he also considers that that especially the second integration requirement could become could represent a barrier to the freedom of movement of long-term residents within the Union. Moreover it is remarked that these measures have further increased the gap between the long-term resident status and the Union citizenship.

Groenendijk, K. (2001), Security of Residence and Access to Free Movement for Settled Third Country Nationals under Community Law, in Implementing Amsterdam – Immigration and asylum rights in the EC Law, Guild E. and Harlow C. (eds), Oxford-Portland, 225-240.

In this chapter the author addresses the issue of the security of residence of third-country nationals legally resident in the EU. He considers this as central issue because of the number of persons concerned; because, according to him, the Community law has focussed primarily on granting and extending residence rights to the EU citizens, explicitly excluding almost all third-country nationals form the free movement of persons and the majority form equal treatment rules; and because he considers unrealistic the idea that this issue can be solved by return of the immigrants to their country of origin. The author highlights that the present picture of community law is rather complicated: the rights of third country nationals, particularly the residence right, depend on their relationship with an EU citizen or an EU company, on their nationality, on the conditions under which they have been admitted in an EU country, on their economic activity, and other factors. Moreover, the author points out that these rights are codified in a range of different instruments.

Building on the competences which the Amsterdam Treaty provided to the Council in this field, the author highlights five different approaches which can be adopted. The first approach takes as starting point the relevant national immigration rules of the Member States; the second approach focuses on existing international standards development outside the EU; the third one would be to extend an existing set of Community rules applicable to one category of third country nationals to all legally resident nationals of third countries irrespective of their nationality; the forth approach takes the existing rules of Community law on free movement of persons as a model for the rights of certain categories of third country nationals and make exception only when necessary; the last approach possible would be to extend the EU citizenship to third country nationals with long legal residence in a Member State. In the conclusions the author points out that, as far as the freedom of movement within the EU is concerned, it should be used the forth approach. With respect to the legal status in the Member State of residence, the author highlight that the European Council seems to have chosen the forth approach, while according to him the most opportune in this case would have been the third one. According to the author the extension of existing set of Community rules applicable to one category of third country nationals to all legally resident nationals of third countries irrespective of their nationality, would have created a coherent system of rules.

[92] Both integration amendments were proposed by Austria, Germany and the Netherlands.

Gross, T. (2005), Integration of Immigrants: The Perspective of European Community Law, *European Journal of Migration and Law*, 7: 145-161.

This article follows a "positivist approach" by offering an analysis of the relevant provisions in the various directives as far as they are concerned with the rights and duties of immigrants in relation to the host society. Looking at the historical development of a common immigration policy, the author shows how the approach followed by European Community law appears to be a sectoral one taking into account the fact that the few directives that have been adopted so far are specifically addressing the norms covering specific categories of third country nationals according to the purpose of their stay. While the package of Council Directives offer provisions dealing with the social, economic and legal "integration of immigrants", they are in fact rather rare. In Gross' view, they "*are not based on a comprehensive strategy for integration but mainly uphold the existing differences in the treatment of the several groups of third-country nationals. Mechanisms of inclusion and exclusion are mixed in a variable geometry*".

J /

Joppke, C. (2007), 'Beyond National Models: Civic Integration Policies for Immigrants in Western Europe', *West European Politics*, Vol. 30, No. 1, January 2007, pp. 1-22.

In the first part of this article it is argued that, instead of diverging in terms of national models, Western European states' policies on immigrant integration are increasingly converging. The author lays out the broad contours of policy convergence in Europe, with the help of the of the Council of European Union's agreement on "common basic principles" of immigrant integration policy. In the main section Joppke focuses on one convergent trend: obligatory civic integration courses and tests for newcomers, which are compared in the Netherlands, France and Germany. While this comparison reveals considerable national variation in implementing civic integration, this variation tends to be incompatible with traditional national model assumptions. Moreover, according to the author, more noteworthy than variation is the shared feature of civic integration that liberal goals are pursued with illiberal means. Therefore, in the concluding discussion he interprets civic integration as "an instance of repressive liberalism" which is gaining strength under contemporary globalisation.

Joppke C. and E. Morawska (2003), "Integrating Immigrants in Liberal Nation-States: Policies and Practices", in C. Joppke and E. Morawska (eds), *Toward Assimilation and Citizenship: Immigrants in the Liberal Nation-States*, pp. 1-36, Plagrave Macmillan, UK.

This book assesses the new trend in immigration studies which the authors characterize as a turn away from multicultural and post-national perspectives toward a renewed emphasis on assimilation and citizenship. They highlight that although there is a wide spread *de facto* multiculturalism in liberal states, which is grounded in their commitment to the principles of non discrimination and protection of individual rights, these policy have recently came under pressure and there is a move away form them.

It is stressed that throughout the 1990's there has been a general trend among the European states towards a more inclusive citizenship, which made it easier f or long term migrants and their children to acquire the citizenship of the host society. For instance it is remarked that all Member States of the EU[93] provide a right to citizenship for second generation immigrants. According to the authors theoretical positions, such that of Soysal (1994) which argued that national citizenship was declining everywhere and there was convergence across states toward

[93] With the sole exceptions of Austria, Greece and Luxemburg

post-national membership schemes, were wrong. They argue that in Europe the current revaluation of citizenship has lunched a trend toward the "de-ethnicization" of citizenship. They consider the following as elements of de-ethnicized citizenship: first, the resurgence of territorial *jus soli* citizenship in Europe (i.e. Spain, Belgium, the Netherlands and Germany complemented their *jus sanguinis* rules with *jus soli* rules); second, the increasing toleration of dual citizenship in Europe (openly endorsed by UK and France); third, the relaxed attitude towards minority identities, related to the fact that to be citizens of a liberal state no longer connotes membership in a particular cultural community. Building on this analysis, authors argues that citizenship in Europe is becoming "Americanized", attributed by birth on territory and constituted by political values rather than by ethnicity (which implies a confrontation with the Other).

K /

Kostakopoulou, T. (2002), 'Long-term Resident Third-Country Nationals in the European Union: Normative Expectations and Institutional Openings', ***Journal of Ethnic and Migration Studies*****, Vol. 28, No. 3: 443-462.**

This article argues that long term resident TCNs are no longer invisible in the EU. It is highlighted that the Communitarisation of migration-related matters after the entry into force of the Amsterdam Treaty has opened up possibilities for the development of a comprehensive, legally binding and less restrictive framework as regards long term resident TCNs. The author highlights three developments: first, the Tampere special summit in October 1999, where the Heads of State and Government called for a common approach to ensure the integration of long term resident TCNs in the Member States; second, the Commission's opinion that this common thinking on integration policy could culminate in forms of "civic citizenship" consisting of a set of rights and duties offered to TCNs; third, the Commission's proposals of a Council Directive on the status of long term resident TCNs which aims at harmonising national laws governing the acquisition and scope of long term resident status and granting long term resident TCNs mobility rights within the Union.

Kostakopoulou emphasizes that the grant of "European denizenship" is an important step forward. She highlights that the legal status of TCNs has been, until recently, regulated by national immigration laws and that the decisions concerning the entry, residence and expulsion of non nationals have traditionally been the reserve of state sovereignty. Moreover, even thought there has been convergence in domestic migration regimes on the elements for the acquisition of long term residence status (legal residence, sufficient income, stable employment and absence of criminal records), there has been considerable divergence in the length of residence required for the acquisition of long term residence status. The "denizenship" entails socio-economic rights such us permanent residence status, the right to family reunion, free access to employment, entitlement to social security and social assistance, and access to education. According to her the lack of common standards for the access to the denizen status contradicted democratic norms and hindered the development of internal market.

However, Kostakopoulou stresses that, although the above mentioned developments are welcome, European "denizenship" should not be seen as the solution to the inequitable exclusion of long term resident TCNs. According to her, a domicile-based paradigm of European citizenship would free the emerging European *demos* from the grip of state nationality and ensure the formal inclusion of long term resident TCNs in the European political process.

M /

Martin, D. (2007), 'Comments on European Parliament v. Council (Case C-540/03 of 27 June 2006)', ***European Journal of Migration and Law*****, Vol. 9, No. 1, pp. 144-153.**

In this article he author analyses the parts of the of the Directive 2003/86/EC on the right to family reunification which were challenged by the European Parliament. The Parliament argued that Art. 4(1), Art. 4 (6) and Art. 8 of the Directive, which create derogations to the right to family reunification granted by the directive, would violate fundamental rights, in particular the right to family life and the principle of non discrimination. The author focuses on two sets of issues: the first one relates to the "unusual position" of the Court of Justice when it checks the validity of a directive with the European Convention on Human Rights; the second address the substance of the ruling.

As far as the first issue is concerned, the author highlights the fact that in requests for preliminary ruling the Court of Justice vested itself with the role of "authentic interpreter" of the European Convention, which is not part as such of Community law. He concludes that contrary to the normal state of affairs, the Court conclusion has hardly the last word on the compatibility of the Directive with the European Convention. Indeed, the European Court on human rights could ultimately rule that a national decision, taken on the basis of the national legislation implementing the Directive, is contrary to Art.8 of the European Convention[94]. As for the analysis of the ruling of the ECJ, the author, first reports the Directive's provisions which were challenged by the European Parliament and then critically explains the decisions and justifications brought by the ECJ.

Martin reaches three main conclusions. The first one is that the application was almost bound to fail. According to him, it was in some how understandable the Court reluctance to rule that Community law Directive infringes the European Convention, taking into account that Art.8 of the Convention does not guarantee a direct right to family reunification. The second conclusion the author reaches concerns the consequences of the ECJ choice to check the validity of the Directive with the European Convention rather then EC law fundamental right to family reunification: the Court act as a sort of first instance court (for the reasons explained before). The third conclusion is that even if the Court had chosen to check the validity of the Directive not primarily with the European Convention but with a fundamental right to family reunification, the conclusion might have been the same but the reasoning beyond it different. In this case the derogation should have been justified in the light of case law of the ECJ instead of the jurisprudence of the European Court. According to the author, in doing so the ECJ would have avoided the possible arguments that it acted as court of first instance.

P /

Peers, S. (2004), 'Implementing equality? The Directive on Long-term Resident Third Country Nationals', ***European Law Review,*** **29(4), p. 437-440;**

In November 2003 the Council finally adopted a Directive on the status of long-term resident third country nationals within the European Union. According to the author, this Directive represented an opportunity to address the long stand criticism that the EU corresponds to an exclusionary organization concerned solely with the citizens of its Member States at the cost of third country nationals residing in the EU. This paper offers an overview of the Directive background and a comprehensive analysis of the context, interpretation and legal effect. In this way the author seeks to answer the question to what extent the Directive improves the status of

[94] This article does not provide for a right to family reunification, but for a right to respect for family life.

long-term resident third country nationals and demonstrates that the EU has accepted arguments for enhancing their status. The author stresses that, on the one hand, the Directive could make a positive contribution to the status of third country nationals in the EU, especially as regards their movement between Member States. On the other hand, the author points out that there are also a wide variety of potential exceptions and conditions in the Directive which will limit the prospect of it accomplishing its main objectives. Peers concludes that much will depend on how the provisions of the Directive, which he considers ambiguous, will be interpreted. Accordingly he suggests the adoption of a general approach to interpreting the Directive, which is in line with the context and objectives of the Directive.

Perchinig, B. (2006), *'EU Citizenship and the Status of Third Country Nationals'*, in R. Bauböck (ed.), *Migration and Citizenship: Legal Status, Rights and Political Participation*, IMISCOE Reports, Amsterdam University Press, Amsterdam.

The author starts by analysing the roots of the Union Citizenship; its evolution from the 1970's until nowadays. Afterwards he focuses on the effect that Union Citizenship has had on the integration of third country nationals at European and Member States level. According to the author the current form of Union citizenship, although extending the rights of Union citizens in other Member States, has not overcome the boundaries of state based nationality. On the contrary, it has marked a stronger dividing line between nationals, Union citizens and third country nationals.

Moving from the consideration that Union citizenship practice is an under researched issue, the author studies the low participation of migrant Union citizens in local and European elections. In doing this, he attempts to demonstrate the limited capacity for integration of the current model of Union citizenship. It is underlined that even though Union citizen are substantially titular of social rights and of the right to reside outside the State of their nationality, their access to political rights and higher public offices is still limited. On the base of this lack of active citizenship Perchinig raises the question whether Union citizenship will ever develop integrative powers comparable to those of Member State citizenship. Perchinig also explores the role of European citizenship and policy vis-à-vis third country nationals. In this contest he remarks the relevance of the Association Agreement with Turkey for the development of the EU migration policy to illustrate that policy outcomes depends not only on explicit policy making in the Council, Commission and Parliament but also on the, often unintentional, effects of ECJ decisions[95]. Finally, the author analyses the concept of "civic citizenship" which was first introduced in 2000 by a Communication of the Commission[96]. The concept stresses the prohibition of discrimination based on nationality and the right to vote at local level. Thus, according to the author this concept "*could become a tool to for gradually harmonizing the status of third-country nationals with Union citizens and guaranteeing a common legal status for immigrants in all Member States"*. He considers that "civic citizenship" might be seen as the missing link between Union citizenship, antidiscrimination policy and EU migration policies.

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[95] See Cases: C-340/97, Ömer Nazli, Caglar Nazli and Melike Nazli v Stadt Nürnberg; C-434/93, Ahmet Bozkurt v Staatssecretaris van Justitie.

[96] COM(2000) 757 final: *"The legal status granted to third country nationals would be based on the principle of providing sets of rights and responsibilities on a basis of equality with those of nationals but differentiated according to the length of stay while providing for progression to permanent status. In the longer term this could extend to offering a form of civic citizenship, based on the EC Treaty and inspired by the Charter of Fundamental Rights, consisting of a set of rights and duties offered to third country nationals"*.

S /

Schneider, H. (2005), 'Towards a European Migration Policy: From Maastricht to Amsterdam, from Tampere to the Hague', in H. Schneider (ed.), ***Migration, Integration and Citizenship: A Challenge for Europe's Future,*** **Volume II, Forum Maastricht: Maastricht, pp. 7-33.**

This article provides an overview of the migration movements in Europe during the last decades and explains the related political, legislative and demographic developments in the Member States and the European Union. Over the last decades the volume and significance of international migration has grown rapidly, representing a challenge for governments and civil societies. From an historical perspective this article shows how many European nations have prospered due to immigration waves. Nevertheless, in the last decades immigration matters have got an increasing negative connotation in Europe. After comparing the legislative developments on Member States level, Schneider highlights the problems of the general approach towards migration orientated mainly on the demands of the labor market.

As far as the process towards a common European immigration and asylum policy is concerned, the author highlights four main phases: the post-Single European Act period; the period from Maastricht to Amsterdam; the period from Amsterdam to Tampere; and the period from Tampere to The Hague. In analysing the legislative steps set on European level, Schneider focuses on the process made concerning legal and economic migration, the positions of the so called long term residents, family reunion as well as integration requirements concerning third country nationals.

T /

Toggenburg, G. N. (2005), ***Who is Managing Ethnic and Cultural Diversity in the European Condominium? The Moments of Entry, Integration and Preservation,*** **Vol. 43, No. 4, November 2005, pp. 717-38.**

This article provides a study of the legal background against which ethnic and cultural diversity is "managed inside the EU". It explores how the responsibilities for "the management of diversity" are spread across the European regulatory system. Toggenburg distinguishes among three sort of layers of interaction between the Member States and the European Union as regards policies related to minority and migration: the moment of entry, the moment of integration and the moment of preservation. In her view, whereas the moment of preservation continues being entirely dominated by Member States' sovereignty, the moment of integration is increasingly experiencing a closer transnational cooperation between the Member States and the EU. Further, the article identifies the moment of entry as the one where more competence has been transferred to the EU level. However, she concludes, "*there is no overall European consensus on the meaning of "diversity", and consequently there cannot be a clear-cut European multicultural model*".

V /

Velluti, S. (2007), 'What European Strategy for Integrating Migrants? The Role of the OMC Soft Mechanisms in the Development of an EU Immigration Policy', ***European Journal of Migration and Law,*** **Vol. 9, No. 1, pp. 53-82.**

In this paper the author claims that Open Method of Coordination (OMC) mechanisms, if adequately designed and used, as policy instruments which combine the use of soft and hard law at all levels of decision-making, could help promote the adoption of a human rights model in

immigration policies and foster the protection and strengthening of TCNs human rights. In particular, according to the author, OMC mechanisms could help revisit the philosophy underpinning EU immigration policy and foster a process which entails a shift from a central focus on securitization of immigration towards a more inclusive and proactive immigration policy. The first section offers an analysis of the EU system from a governance perspective in the broader context of globalisation. In this way the author highlights how soft law has become a pivotal policy-making tool for furthering and deepening European integration by building upon and around the legal *acquis* without directly creating strict legal obligations. In the second section he examines key legislative developments in the context of legal migration and it is provided a critique of recent Directives. In the third section Velluti starts by looking at the origins of the OMC in the field of immigration and then critically evaluates its partial implementation to date and the employment of subsequent soft techniques in this area. Afterwards, the author concludes by assessing whether there is the case for developing an EU immigrant integration policy.

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Assets

- Complete independence to set its own research priorities and freedom from any outside influence.
- Formation of nine different research networks, comprising research institutes from throughout Europe and beyond, to complement and consolidate CEPS research expertise and to greatly extend its outreach.
- An extensive membership base of some 120 Corporate Members and 130 Institutional Members, which provide expertise and practical experience and act as a sounding board for the utility and feasability of CEPS policy proposals.

Programme Structure

CEPS carries out its research via its own in-house research programmes and through collaborative research networks involving the active participation of other highly reputable institutes and specialists.

Research Programmes

Economic & Social Welfare Policies
Energy, Climate Change & Sustainable Development
EU Neighbourhood, Foreign & Security Policy
Financial Markets & Taxation
Justice & Home Affairs
Politics & European Institutions
Regulatory Affairs
Trade, Development & Agricultural Policy

Research Networks/Joint Initiatives

Changing Landscape of Security & Liberty (CHALLENGE)
European Capital Markets Institute (ECMI)
European Climate Platform (ECP)
European Credit Research Institute (ECRI)
European Network of Agricultural & Rural Policy Research Institutes (ENARPRI)
European Network for Better Regulation (ENBR)
European Network of Economic Policy Research Institutes (ENEPRI)
European Policy Institutes Network (EPIN)
European Security Forum (ESF)

CEPS also organises a variety of activities and special events, involving its members and other stakeholders in the European policy debate, national and EU-level policy-makers, academics, corporate executives, NGOs and the media. CEPS' funding is obtained from a variety of sources, including membership fees, project research, foundation grants, conferences fees, publication sales and an annual grant from the European Commission.

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