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Chapter 7: The protection of civil rights and liberties and the transformation of Union citizenship

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1. Introduction

What is the part played by the protection of civil rights in the development of European Union (EU) citizenship? At first sight, it is a limited one. Formally speaking, EU citizenship, rooted in market integration, grants nationals of the member states, as EU citizens, the 'civil' rights to move and reside in another member state, and to be treated like nationals of that host state. Beyond these, it does not, as a formal status, offer further guarantees in terms of civil rights or liberties. As noted by the European Parliament, '[b]y contrast with the constitutional understanding in European states since the French Declaration of Human and Civil Rights of 1789, no specific guarantees of fundamental rights are associated with citizenship of the Union' (Bux, 2016).

This chapter, which draws on EU-funded research on the realisation of civil rights associated with EU citizenship (bEUCitizen),¹ approaches EU citizenship from an essentially legal perspective; it nevertheless adopts a broader vision, which goes beyond its formal Treaty rendition focused on transnational mobility, and is informed by the notion of membership of a community of values, in the sense advocated by 'constitutional patriotism'. As the European Commission recently put it, 'Union citizenship also means equal treatment and sharing in a system of common values, which the Union upholds, including respect for human dignity, equality and human rights, and inclusion, tolerance and respect for diversity' (European Commission, 2017a, p. 12). Exploring the more extensive legal domain of EU membership, rather than EU citizenship *stricto sensu*, the analysis shows that those who live in the EU benefit from an ever-growing corpus of civil rights and liberties, which the EU institutions and member states, when they act within the scope of EU law, must respect and protect. These rights (and corresponding remedies) are not restricted to those who formally qualify for EU citizenship, but are guaranteed to all those who fall under their

scope. This alternative approach provides for a more substantial and inclusive vision of EU citizenship, which is nonetheless limited in scope and fragmented, and suffers from enforcement challenges. It results in inequalities and gaps in the protection of EU citizens, which puts under strain the liberal notion of citizenship, based on equality and liberty (Marshall, 1950).

The first part exposes the official notion of EU citizenship, with its limited civil rights ‘substance’, before revealing a second broader EU *civil rights acquis* and examining the role played by the EU system of protection of fundamental rights, before discussing the possibility of their integration into a single EU citizenship status. The second part outlines the civil rights which constitute the substance of this alternative EU citizenship. These are not limited to free movement and related equal treatment, but extend to a general protection against discrimination on various grounds, the right to effective judicial protection, and the right to the protection of personal data, as rights which have acquired a ‘particular significance’ in the EU.² It also critically reflects on the EU’s ‘neglect’ for important civil rights, such as freedom of expression, despite their historical relevance to the construction and practice of citizenship across the world. It concludes on a call for formally recognizing and consolidating this alternative vision of EU citizenship, more centred on the protection of the core civil rights and liberties of all (would-be) EU citizens, and which is already, to some extent a ‘reality’.

2.1 Civil rights and EU citizenship – coming together?

In the EU, unlike in many national settings, EU citizenship and the protection of civil rights and liberties set off on separate tracks, and have yet to really meet. The official version of EU citizenship, anchored in market integration, offers only an embryonic civil rights core focused on free movement (2.1), but EU law, taken more broadly, has developed a significant ‘EU *civil rights acquis*’ (2.2). Both co-exist with overlapping European fundamental rights regimes, which offer protection, irrespective of citizenship status, but remains pluralist and in some respects, deficient (2.3). These disaggregated frameworks could be further consolidated, integrated and fully acknowledged, as an essential component of EU citizenship.

2.1 The ‘official’ EU citizenship – is it all about free movement?

Born out of market integration, EU citizenship offers important free movement and equal treatment rights. Yet, as it currently stands, it has not turned into the ‘fundamental status’ of *all* Union citizens, it is ‘destined to become’.³ It benefits mostly the mobile and more privileged EU citizens and their families, but fails to fully protect those ‘on the move’, and offers little to those who are not mobile across the EU.

As part of the functionalist approach to European integration focused on the creation of a single market, the original Rome Treaty (1957) enabled nationals of the member states to move to another member state to pursue economic activities (e.g. as workers, service providers or recipients) without suffering discrimination because of their national

origins. Free movement was later granted, through legislative measures, to other categories of persons, such as students, pensioners, or other ‘economically inactive’ nationals of the member states (see Seeleib-Kaiser in this volume). EU citizenship emerged from the case law of what is now known as the Court of Justice of the European Union (CJEU) interpreting these free movement rules (O’Leary, 1996; Jacobs, 2007), and free movement and economic activity continues to frame what EU citizenship is about.

The Treaty of Maastricht (1992), by using the language of citizenship, and by granting EU citizenship status to all nationals of EU member states (Article 9 TEU, Article 20(1)) and by refraining from making reference to any cross-border movement or economic activities, opened the door for a broader conception (Kochenov and Plender, 2012). Yet, so far, EU citizenship has remained within its original transnational (economic) mobility frame (Nic Shuibhne, 2015), and despite a few tentative ‘excursions’ beyond. EU citizenship still mostly concerns mobile individuals, since the main right attached to this status is the right to move and reside in another EU state (Articles 20 and 21 TFEU), and having equal treatment rights with nationals of the host state (Article 18 TFEU). Furthermore, as showed below (3.1.2), the exercise of the right of free movement is made subject to conditions, which require market or economic contribution in the host country to make the most out of mobility and equal treatment rights.

Unlike national citizenship, EU citizenship does not, for the time being, offer further guarantees for civil rights and liberties. When EU citizenship was formally introduced in the Treaty, Advocate General Jacobs, advisor to the CJEU, pleaded for a more protective status. He argued that an EU citizen who goes to another member state should be ‘entitled to say "civis europeus sum" and to invoke that status to oppose any violation of his fundamental rights’.⁴ At some point, the Court appeared tempted to follow in his footsteps. Drawing on its internal market logic, it considered that national measures which affected the free movement rights of EU citizens, fell within the scope of EU law, even when the subject matter belong to national competences, and therefore had to respect EU general principles for the protection of fundamental rights. In *Carpenter*, for example, it ruled that the deportation of the Philippine wife of a British citizen, because it interfered with his ability to provide services in another member state, must respect the right to family life.⁵ In *Dano*, in contrast, it concluded that a German decision refusing to grant unemployment benefits to a Romania national fell outside the scope of application of EU law, which prevented her from invoking the protection of the EU Charter.⁶ In short, whilst situations involving cross-border movement are more likely to be ‘governed’ by EU law and hence trigger the protection of the EU Charter (see below, 2.3), the mere fact that an EU citizen has moved to another member state is not by itself sufficient to invoke the Charter against any national measures which restrict civil rights. Such a possibility would, quite obviously, bring potentially any national measures, in any policy field, under the scope of application of the Charter, and under EU judicial supervision, from the moment that a ‘token’ EU citizen would be willing to litigate. It would alter the nature of the EU legal and political system, taking it into a more pronounced federal direction (Kochenov 2017). Whilst it is easy to understand why EU politicians and courts are reluctant to make that move, in the current Euro-sceptic climate, it places EU citizens in a situation in which exercising their free movement rights may restrict or even jeopardise some of their civil rights.

The relevance of EU citizenship as a legal status is even less evident when one does not engage in cross-border activities. In two cases, *Rottmann* and *Zambrano*, the Court opened the door for a broader understanding of EU citizenship, to cover sedentary EU citizens (Kochenov, 2011). In *Rottmann*, it ruled that Germany's decision to withdraw German citizenship from a former Austrian who had acquired German citizenship by deception must take into account its implications for the status of EU citizen and respect the principle of proportionality.⁷ In *Zambrano*, which concerned the right of residence of Columbian parents of children who were born and lived in Belgium and had Belgian citizenship, the Court ruled that Article 20 TEU protected all EU citizens, even those who did not exercise their right to free movement, against national measures that would deprive them from the 'genuine enjoyment of the substance of the rights' attached to their status of EU citizens.⁸ The Court did not define what this 'substance' actually was. In later cases, it narrowly circumscribed the scope of the ruling to situations in which the EU dependent child would be forced to leave the EU territory.⁹

For sedentary EU citizens, the protection of EU citizenship is therefore, by and large, limited to the right not to be stripped of their national (and thus EU) citizenship in a way which would disproportionately affect the rights attached to their EU citizenship status, and not to be forced to leave the EU territory. This narrow approach thus renders it largely irrelevant for the vast majority of EU citizens who live in their own country, and do not trade or work across cross-borders.

So far, academic calls for a broader definition of the 'substance' of rights attached to EU citizenship (Kochenov, 2011; Kochenov 2017; Von Bogdandy et al., 2012), by associating it more closely with the protection of core civil rights, have had little echo in the Court. The Court has refrained from making a direct link between EU citizenship status (Article 20 TEU) and the Charter, although in a recent case which, like *Zambrano*, concerned the residency rights of TCN parents of an EU child in the country of nationality of the child, it ruled that when national authorities assess whether an EU child would be forced to leave the territory of the Union, they must take account of the right to family life and the best interests of the child, protected by Charter.¹⁰ It is, however, too early to tell whether this inaugurates a new chapter in the development of EU citizenship, which would associate more closely the status of EU citizenship with EU Charter protection, or just a small adjustment, to protect particularly vulnerable categories of EU citizens, namely children. In any case, EU citizenship, when understood as EU membership rather than *stricto sensu*, has much more to offer to those who live in the EU than its official version.

2.2 The '*EU civil rights acquis*' and the fleshing out of the alternative EU citizenship

Those who reside in one of the EU member states benefit from the protection of a relatively extensive *EU civil rights acquis*. Indeed, a number of specific Treaty provisions, as well as EU legislation, protect the civil rights and liberties of those who are in situations which they cover.

The EU does not possess legislative competence in human rights matters, but this did not prevent it from adopting instruments which protect important civil rights and liberties on other legal bases. It relied on Treaty provisions related to the internal market to adopt legislation on data protection. More recently, it passed EU laws providing for minimum due process guarantees in criminal proceedings to support police and judicial cooperation in criminal matters. The EU, furthermore, has acquired specific competences to promote equal treatment and fight discrimination, which have been used by the EU institutions to adopt various non-discrimination Directives. These instruments apply to all those who fall under their scope, and not just EU citizens, and therefore contribute to the more inclusive nature of this alternative EU citizenship vision (see below 2.3). Their scope is nonetheless limited to specific contexts, often economic ones, which leads to a fragmented approach (Muir, 2015).

2.3 The confused scope of the EU Charter of Fundamental Rights – not (yet) the Charter of EU Citizens’ Rights

Whilst the original Treaties did not include fundamental rights protection, the EU now boasts a fully-fledged bill of rights, the EU Charter of Fundamental Rights, which include all important fundamental liberties and freedoms. It protects the rights of all individuals, not just EU citizens, within the scope of application of EU law. The main difficulty lies in its limited and uncertain scope of application. As exposed earlier, the formal EU citizenship status, or even the exercise of free movement rights, do not, as such, automatically trigger the application of the Charter, and it is not yet clear what does.

Post-WWII projects on European political integration, marked by the fresh memories of the severe human rights violations and atrocities committed by the Nazi and fascist regimes, had placed fundamental rights protection at their core (De Búrca, 2011). The failure of the European Defence Community (1954) nevertheless forced a pragmatic refocusing of economic integration, and pushed the protection of Europeans’ civil liberties to the side lines. The member states remained responsible to ensure the protection of their citizens’ fundamental freedoms, subject to oversight by international human rights bodies, and in particular the institutions of the Council of Europe. The European Court of Human Rights (ECtHR), set up for that purpose, was tasked with enforcing European-wide standards laid down in the European Convention on Human Rights (ECHR).

The ‘return’ of fundamental rights in the process of European integration began in the late-1960s. The CJEU, by recognising the supremacy and direct effect to EU law,¹¹ furthered economic integration, but also provoked a ‘constitutional malaise’. National constitutional courts, in particular the German and Italian ones, were concerned that EU market rights and economic regulations could trump the core constitutional rights of their citizens, which these courts had a firm mandate to protect.¹² The CJEU, to preserve the freshly established authority of EU law, had little choice but to declare that EU law contained general principles for the protection of fundamental rights, which individuals could invoke in courts, against EU institutions,¹³ but also member states when these acted within the scope of EU law.¹⁴

Despite this statement of principle, the CJEU was for long hesitant to strike down EU acts for violation of fundamental rights, in particular legislative measures (Granger, 2015). Following the adoption, at first only in a declaratory form, of the EU Charter of Fundamental Rights at the Nice Treaty summit (2001), the CJEU became more receptive to human rights claims. It annulled EU anti-terrorist measures which failed to respect due process rights.¹⁵ It also validated national measures restricting EU economic freedoms where these were necessary to secure the effective enjoyment by EU citizens of their freedom of expression or assembly, or human dignity.¹⁶

From a by-product of economic integration, the respect for fundamental rights has now become a more central element of the European integration project (Williams, 2004). The Amsterdam Treaty amendment (1996) incorporated respect for human rights as a core EU value (Article 2 TEU) and made it an absolute condition for EU membership (Article 49 TEU). The protection of the civil rights of EU citizens nonetheless continues to engage three main overlapping systems: the national, EU and ECHR (Douglas-Scott, 2006; Greer and Williams, 2009; Sabel and Gerstenberg, 2010). In that sense, EU citizenship is very much a ‘composite’ one (Shaw, 2011, p. 578, van Eijken 2014, p. 235), with different rights-remedies components coming into play depending on the particulars of a situation.

The formal adoption of the EU Charter as a binding instrument, with the Lisbon Treaty (2009), further enhances the process of incorporation of human rights in the EU framework, pending EU accession to the ECHR (Article 6(2) TEU). It requires that EU institutions, as well as member states when they ‘implement’ EU law, comply with the Charter’s rights (Article 6(1) TEU, Article 51(1) of the EU Charter).

Over the last few years, the Court, relying on the Charter and referring, at times, to equivalent ECHR provisions and ECtHR case law, has struck down important EU acts, including legislative ones, which threatened citizens’ right to privacy and the protection of their personal data (Granger and Irion, 2015).¹⁷ It is not yet clear whether this more robust scrutiny over the EU legislator’s respect for fundamental rights will extend to other rights though, since until now, the Court has displayed little inclination to undercut the effectiveness of controversial EU regimes, such as the European Arrest Warrant, even when its operation results in a weakening of EU citizens’ right to a fair trial.¹⁸ Moreover, it has adopted a generally deferential attitude towards EU crisis measures (Granger, 2015), despite their potential impact on civil rights such as access to justice, freedom of expression or assembly (Ivanković Tamamović, 2015).

The Court regularly reviews national measures implementing EU law, for compatibility with civil rights. A key difficulty nevertheless lies in defining when national measures are implementing EU law, and should, therefore, comply with the Charter and be subject to EU oversight (Spaventa, 2016). For outside the scope of application of EU law, the Charter does not apply and EU institutions can only formally intervene in case of a serious and persistent breach of Article 2 TEU values, or a risk thereof, under Article 7 TEU (see below 3.2.3). Despite some convergence, the European civil rights

landscape remains diverse (Callewaert, 2009; Di Federico, 2011; van Eijken and de Vries, 2015). For example, freedom of religion is defined differently across the EU and a Muslim woman can wear a veil at work in London, but be asked to take it off in the office in Paris. Pluralism and the respect for diversity are important European values, which infuse the Treaty (eg Article 4(2) TEU) and its interpretations; they are nonetheless problematic from the point of view of the core principle of equality between all EU citizens, a principle recognised at Article 9 TEU, who do not all formally enjoy the same civil rights, depending on where they live or what they do. Furthermore, as EU member states, such as Poland and Hungary, are slowly turning into ‘illiberal democracies’, adopting legislation and engaging in practices which significantly curtail core civil liberties such as freedom of expression, freedom of religion, or freedom of education, some EU citizens may no longer enjoy basic civil rights, and the EU has struggled to address these backsliding and shortcomings (Granger and Salat, 2017), leaving EU citizens ‘on their own’ to challenge national abuses. These developments put at risk another essential feature of citizenship, liberty.

EU citizenship, when approached from the perspective of membership of a community of values, within the meaning of advocated by ‘constitutional patriotism’ (Müller 2008) has potentially much more to offer to all EU citizens and others who have ‘Europe’ as their home, than the ‘official’ version, focused on transnational economic mobility. It consists in a special enabling and protective regime, which includes important civil rights and freedoms, but its current fragmented and partial coverage puts under stress essential dimensions of citizenship, equality and liberty. This fundamental failing could cause the demise of EU citizenship as a fundamental status of the EU citizen. Still, despite, and bearing in mind, these limitations, certain civil rights have acquired a more prominent place in this alternative vision of EU citizenship.

3. The civil rights and liberties of citizens and ‘quasi-citizens’ of the EU: between the ‘official’ and ‘alternative’ EU citizenship

In addition to the rights officially associated with the status of EU citizens, free movement and equal treatment, which not all have equal access to (3.1), a number of important civil rights, such as non-discrimination, due process rights, and the right to data protection (3.2), have gained sufficient prominence in the EU framework, through recognition in various sets of EU instruments, and enhanced judicial protection, to be considered as central to the notion of EU citizenship, understood as a community of values. The effective realisation of all those rights is still problematic though. Furthermore, some core civil rights and liberties, which have in other contexts featured prominently in the construction of citizenship, such as freedom of expression, have remained marginal in the development of Union citizenship (3.3).

3.1 The ‘official’ EU citizenship rights: free movement and equal treatment

The formal EU citizenship rights which ‘qualify’ as civil rights and liberties are the right to free movement and the right not to be discriminated based on nationality within the scope of EU law (Article 20, 21(1) and 18 TFEU). A first hurdle in enjoying those

rights is the derivative nature of EU citizenship, which creates inequalities between (potential) EU citizens. A second challenge is that, although these rights are granted to all EU citizens, they are, in practice, only benefiting a small minority. Moreover, free movement is not a privilege of EU citizens, which thus questions the added value of that status.

3.1.1 Being an EU citizen – the unequal ‘right to have right’

EU citizenship is automatically granted to nationals of the member states (Article 9 TEU, 20 TFEU). Some form of ‘associate EU citizenship’ may one day be created,¹⁹ but until then, access to, and loss of, EU citizenship depends on the nationality laws of member states. They determine who is an EU citizen and who is not. National rules on the matter vary greatly, and create different opportunities to acquire, or retain, EU citizenship, depending on where and how one happens to be born or live (Van Eijken and Phoa, 2016; forthcoming).²⁰

Some countries emphasize parental lineage (*ius sanguini*). For example, children born to foreigners in Hungary do not have Hungarian nationality, and thus EU citizenship, at birth, even if their parents have lived there for decades. When they reach majority, they can apply for naturalization, under the same conditions as any other foreigners (eg residency requirement, economic resources, language test, constitutional test, etc.). Conversely, children born to Hungarians abroad become automatically Hungarian.²¹ Other countries place more importance on the place of birth and residence (*ius soli*). In France, children born to foreigners acquire citizenship at birth or when reaching majority. However, in countries stressing *ius soli*, citizenship cannot always pass across generations of ‘expatriates’. For example, children of British nationals ‘by descent’ (i.e. themselves born abroad), do not automatically become British citizens.²²

Resident foreigners may become EU citizen by applying for naturalization in one of the member states, but the conditions for naturalization vary greatly from one country to the other. A substantial period of residence is usually required, and many countries request solid linguistic knowledge, and impose integration or citizenship tests. In some countries, ethnic considerations can facilitate the naturalization process. In Hungary, citizens from neighbouring states, who live in territories that used to be part of Hungary before WWI (eg Serbia, Ukraine, Slovakia, etc), and demonstrate the plausibility of his or her descent from Hungary, can apply for facilitated naturalization, without fulfilling residence, resources or constitutional knowledge requirements.²³ In other countries (e.g. Malta, Cyprus), substantial financial investments can help someone acquire national, and thus EU, citizenship (van Eijken and Phoa, forthcoming).

In some member states, EU citizens can be deprived of their national and EU citizenship more easily than in others. Recent terrorist attacks have revived debates about withdrawing citizenship from (dual) citizens (allegedly) involved in terrorist activities in France and in the Netherlands, which could result in individuals in one member state being stripped of their EU citizenship for acts which in other EU states would not trigger such punishment (Van Eijken and Phoa 2016).

The reliance of the status of EU citizen on national citizenship means that not all individuals have the ‘same right to have rights’. There are, furthermore, particular challenges, as well as fraudulent practices, in obtaining national ID cards or passports, which justify EU citizenship status (De Waele, 2016; European Commission, 2017a).

The fundamental inequality which result from this derivative nature is particularly problematic, given the important residence and equal treatment right attached to this status.

3.1.2 The right to free movement and residence, and associated equal treatment – not for all, and not only for, EU citizens

The right to move and reside freely in another member state is the best-known EU citizenship right (European Commission 2013; 2017). It is, however, easier for those who are better educated and wealthier to move around in optimal conditions. The others can still move, but usually at their own risks and perils, and they may be sent back ‘home’ if they become an ‘unreasonable burden’ on the social security system of the host state, and abuse or break its law. Despite being characterised as a EU citizenship right, it is also available, under similar conditions, to non-EU citizens. These realities put into question the added value of EU citizenship.

The right to free movement is granted to all EU citizens, but its exercise is conditional upon fulfilling certain conditions (or ‘duties’, Bellamy 2016). The basic rules are laid down in Article 20 and 21 TFEU and consolidated in Directive 2004/38²⁴ and the CJEU case law. In short, if EU citizens wish to remain for a longer period in another member state, they must either work (as an employee or self-employed person) or have sufficient economic resources to provide for themselves and their families and comprehensive enough health insurance. They should also respect the law. After five years of residence fulfilling these conditions, they become permanent citizens, which gives them more secured residency and equal treatment rights, as they can only be expelled on serious public security grounds. When mobile EU citizens or their family members do not, or no longer comply with EU residence conditions, they are ‘illegal migrants’. They are not systematically expelled, but cannot claim social rights, such as social assistance (Granger forthcoming).

In addition to EU legal conditions, further barriers to the realization of EU mobility rights impede the actual exercise of the right to free movement. Studies looking at the practical implementation of the EU right to free movement and residence (Anderson, et al, 2014; Thym, 2015; O’Brien, 2016; Nic Shuibne and Shaw, 2014; van Eijken and Phoa, 2016; Ballesteros et a., 2016; Granger, forthcoming) and equal treatment in access to social benefits (Pennings, 2012; Greer and Sokol ,2014; Seeleib-Kaiser forthcoming, and in this volume) reveal a picture of unequal enjoyment of these formal EU citizenship rights. Those in more secure forms of employment, or who are wealthy enough (and are usually more educated), can rip the full benefits of EU citizenship. In contrast, those in more precarious jobs, who are unemployed, who have limited resources, or more marginal lifestyles, or those who belong to discriminated minorities

(e.g. Roma), have a much harder time moving and remaining in another member state (Granger, forthcoming). This led some to describe EU citizenship as a ‘class’ citizenship, which benefits an elite and alienates the (working) poor (O’Brien, 2016). And in any case, it only concerns a small minority (three per cent) of EU citizens, who happen to live in a state other than their own (European Commission, 2013, 11).

What is more, EU citizens are not the only ones to enjoy free movement rights. Many non-EU citizens also do. To start with, family members of EU citizens lawfully resident in another member state, including TCNs, have so-called ‘derived’ mobility and residency rights which mirror those of their EU family members. The spouse, direct and dependent children and dependent parents qualify automatically as family members under EU law. This also applies to registered partners where the host state recognises for them a status equivalent to marriage. ‘Unrecognized’ registered partners, unregistered partners and other dependent relatives, should have ‘facilitated’ entry and residency. TCNs parents of minor dependent EU children also have a ‘derived’ right to reside in the host member state,²⁵ as well as in the state of nationality of their child if otherwise the dependent EU child would be obliged to leave the territory of the EU.²⁶ TCN family members of EU citizens encounter various difficulties when accompanying or joining their EU family member in another member state, as EU rules are not always transposed in national law, or not properly interpreted or applied. They often face abusive administrative practices, such as lengthy or unnecessary procedures for visa issuance, excessive documentation requirements or intrusive questioning (Shaw and Miller, 2012; Nic Shuibhne and Shaw, 2014; Ballesteros et al., 2016; van Eijken and Phoa, 2016; Granger, forthcoming).

Other non-EU citizens enjoy free movement rights equivalent to that of EU citizens and their families. This is the case of the nationals of Switzerland, Norway, Iceland and Liechtenstein who enjoy such rights on the basis of special agreements. Furthermore, the EU adopted legislation granting more limited mobility and residency to TCNs who are long term residents in the EU, seasonal workers, highly skilled workers, students, trainees, volunteers, researchers, or intra-corporate transfers, and provide for family reunification for TCNs who are long-term residents in the EU (Granger, forthcoming).

EU rules on TCN movement and residency rights dilutes the exclusionary nature of EU citizenship, but also limits the added value of the EU citizenship status, and they call into question the centrality of free movement to EU citizenship. The possibility for British citizens to still enjoy free movement rights under a future EU-UK agreement the future whilst no longer being EU citizens reveal the limitations of a status, where it offers little more to its holders than what others have under different regimes. If EU citizenship is not about free movement, then what is EU citizenship about? This is when we turn to other rights which are slowly becoming part of the ‘unofficial’ status of EU citizenship.

3.2 The core civil rights of the alternative Union citizenship

A number of important civil rights are becoming more closely associated with the notion of EU citizenship, understood as membership of the EU community of values. Not yet labelled as EU citizenship rights, they are sometimes discursively associated with the status of EU citizens, including by the EU institutions themselves (European Commission, 2014a; 2017).

3.2.1 Equal treatment and non-discrimination – towards equal participation in European societies

Non-discrimination is not listed explicitly as an EU citizenship right, but is included in Part II of the TFEU, entitled Non-Discrimination and Citizenship of the Union, which suggests a close connection. Membership of the EU provides for a robust legal framework, as well as a range of policy instruments and bodies, to tackle discrimination. It sets the ground for an attractive ‘alternative’ EU citizenship, more inclusive and egalitarian, even if still limited in scope, and fragmented in nature.

EU non-discrimination law developed from the internal market prohibition of discrimination based on nationality, as well as provisions providing for gender equality in the field of employment, which were included in the original Treaty to avoid more progressive member states being penalised by a ‘competitive disadvantage’ (Muir, 2015). The Court has, since, recognised the important ‘social’ function of the right to gender equality.²⁷ The EU institutions adopted a series of laws and policies to tackle gender-based discrimination in various contexts, such as employment, social security, access to goods and services, etc. (Muir, 2015; Dudek, forthcoming). The introduction of a non-discrimination legal basis by the Treaty of Amsterdam (now Article 19 TFEU) empowered the EU to pass further legislation ‘to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.’ The EU adopted two important non-discrimination instruments, the Framework Employment Directive, which prohibits discrimination based on any listed grounds in the context of employment, and the Race Directive outlawing discrimination based on race and ethnicity in the broader fields of employment, training, education, social security, and access to goods and services.²⁸ Finally, the EU Charter outlaws discrimination based on sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation (Article 21).

The legal framework is complemented by a range of policy measures (e.g. funding, information, etc) and bodies (e.g. EU Fundamental Rights Agency and national equality bodies, etc.) which support its practical implementation (Dudek, forthcoming). The protection from discrimination is not restricted to EU citizens but extends to all TCNs who fall under the scope of relevant EU Directives and the Charter; it does not require any cross-border movement (Dudek, forthcoming). The main limitations lie in the fact that most EU measures concern participation in socio-economic, and not political, life, and that they are not always fully implemented at national level (Muir, 2015).

Women groups and legal entrepreneurs have successfully activated EU law against states or employers to secure better opportunities for women (Mazey, 1998). Other underrepresented or marginalized groups (e.g. LGBT, Roma) are beginning to more fully explore and exploit EU law's potential for greater recognition and participation in European societies (Ayoub, 2013; Jacquot and Vitale, 2014). To the extent that EU laws and policies contribute to fight discrimination and exclusion (Bell, 2002; 2008, De Schutter, 2006; Ellis and Watson, 2012), they enable greater economic and social participation of all those who live in the EU and thus can help fostering more active citizenship practices.

3.2.2 The right to protection of personal data: The new right of EU citizens in the digital era

The EU has, over the years, positioned itself as the champion of the protection of individuals' personal data against undue intrusion from EU, national, and private actors (Irion, 2017; Granger and Irion, forthcoming). Its practical implementation is however problematic, leaving individuals exposed to abuses.

The EU framework for data protection goes back to the adoption of important legislative harmonization measures, notably the Data Protection Directive, and the e-Privacy Directive, on the basis of internal market provisions.²⁹ These were given a stronger human rights' orientation through judicial interpretations, the Court relying at first on the general principle for the protection of the right to privacy and since the adoption of the EU Charter, its Article 8 which specifically addresses the right to protection of personal data (Irion, 2017).

The CJEU has gradually defined the contours of this 'new' civil right for the digital age, and developed a protective jurisprudence.³⁰ It sanctioned national measures which, in its view, undermined data protection,³¹ as well as invalidated controversial EU measures, such as the EU Data Retention Directive³² or the Commission decision on the EU-US Safe Harbor Agreement,³³ and imposed damages on the EU anti-fraud office OLAF.³⁴ The tough stance taken by the Court when the protection of personal data is at stake, which contrasts with its more deferential attitude when other human rights are concerned, suggests that this right has a particular significance for EU citizens (Irion, 2017). The Court is not so explicit about it, but its Advocates General seem to treat the right to data protection as a core right of EU citizens.³⁵

Since Lisbon, the Treaty itself now includes the right of everyone to the protection of her personal data and offers a dedicated legal basis for the adoption of data protection measures (Article 16 TFEU). A reform of EU data protection law has recently gone through, with the adoption of two new instruments.³⁶ There are, however, notorious implementation challenges, caused notably by complexity and rapid technological changes and the business and security potentials of data collection and use (Granger and Irion, forthcoming).

3.2.3 Effective Judicial Protection – the ‘Enabling’ Right of EU Citizens

According to the President of the CJEU, the effective realization of EU rights is supported by a ‘complete’ system of legal remedies (Lenaerts, 2015, p. 14). It nonetheless displays some insufficiencies, in case of violations of EU rights by EU institutions themselves, or in situations of systemic failure of the judicial system at national level (Granger and Salat, 2016; forthcoming; Adamo, forthcoming).

EU law demands that individuals have access to equivalent and effective remedies when vindicating their EU rights. This requirement, developed first in the case law of the CJEU related to remedies available to enforce EU law in national courts (Dougan, 2005), has now been codified (Article 19(1) TEU). Article 47 of the EU Charter further provides that ‘[e]veryone whose [EU] rights and freedoms ... are violated has the right to an effective remedy before a tribunal’, to ‘a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law’ and to access to a lawyer and legal aid, in case of needs.

Since the implementation of EU laws and policies is mainly carried out at national level, violations of citizens’ rights are committed by national authorities. Where emanations of the state or private actors infringe rights granted under EU law, the victims can resort to the various non-judicial mechanisms available at national level, such as citizens’ advice bureau, ombudspersons, or human rights bodies (Granger and Salat, 2016). They can also rely on various information and advice services hosted by the EU institutions.³⁷ Where their EU free movement rights and equal treatment are threatened, EU citizens can ask for help from SOLVIT, a problem-solving network of national administrative authorities under EU coordination.³⁸ Furthermore, individuals benefit from relatively effective combination of a public centralized enforcement mechanism, the infringement procedure, and private decentralized enforcement through national courts.

First, individuals can complain to the European Commission, alerting it to violation of their EU rights. If the Commission decides not to act upon the complaint, it should inform the complainant about alternative remedies. If it decides to act, it starts an informal, then a more formalized, ‘dialogue’ with the member state concern, to gather information about the nature and scope of the infringement, and to try to secure the necessary national adjustments. For example, the Commission launched infringement proceedings against Hungary for failure to comply with internal market and international trade law rules, and violation of academic freedoms, the right to education and freedom to conduct a business, for the adoption of a legislative amendment which would force Central European University to stop its operation in Budapest (European Commission, 2017). Where this diplomatic-administrative phase fails, the Commission can bring the matter before the CJEU for a finding of violation and, eventually, financial sanctions. The Commission, for instance, brought an infringement action against Hungary under EU legislation prohibiting age discrimination, to address threats on judicial independence and protect the right to a fair trial, caused by the forced early retirement of senior judges (Granger and Salat, forthcoming). Whilst the Commission relies on individuals’ complaints to detect violations, these play no role in the later procedure, and cannot force the Commission to pursue the matter (Harlow and Rawling,

2006). Moreover, the Commission can only start a procedure against a member state when a situation falls under the scope of EU, and cannot be used to address any violation of the Charter rights. The Commission could nonetheless try to bundle infringement actions together to address systemic violations of human rights by member states (Kochenov and Pech, 2016).

Second, individuals can turn to national courts to vindicate their EU rights against member states. Indeed, under the doctrines of supremacy and direct effect, individuals can invoke EU rights before domestic courts, which must uphold them, and invalidate or set aside conflicting national norms. This only works, however, when national justice systems are properly functioning, and do not suffer from systemic problems (e.g. corruption, political influence, excessive delays, etc). Rights set out in Treaty provisions, such as the right to free movement of workers, or in Regulations, like data protection, can be invoked against state authorities, as well as private parties, which fail to respect them (horizontal direct effect).³⁹ Those laid down in Directives can be relied on only against public authorities (vertical direct effect).⁴⁰ However, national courts must take account of Directives in interpreting national law (indirect effect), including in disputes between private parties (Drake 2005).⁴¹ Moreover, when invoked in combination with a general principle of EU law or the Charter's judicially enforceable rights (e.g. prohibition of discrimination based on age), some provisions of EU non-discrimination Directives, may be relied on in disputes between private parties, such as between employees and their employers.⁴² If national courts doubt whether national law or private practices respect EU rights (for example, whether a ban on wearing the veil at work is compatible with the Race Directive),⁴³ they can refer questions of interpretation to the CJEU, which will assist them (Article 267 TFEU). Under EU law, individuals must have access to a court to vindicate their EU rights as well as to effective remedies, including deterrent sanctions and proportionate compensation (Article 19 TFEU).

The EU principle of effective judicial protection has, so far, mostly served those economic actors who invoked EU internal market or competition rules against restrictive national or private measures. However, individuals, supported by civil society actors, can also rely on it to secure access to court and obtain more effective remedies against state or private measures (e.g. by employers or Internet service providers), where these violate EU citizenship rules (e.g. residency rights of Third Country Nationals family members of EU citizens, protection of EU citizens from expulsion, etc.), EU non-discrimination or data protection instruments, or the Charter, where it applies. Lawyers look for ways of bringing cases under the scope of EU law, in order to secure access to EU and national remedies (e.g. judicial review, compensation, interim relief), which would not otherwise be available under domestic law.

As already suggested above (2.3), individuals have had a harder time challenging restrictive EU measures on human rights grounds. Where EU institutions fail to respect the rights of their citizens (including all those contained in the Charter), which is increasingly likely to occur as a result of the increase powers and competences of EU institutions, these can complain to the European Ombudsman (Articles 20(2)d, 24 and

228 TFEU) or send petitions to Members of the European Parliament (Articles 20(2)d, 24, 227 TFEU). Furthermore, individuals can, in principle, challenge EU measures which violate their EU rights before the EU Courts, through an action for annulment (Article 263 TFEU). However, the Treaty, as restrictively interpreted by the CJEU, imposes demanding standing requirements,⁴⁴ which limit the actual ability of individuals to bring such direct challenges against EU legislation, even when these violates core civil rights (Albors-Llorens, 2012; Arnall, 2015). Affected individuals can nevertheless resort to indirect judicial actions against EU laws. They do so by challenging further EU implementing measures before the EU courts under an action for annulment combined with a ‘plea of illegality’ against the ‘parent’ EU legislation (Article 277 TFEU), or by bringing actions before domestic courts against national implementation measures, asking the national court to raise the question the validity of the EU act via a request for a preliminary ruling (Article 267 TFEU). This is how an Irish NGO and thousands of Austrian citizens successfully challenged the EU Data Retention Directive,⁴⁵ or how an Austrian law student obtained the annulment of the Commission Decision on the EU-US Safe Harbor Agreement,⁴⁶ for breach of the Charter’s right to privacy and data protection. There are nonetheless certain EU actions which are beyond the remit of EU judicial control. This is the case of Common Foreign and Security Policy measures (Article 24(1) TEU, Article 275 TFEU), even if individuals can still challenge in court restrictive measures adopted against them, such as asset-freezing or travel bans (Article 274 (2) TFEU). The unusual institutional set-up supporting EU-driven austerity measures also rendered them partially immune to judicial challenge.⁴⁷

One of the key difficulties with justice systems is that they are relatively slow, and the annulment of problematic measures intervenes often too late to help those whose rights have been violated. In order to prevent irremediable damage, individuals can ask for interim relief against EU acts (Articles 278 and 279 TFEU) and national measures in breach of EU law.⁴⁸ If harm has already been done, they can seek compensation against the EU (Article 235 and 340 TFEU) or member states’.⁴⁹ The substantive and procedural conditions nonetheless make such awards difficult to obtain (Granger, 2007).

In addition to effective judicial protection, the Charter also protects further due process guarantees in criminal proceedings, such as the presumption of innocence and the rights of the defence (Article 48), the principle of the legality and proportionality of criminal offense and penalties (Article 49) and the right not to be tried and punished twice for the same criminal offence (Article 50). Moreover, EU mutual recognition instruments had led to some degree of harmonization in criminal and civil procedure across the EU. Indeed, EU mechanisms, such as the European Arrest Warrant, which enables the transfer of accused or convicted criminals from one member state to the other to face trial or serve a sentence, exposed citizens to procedures and practices in other member states, which did not always respect basic due process guarantees.⁵⁰ In order to sustain the mutual trust which the operation of mutual recognition regimes necessitates, the EU has released a Roadmap for the adoption at EU level of a set of instruments and measures imposing minimum standards in criminal procedure across the EU, to adequately protect the rights of victims, the right to interpretation and translation, the right to information about rights, the right to legal advice, the right to legal aid, the right

for a detained person to communicate with family members, employers and consular authorities, the right to protection for vulnerable suspects, and the presumption of innocence and define the conditions of pre-trial detention.⁵¹ Some of the measures have already been adopted.⁵² If properly implemented and respected, these should improve the due process rights of all those on the territory of the EU and who have been victims or are accused of a crime (Granger and Salat, 2016).

In situations which fall outside the scope of EU law, EU institutions have little to offer in terms of judicial assistance. The Treaty of Amsterdam introduced a provision, now Article 7(2) TEU, providing for a sanction mechanism in case of systemic violations of Article 2 TEU values, which include respect for human rights. It has been, since, supplemented by a preventive component (Article 7(1) TEU). On 17 May 2017, the European Parliament, considering that the current fundamental rights situation in Hungary justified starting an Article (1) procedure, adopted a resolution in that sense (European Parliament 2017). The high political threshold (i.e. unanimity) required to trigger sanctions undermines its potential practical impact thought (Sedelmeier 2014). In order to avoid reaching an Article 7 situation, the Commission in 2014 designed a pre-Article 7 procedure, entitled ‘Rule of Law Mechanism’, to address threats on the rule of law, and which could be activated in case of systematic violations of fundamental civil rights (European Commission 2014b). It activated against Poland in January 2016, responding to threats on the independence of the constitutional tribunal and media freedom, without results so far (Granger and Salat, forthcoming)

Despite some important limitations and some shortcomings, EU law contributes to improving individuals’ access to justice across the EU to vindicate their rights, in particular those derived from EU law. In that sense, it enables EU citizens to enforce their EU citizenship rights, such as free movement, or right to vote in EP elections,⁵³ but also other substantive rights deriving from EU membership, such as non-discrimination (Dudek, forthcoming), and Charter’s rights, where the situation is governed by EU law. Therefore, the right to effective judicial protection reinforces EU citizenship as a legal status, in both its official and alternative versions. Still, not all victims of rights violations are willing or able to take matters to courts, and empirical studies suggests that rights and remedies tend to be better exploited by corporate actors (Harding, 1992; Harding, Kohl and Salmon, 2016) and organized interests (Conant, 2002) than by ordinary citizens. EU institutions are developing further policy tools to assist citizens and their lawyers in enforcing their rights in courts (eg Handbook on Access to Justice, 2016). Civil society organizations have a key role to play here in supporting citizens vindicating their rights in courts (Gonçales Vega, forthcoming).

Free movement, non-discrimination, effective judicial protection, and the protection of personal data are all civil rights which have come to occupy a central place in the EU legal framework, and can be described as constituting the civil rights ‘core’ of a broader vision of EU citizenship. Defining a European way of life, they are also granted to non-EU citizens who live in the EU or in other ways fall under the scope of its laws, which makes this alternative EU citizenship and its associated rights more inclusive than the official concept, restricted to nationals of the member states. However, their scope of application varies, which results in a fragmented legal status.

3.3 The ‘forgotten’ civil liberties and EU citizenship – what to do with freedom of expression?

Important civil liberties which have, traditionally, played a crucial role in constructing citizenship and a sense of belonging to a community, nonetheless occupy a marginal position on the EU citizenship legal framework. This is, notably, the case of freedom of expression. New online forms of communication, information and expression, known as citizen-journalism, have opened new avenues for citizens’ mobilization and engagement, but have, strangely, received little attention from the EU institutions.

Freedom of expression is protected under the EU Charter (Article 11), within the scope of application of EU law. However, the only area in which the EU has legislated it is in the field of audio-visual media.⁵⁴ It is, in fact, on this basis that the EU Commission questioned Hungary in 2012, and Poland in 2015, on their controversial media reform, which put pluralism in the media and therefore freedom of information and expression at risk in these member states (Von Bogdandy et al, 2012; European Commission 2016b; Granger and Salat 2016). The EU has, furthermore, adopted measures which impose certain restrictions on free speech, notably to prevent and sanction ‘hate speech’.⁵⁵

Over the last two decades, the journalistic landscape has radically changed with the development of online newspapers, portals and blogs, as well as news sharing on social media (e.g. Facebook, Twitter). These new modes of information and expression, which go under the label of ‘citizen journalism’, have the potential to actively engage citizens in political life and can thus contribute to foster more active citizenship practices, and greater participation in public life (Cram, 2015). In some EU countries, like Hungary, online portals are the main providers of investigative journalism and play a crucial role in informing citizens (Mediapower Monitor, 2017).

The phenomenon of ‘citizen journalism’, as both a source of information and medium of expression for EU citizens, and as a practice of active citizenship, is not regulated at EU level, despite an obvious cross-border dimension (Granger and Salat, 2016). Depending on the countries or circumstances, ‘citizen journalists’ are either treated as professional journalists (with relevant rights and duties attached) or as ordinary citizens exercising their freedom of expression. Moreover, EU states have varied standards concerning the scope and limits of freedom of expression, with many countries criminalizing defamation or the glorification of terrorism, prohibiting insults or criticism of politicians or offering stronger protection to privacy. As online news portal, blogs and social media posting do not know of borders and can be accessed from anywhere in the EU, citizen journalists operate in an uncertain environment (Salat, forthcoming).

The absence of an EU-wide framework for the protection of freedom of expression online is all the more surprising that the EU has issued guidelines on freedom of

expression off and online to the attention of third countries, in which it stated that ‘without freedom of expression and freedom of the media, an informed, active and engaged citizenry is impossible’ (Foreign Affairs Council, 2014). The case has been made for greater EU intervention in protecting freedom of expression online, and citizen journalists in the member states, in particular in the light of recent attacks on digital journalism (Index on censorship, 2013).

4. Conclusion

As put by the European Commission, ‘[t]he ultimate goal of EU citizenship policies is for all EU citizens to feel at home wherever they are in the EU and to feel truly European, also when staying at home. This means enhancing EU rights and making sure that EU citizens can enjoy them in their everyday life (European Commission, 2016a).’ This objective is, in fact, already partially realised. Those who live in the EU enjoy, as a result of European integration, a range of civil rights which go beyond what the Treaty calls EU citizens’ rights, and which make up for an alternative vision of EU citizenship, which is more encompassing than the official version. First, it is much broader in scope, and includes, beyond free movement and equal treatment irrespective of nationality, other civil rights such as the protection from discrimination, the right to the protection of personal data, and due process guarantees. It also includes, enhances and redefines the right to family life, as EU citizenship rules guarantee to EU citizens ‘on the move’ and their close family members the right to live together, and free movement enables EU citizens to access rights to family life, as well as matrimonial or reproductive rights, which they would not have if they had ‘stayed home’ (van Eijken and Phoa, 2016; Granger, forthcoming; Knijn and Naldini in this volume and forthcoming; Jimenez Blanco, Espiniella Menendez, forthcoming). Second, it affords important civil rights not just to the nationals of the member states, but also to Third Country Nationals that fall under the jurisdiction of EU law, thereby offering a much more inclusive notion of citizenship. Third, this alternative citizenship status addresses the needs not only of mobile EU citizens, but also takes care of those who do not want to, or cannot, move. Fourth, to a certain extent, they can compensate for the deficiencies of national systems, where these fail to sufficiently respect and protect the civil rights of those who live on their territory, including their own citizens, by offer greater protection to certain rights, or providing for more effective means to vindicate them. The main limitations lay in that, in its current operation, it is a highly fragmented legal status, which does not respect even formal equality, and sometimes fail to guarantee liberty to EU citizens, and thus challenge the very notion of citizenship, in its liberal version.

The EU legal and policy framework, as well as scholarship, ought to more readily acknowledge what EU citizenship is ultimately about, and abandon the current narrow official definition of it. Moreover, for this new status to be truly meaningful for all EU citizens, some adjustments are required. Implementation problems must be tackled more effectively, through supportive and corrective initiatives. Moreover, the legal framework and institutional practices must ensure that the EU itself respects the civil rights and liberties of its citizens in all its endeavours, and that it has the means to protect them against the most serious violations of their right by state and private actors,

in all context. Such a development would nonetheless require addressing the question of the political structure of the EU, and would necessitate a further step in the federal direction (Kochenov, 2017), a move for which Europeans and their political leaders may not be ready for yet (Granger, 2016).

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¹ This chapter draws on the work carried in Work Package 7 on civil rights of the project entitled bEUcitizen (Barriers towards EU citizenship), which received funding from the European Union's Seventh Framework Programme for research, technological development and demonstration under grant agreement no 320294, <http://beucitizen.eu/>. Some of the arguments developed in this chapter were

rehearsed in one of the project's policy brief (Granger 2016). I want to thank colleagues involved in the project for their ideas and input at various stages of the project, and the editors of this volume for useful feedback. All errors are mine.

² EU citizenship also contributes to redefining the right to family life. This dimension is addressed in the chapter by Knijn and Naldini (forthcoming), in this volume, and Granger (forthcoming)..

³ Case C-184/99 *Grzelczyk* ECLI:EU:C:2001:458.

⁴ Advocate general Jacobs' Opinion in case C-168/91 *Konstantinidis* ECLI:EU:C:1992:504, para 46.

⁵ Case C-60/00 *Carpenter* ECLI:EU:C:2002:434; see also case C-457/12, *S* ECLI:EU:C:2014:136.

⁶ Case C-333/13 *Dano* ECLI:EU:C:2014:2358.

⁷ C-135/08 *Rottmann* ECLI:EU:C:2010:104.

⁸ Case C-34/09 *Zambrano* ECLI:EU:C:2011:124.

⁹ C-256/11 *Dereci and Others* ECLI:EU:C:2011:734.

¹⁰ C-133/15 *Chavez-Vilchez and others* ECLI:EU:C:2017:354.

¹¹ Cases 6/64 *Costa v ENEL* ECLI:EU:C:1964:66, 106/77 *Simmmenthal* ECLI:EU:C:1978:49, and 26/62 *van Gend & Loos* ECLI:EU:C:1963:1.

¹² eg *Solange I* Case 2BvL 52/71 [1974] BVerGE 37, 271.

¹³ Cases 29/69 *Stauder* ECLI:EU:C:1969:57, 11/70 *Internationale Handelsgesellschaft* ECLI:EU:C:1970:114, 4/73 *Nold*, ECLI:EU:C:1974:51 and 44/79 *Hauer*. ECLI:EU:C:1979:290.

¹⁴ Cases C-5/88 *Wachauf* ECLI:EU:C:1989:321; C-260/89 *ERT* ECLI:EU:C:1991:254.

¹⁵ Case C-402/05 *P* and C-415/05 *P Kadi* ECLI:EU:C:2008:461.

¹⁶ Cases C-112/00 *Schmidberger* ECLI:EU:C:2003:333; C-36/02, *Omega* ECLI:EU:C:2004:614.

¹⁷ Joined cases C-293/12 *Digital Rights Ireland* and C-594/12 *Kärntner Landesregierung, Michael Seitlinger, Christof Tschohl and others* ECLI:EU:C:2014:238; C-362/14 *Schrems*

ECLI:EU:C:2015:650; C-203/15 and C-698/15 *Tele2 Sverige* ECLI:EU:C:2016:970

¹⁸ Cases C-399/11 *Melloni* ECLI:EU:C:2013:107; C-396/11 *Radu* ECLI:EU:C:2013:39; compare with C-168/13 *Jeremy F* ECLI:EU:C:2013:358.

¹⁹ See MEP Charles Goerens Amendment 882 offering Brits 'associate EU citizenship' for nationals of former member states, accessed on 15 May 2017 at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-592.348+02+DOC+PDF+V0//EN&language=FR>.

²⁰ European Union Observatory on Democracy and Citizenship (EUODO), accessed on 15 May 2017 at <http://eudo-citizenship.eu/>.

²¹ Act LV of 1993 on Hungarian Citizenship.

²² For details, see Home Office, 'Guide MN1 – Registering as a British citizen, a guide about the registration of children under 18, accessed on 15 May 2017, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/583385/MN1_Guide_January_2017.pdf

²³ above n 21.

²⁴ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States [2004] OJ L 158/77. Its provisions are superimposed and partially overlap with other EU rules and legislation concerning mobility, residency and equal treatment for workers or self-employed, which creates particular difficulties (O'Brien 2016).

²⁵ C-200/02 *Chen* ECLI:EU:C:2004:639.

²⁶ C-39/09 *Zambrano* above n 8.

²⁷ Case 43/75 *Defrenne* ECLI:EU:C:1976:56, paras 10-12.

²⁸ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L 180/22; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L 303/16.

²⁹ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1995] *Official Journal L 28/31*; Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) [2002] OJ L201/37; Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data [2001] OJ L 8/1, Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters [2008] OJ L 350/60.

30 For a thematic overview of the EU courts decisions, see https://ec.europa.eu/anti-fraud/sites/antifraud/files/caselaw_2001_2015_en.pdf, accessed on 15 May 2017.

31 For example, the Commission took Hungary to Court for terminating the mandate of the Hungarian Data Protection Supervisor, as it threatened its independence, and ultimately the protection of personal data (case C-288/12 *European Commission v Hungary* ECLI:EU:C:2014:237)

32 *Digital Right Ireland* above n 17.

33 *Schrems* above n 17.

34 Case T-259/03, *Nikolaou* ECLI:EU:T:2007:254.

35 See Opinions of the Advocates General in the *Digital Rights Ireland* case (ECLI:EU:C:2013:845) and in the *Schrems* case, which are explicit about it (ECLI:EU:C:2015:627).

36 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)[2016] OJ L 119/1; Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data [2016] OJ L 119/89.

37 E.g. Europe Direct, at https://europa.eu/european-union/contact_fr, Your Europe <http://europa.eu/youreurope/index.htm>, EURES at <https://ec.europa.eu/eures/public/homepage>, EURAXESS, <https://euraxess.ec.europa.eu/>, all accessed on 15 May 2017.

38 SOLVIT, accessed on 15 May 2017, at http://ec.europa.eu/solvit/index_fr.htm

39 C-415/93 *Bosman* ECLI:EU:C:1995:463

40 Case 152/84 *Marshall* ECLI:EU:C:1986:84 and C-282/10 *Dominguez* ECLI:EU:C:2012:33.

41 Cases 14/83 *von Colson and Kamann* ECLI:EU:C:1984:153 and C-106/89 *Marleasing* ECLI:EU:C:1990:395.

42 Cases C-144/04 *Mangold* ECLI:EU:C:2005:709, C-555/07 *Küçükdeveci* ECLI:EU:C:2010:21, and C-441/14 *Dansk Industri* ECLI:EU:C:2016:278.

43 Cases C-157/15 *Achbita* ECLI:EU:C:2017:203 and C-188/15 *Bougnaoui* ECLI:EU:C:2017:204.

44 Case 25/62 *Plaumann* ECLI:EU:C:1963:17; C-583/11 *P Inuit* ECLI:EU:C:2013:625.

45 *Digital Right Ireland* above n 17.

46 *Schrems* above n 17.

47 Case C-370/12 *Pringle* ECLI:EU:C:2012:756, but see recent joined Cases C-8/15 P to C-10/15 P *Ledra Advertising* ECLI:EU:C:2016:701.

48 Case C-213/89 *Factortame* ECLI:EU:C:1990:257; C-432/05 *Unibet* ECLI:EU:C:2007:163.

49 Joined cases C-6/90 and C-9/90, *Francovich* ECLI:EU:C:1991:428.

50 See also cases reported by the NGO *Fair Trial International*, accessed on 15 May 2017, at <https://www.fairtrials.org/>

51 Resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings [2009] OJ C 295/1.

52 Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings [2010] OJ L 280/1; Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings [2012] OJ L 142/1; Directive 2013/48/EU of the European Parliament and the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European Arrest Warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty [2013] OJ L 294/1.

53 C-650/13 *Delvigne* ECLI:EU:C:2015:648.

54 Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) [2010] OJ L 95/1. The EU also engages with some kind of soft monitoring of freedom of expression, through the Media Pluralism Monitor funded and hosted by the EU institutions, <https://ec.europa.eu/digital-single-market/en/media-pluralism-monitor-mpm>, accessed on 15 March 2017.

55 e.g. Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law [2008] OJ L 328/55; Code of Conduct on illegal online hate speech, accessed on 15 March 2017 at http://ec.europa.eu/justice/fundamental-rights/files/hate_speech_code_of_conduct_en.pdf