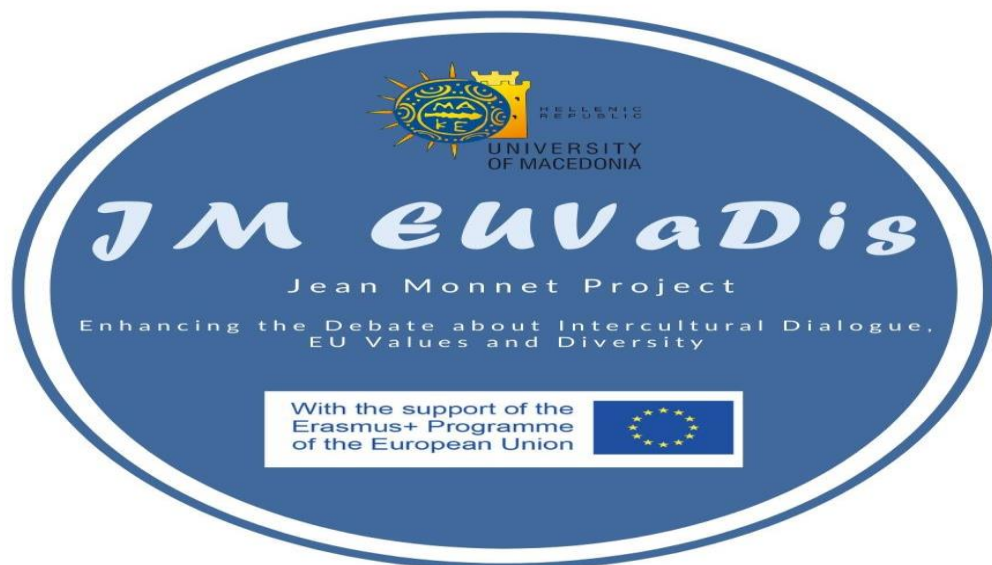


JEAN MONNET PROJECT EUVaDis

RESEARCH PAPER 3

EUROPEAN CITIZENSHIP

**‘The evolution of European citizenship
through the ECJ's jurisprudence’**



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ABSTRACT

The institution of European citizenship has been in existence for more than thirty years and continues to occupy both public opinion and the academic community. But where the treatment of European citizenship - and the rights it confers on European citizens - is undoubtedly worthy of observation and study in the judicial practice of the Court of Justice of the European Union (CJEU). Although the CJEU initially reaffirmed the protection afforded by European legislation, as demonstrated by the important judgments it has handed down, the last decade has nevertheless seen a trend towards a retreat, the reasons for which are not yet clear. The commentary on critical judgments of the CJEU on European citizenship is considered incomplete without an earlier approach to the institution of European citizenship, both in terms of conceptual - historical and its content. In the first section, the institution of European citizenship will be defined as a concept both through its evolutionary course and, more importantly, in contrast to national citizenship. In the second section, the rights conferred on European citizens by the Treaties of the European Union and the Charter of Fundamental Rights will then be summarised. In the third section, and after having presented the main areas of interest regarding European citizenship, a brief commentary will be made on critical judgments of the CJEU to demonstrate the Court's attitude towards the institution, as well as the unexpected turnaround in recent years. In the fourth and last section, the conclusions are set out. In conclusion, an attempt will be made to demonstrate the importance of the institution as a whole and, in particular, as it has evolved following the change in the jurisprudence of the CJEU. Given this change, the study concludes with the view that it is the restriction of the rights conferred by primary Union law through the Treaties that is ultimately felt more than the legal certainty that the Court has sought

KEYWORDS: EU citizenship; EU Citizenship Law; Fundamental rights; European Court of Justice; Jurisprudence; European integration;

The evolution of European citizenship through the ECJ's jurisprudence

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I. Introduction

The institution of European Union citizenship was formally introduced into the European legal system by the Maastricht Treaty in 1992¹. However, as a concept aimed at creating a political community with a sense of common identity, it can be traced at the time of the establishment of the European Coal and Steel Community in 1951². In the 1970s, the concept of European citizenship was linked to the idea of granting rights to nationals of Member States who exercise an economic activity in the territory of another Member State in order to put them on an equal footing with citizens of the latter aiming to ensure legal equality between them³.

The introduction of European citizenship in the Maastricht Treaty, which entered into force in 1993, incurred a number of rights conferred on European citizens. Among these was the right to move and reside freely within the European Union, protection against discrimination on grounds of nationality, the right to vote and stand as a candidate in local and European Parliament elections in their country of residence and the right to diplomatic protection and assistance from any embassy or consulate of any authority of any EU country, should they be outside the EU, as well as the

¹ Kostakopoulou, Dora, European Commission (2010) Citizenship, migration and intercultural dialogue in the EU: defending the connections. In, *A Europe of Achievements in a Changing World: Visions of Leading Policymakers and Academics*. Saarbrücken, GE, Lap Lambert Academic, p. 123; Maas, Willem. "European Union citizenship in retrospect and prospect." *Routledge handbook of global citizenship studies*. Routledge, 2014, pp. 411-413.

² L. PAPADOPOULOU / D. ANAGNOSTOPOULOU (eds.), "Towards an Inclusive European Citizenship?", Jean Monnet Center of Excellence, Papazisis publications, Athens 2019, p. 39.

³ Silveira, Alessandra, and Claudia McKenny Engström. "The emerging culture of EU citizenship as" citizenship of rights" and the legal nature of the EU polity." (2016), p. 141.

rights to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union⁴.

The Treaty of Amsterdam⁵ in 1997 strengthened European citizenship, as new rights were added, including the right to address the EU institutions in any one of the official languages and to receive a reply written in the same language, access the documents of the European Parliament, the Council and the European Commission and the EU civil service⁶.

In the Lisbon Treaty (2007), the new rights added were those of access to documents of the EU institutions, as well as the European Citizens Initiative⁷.

Therefore, it is clear that European citizenship as an institution aims to create a common space where a sense of belonging and a common identity⁸ among EU citizens will prevail. This common identity goes beyond the limits set by the national identity, while the ultimate aim is to promote the idea of European integration⁹ by strengthening relations between European citizens, who will participate more and more actively in the democratic society within the EU.

II. European citizenship in comparison with national citizenship

⁴ Treaty on the Functioning of the European Union (TEFU) Article 20(2d); Mantu, Sandra. "(En)gendering EU Citizenship." *Gender Equality in the Mirror*. Brill Nijhoff, 2022. p. 95.

⁵ Maas, Willem, 2014, p. 409.

⁶ Kostakopoulou, Theodora. "European Union citizenship as a model of citizenship beyond the nation state." *ROUTLEDGE/ECPR STUDIES IN EUROPEAN POLITICAL SCIENCE* (1998): 156 and L. PAPADOPOULOU / D. ANAGNOSTOPOULOU (eds.), 2019, pp. 55-6.

⁷ Moccia, Luigi. « European civic citizenship and EU integration policies », *Civitas Europa*, vol. 40, no. 1, 2018, p. 110.; Isin, Engin F., and Michael Saward. "Questions of European citizenship." *Enacting European Citizenship* (2013): 1.

⁸ Samantha Besson, André Utzinger. *Towards European Citizenship*. *Journal of Social Philosophy*, 2008, 39 (2), p.185. [ff10.1111/j.1467-9833.2008.00421.x](https://doi.org/10.1111/j.1467-9833.2008.00421.x). [ffhal-02516254f](https://doi.org/10.1111/j.1467-9833.2008.00421.x).

⁹ Samantha Besson, 2008, p. 186.

National citizenship is the legal status that links a person as a citizen to a particular State¹⁰. The rights and obligations of citizens of the State are defined in the national legislation of the State concerned¹¹. European citizenship does not seek to supersede national citizenship¹² but the two are directly linked, the former providing an additional level¹³ at which citizens of Member States can enjoy additional rights¹⁴ beyond the scope of national territory. European citizenship, therefore, complements and not replaces, national citizenship¹⁵ nor threatens the Member States' authority in granting national citizenship¹⁶. This is why European citizenship is conferred on citizens of the Member States, who in this capacity acquire European citizenship at the same time and in parallel with the citizenship of a Member State.

However, it is argued that European citizenship ends up undermining national citizenship, because the judicial assertion of the rights conferred by European legislation is capable of leading to the supremacy of these rights over those enjoyed by the citizens of a Member State. This is why part of the academic discourse proposes that European citizenship should remain complementary to national citizenship¹⁷. On the opposite side of this view, there is also that part of scholars who argue that European citizenship is in a position of dependence on citizenship granted at the national level. This opinion is reinforced by the perception that European citizenship, although it has given rise to new rights with a wider scope beyond national borders, has not brought about significant changes in the institution of

¹⁰ Margiotta, Costanza, and Olivier Vonk. "Nationality law and European citizenship: the role of dual nationality." *Globalisation, migration, and the future of Europe*. Routledge, 2012, pp. 1, 4.

¹¹ Samantha Besson, 2008, p. 184.

¹² TFEU, Article 1, paragraph 1.

¹³ Maas, Willem. "The evolution of EU citizenship." *Making history: European integration and institutional change at fifty* 8 (2007): 242-3.

¹⁴ Samantha Besson, 2008, p. 191.

¹⁵ Orgad, Liav, and Jules Lepoutre. "Should EU Citizenship Be Disentangled from Member State Nationality?." *Should EU Citizenship Be Disentangled from Member State Nationality* (2019), p. 3.; Samantha Besson, 2008, p. 190.

¹⁶ Yeong, Loke Hoe. "EU citizenship: Citizenship and identity beyond national borders. EU Centre Singapore Background Brief No. 10, October 2013, p. 3.

¹⁷ Garner, Oliver. "The existential crisis of citizenship of the European Union: the argument for an autonomous status." *Cambridge yearbook of European legal studies* 20 (2018): 135.

national citizenship, as persons in the Member States feel mainly as nationals of the states and much less as European citizens¹⁸.

III. Aim, legal basis and the rights granted by the European Citizenship

Through the institution of citizenship, the aim from the outset was to provide European citizens with a set of rights in order to promote equality between those moving to the host State and nationals of that State. This demonstrates the link between European citizenship and the principle of equality between nationals of the Member States¹⁹. Individuals are therefore endowed with certain rights and obligations as defined by the EU Treaties²⁰.

European citizenship has its legal basis in the Treaties of the European Union. More specifically, Article 9 of the TEU, according to which *"Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship"*, regulates the question of the relationship between national and European citizenship. This provision also stresses the need to respect the principle of equality between EU citizens and, in particular, their equality before the EU institutions. Similarly, Article 20 of the TFEU which states that *"Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship"*, establishes the complementary nature of European citizenship, the existence of which depends on the nationality of a Member State²¹.

¹⁸ Margiotta, Costanza, and Olivier Vonk, 2012, p. 4.

¹⁹ Silveira, Alessandra, and Claudia McKenny Engström. "The emerging culture of EU citizenship as" citizenship of rights" and the legal nature of the EU polity." (2016), p. 141.

²⁰ Konstadinides, Theodore. European Citizenship in a Constitutional Context: where the 'social' coexists with the 'market'. Svenska institutet för europapolitiska studier (Sieps), 2022. p. 3.

²¹ Mann, Dennis-Jonathan, and Kai P. Purnhagen. "The Nature of Union Citizenship between Autonomy and Dependency on (Member) State Citizenship-A Comparative Analysis of the Rottmann Ruling, or: How to Avoid a European Dred Scott Decision." Wis. Int'l LJ 29 (2011), p. 7.

It is worth mentioning the provision of Article 18 TFEU which introduced the general prohibition of discrimination on grounds of nationality²². The following articles on the defined rights granted to European citizens can be seen in the light of this prohibition, which, however, as a general prohibition, does not provide a broader framework of protection, as is the case, on the contrary, with Article 21 TFEU, whose protection extends to all citizens of the Union without exception and not only to economically active persons²³.

Articles 21 - 24 TFEU²⁴ specify the rights granted to European citizens. More specifically, Article 21 refers to the right to move and reside freely in the territory of another Member State²⁵, including the right to work in any European country without being discriminated against by the host State. Article 22 provides for the right to vote and to stand as a candidate in municipal and European Parliament elections in the Member State of residence. Then, Article 23 provides for the right to diplomatic and consular protection during the accommodation in a country outside the EU from any other Member State when the State of which the person is a national is not represented in that third country. The other rights, namely the institution of the European citizens' initiative, through which European citizens, by collecting one million signatures, are entitled to propose new European laws, the right to petition the European Parliament on any matter within the EU's field of competence, and the rights of petition to the Ombudsman and access to documents of the European institutions are set out in Article 24(1), (2), (3) and (4) respectively.

²² TFEU, Article 18. *"1. Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited. 2. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt rules designed to prohibit such discrimination"*.

²³ Konstadinides, Theodore, 2022, p. 4.

²⁴ European Union, Consolidated version of the Treaty on the Functioning of the European Union, 13 December 2007, 2008/C 115/01, available at: <https://www.refworld.org/docid/4b17a07e2.html>.

²⁵ See also the Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance), which entered into force in 2006.

Closely linked to the institution of European citizenship is the legally binding text of the Charter of Fundamental Rights of the EU, which reinforces the rights granted by the European Treaties in a separate sub-chapter²⁶, but also provides for a number of fundamental rights of European citizens, such as respect for human dignity, protection against discrimination, freedom, equality and justice. What has been achieved through the Charter is to elevate two rights to the level of fundamental rights²⁷, that of non-discrimination²⁸ and the right to move and reside freely within the territory of the Member States²⁹.

For the above rights, of course, and especially in the context of their examination by the CJEU, questions arise as to whether their protection can lead to regulatory intervention by the EU -through the role of its institutions- in the field of citizenship, among others. Moreover, as will be shown in the next section, in every case involving a right deriving from European citizenship, the CJEU has addressed the question of the demarcation between the competence of the Member States, on the one hand, and the competence of the Union, on the other³⁰.

An important provision which played the role of a balancing act was that of Article 51 (2) of the Charter, which states verbatim that *"the Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties"*. Article 51 of the Charter, in other words, states that the obligation to apply its provisions arises only when Member States apply Union law³¹. In this way, the risk

²⁶ EU Charter of Fundamental Rights, TITLE V: 'Citizens' rights', Articles 39-46.

²⁷ Konstadinides, Theodore, 2022, p. 5.

²⁸ Charter of Fundamental Rights of the EU, Article 21, par. 2: *"Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited"*.

²⁹ Charter of Fundamental Rights of the EU, Article 45, par. 1: *"Every citizen of the Union has the right to move and reside freely within the territory of the Member States"*.

³⁰ Konstadinides, Theodore, 2022, p. 5.

³¹ p. 5.

that the national sovereignty and regulatory autonomy of the Member States might be seen as being infringed has been avoided³².

IV. CJEU's impact on the institution of European citizenship under the light of its milestone cases.

The Court of Justice of the European Union ("CJEU" or "the Court") has played a catalytic role in the development of the institution of European citizenship from its inception to the present day. For a long time it was argued that the Court had succeeded in delimiting national jurisdiction and extending the rights of European citizens. For twenty years the CJEU has laid the foundations for pushing States to ensure that they comply with their obligations to effectively protect citizens when moving within the EU.

From the outset, it was clear that the Court's aim was to ensure the uniform interpretation and application of EU rules, with the ultimate aim of ensuring equal treatment of European citizens by the Member States³³.

For example, in the *Grzelczyk*³⁴ judgment, the Court established the principle of non-discrimination on grounds of nationality as a fundamental principle of European Citizenship. In this case, the CJEU pointed out that the refusal by the host State to grant maintenance allowance to a student from another Member State is incompatible with the principle of non-discrimination³⁵. The Court therefore supports the view that a number of rights derive from EU citizenship, including that of equal treatment and non-discrimination on grounds of nationality³⁶.

³² Spaventa, Eleanor. "The interpretation of Article 51 of the EU Charter of Fundamental Rights: the dilemma of stricter or broader application of the Charter to national measures." (2016), p. 17.

³³ Konstadinides, Theodore, 2022, p. 6.

³⁴ CJEU, C-184/99, *Rudy Grzelczyk/Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve*, (20 September 2001), ECLI:EU:C:2001:458.

³⁵ par. 29-32, 36 and 39.

³⁶ Lanceiro, Rui. "Dano and Alimanovic: the recent evolution of CJEU caselaw on EU citizenship and cross-border access to social benefits." *UNIO–EU Law Journal* 3.1 (2017), p. 65. See also C-85/96, *María Martínez Sala v Freistaat Bayern* (12 May 1998), ECLI:EU:C:1998:217 and C-456/02, *Michel*

Related to the prevailing view that Member States must take into account the impact of any measures they may take on the rights conferred on EU citizens by European citizenship was the Rottman case³⁷, in which it was held that a check on whether or not the principle of proportionality was required in order for a Member State to be able to revoke the citizenship of a citizen acquired through fraud³⁸. On the question of the acquisition or loss of nationality it was therefore considered necessary for Member States to respect their obligations under EU law in the exercise of their national competence³⁹. It can therefore be seen that Member States have been unable to take or maintain measures in an uncontrolled and autonomous manner when it comes to citizens' rights enshrined in the European Treaty. In other words, a restriction on the exercise of a Treaty right meant that it was contrary to Union law.

Just one year later, the CJEU in Zambrano case⁴⁰ is quick to draw a restrictive line and emphasize the limited action of Member States when it comes to the question of the effective exercise of rights by citizens arising from their status as EU citizens. The landmark judgment, as widely reported, led to the finding that a Member State's refusal to grant a residence permit to a non - EU citizen but the parent of an EU citizen's child leads to the child being deprived of the genuine enjoyment of his or her European citizenship⁴¹. The case has since been cited a number of times in future cases relating to the protection of the rights of family members who are not themselves EU citizens but their dependants⁴².

Trojani v Centre public d'aide sociale de Bruxelles (CPAS), (7 September 2004), ECLI:EU:C:2004:488.

³⁷ CJEU, C-135/08, *Janko Rottman/Freistaat Bayern* (2 March 2010), ECLI:EU:C:2010:104, C-413/99, *Baumbast and R v Secretary of State for the Home Department* (17 September 2002), ECLI:EU:C:2002:493, which show that the CJEU did not link the right to receive social benefits to the market economy of the Union.

³⁸ See par. 55.

³⁹ Konstadinides, Theodore, p. 6 and L. PAPADOPOULOU / D. ANAGNOSTOPOULOU (eds.), 2019, p. 44.

⁴⁰ CJEU, C-34/09, *Gerardo Ruiz Zambrano/Office national de l'emploi (ONEm)* (8 March 2011), ECLI:EU:C:2011:124.

⁴¹ See par. 42-43.

⁴² See also CJEU cases C-165/16, *Toufik Lounes/Secretary of State for the Home Department* (14 November 2017), ECLI:EU:C:2017:862; C-673/16, *Relu Adrian Coman and Others/Inspectoratul*

However, as was obvious, and as the Court's attempt to promote uniformity is linked to and implies the limitation of State power, there have been strong reactions and pressures from the side of the States. There have been States that have reacted both to the judgment in Zambrano case and against similar judgments when the consequence of these has been the obligation of States to amend or repeal national laws⁴³, as was the Coman case⁴⁴, in which the Court obliged a Member State to grant the right of residence to a third-country national who had married a European citizen, despite the fact that national law did not provide for same-sex marriage.

Despite the obstacles raised by the Member States, the jurisprudence of the CJEU was in favour of extending the rights guaranteed by European citizenship to the citizens of European States, considering the Court as a pioneer in the protection of social rights in the EU.⁴⁵ However, the last decade has been marked by the Court's shift. There is now a tendency to limit the rights based on EU citizenship as rights that are by nature limited⁴⁶.

Following the judgments in the cases Dano (2014)⁴⁷ and Alimanovic (2015)⁴⁸ it was argued that the Court had moved on to a new phase, closing the previous one whose focus was on social rights⁴⁹.

It is recalled that, interpreting Directive 2004/38/EC⁵⁰ (known as the "Citizenship Directive"), the Court held that freedom of movement is a general rule and that, in any

General pentru Imigrări and Ministerul Afacerilor Interne (5 June 2018), ECLI:EU:C:2018:385 and C-115/15, *Secretary of State for the Home Department v NA* (30 June 2016), ECLI:EU:C:2016:487.

⁴³ Ruehl, Giesela, The "Coman" Case (C-673/16): Some reflections from the point of view of private international law, published at *Conflict of Laws.net*. (July 2, 2018). Retrieved from <https://conflictoflaws.net/2018/the-coman-case-c-673-16-some-reflections-from-the-point-of-view-of-private-international-law/>.

⁴⁴ see (9).

⁴⁵ Blauburger, Michael, et al. "ECJ judges read the morning papers. Explaining the turnaround of European citizenship jurisprudence." *Journal of European Public Policy* 25.10 (2018), p. 1423.

⁴⁶ Konstadinides, Theodore, p. 9.

⁴⁷ CJEU, C-333/13, *Elisabeta Dano and Florin Dano v Jobcenter Leipzig*, (11 November 2014), ECLI:EU:C:2014:2358.

⁴⁸ CJEU, C-67/14, *Jobcenter Berlin Neukölln v Nazifa Alimanovic and Others*, (15 September 2015), ECLI:EU:C:2015:597.

⁴⁹ Konstadinides, Theodore, p. 10.

⁵⁰ 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

event, the principle of proportionality and the limits set by EU law itself require that, when a host Member State is called upon to decide whether or not to provide a social benefit to a national residing in it, it must assess globally to what extent that benefit constitutes a burden on the social protection system, taking into account the individual situation of each national⁵¹.

Contrary to what the case law of the Court had previously established, these judgments resulted in the rejection of the existence of a right to receive social benefits in the host Member State. More specifically, in the Dano case⁵² it was confirmed that it is not possible to invoke equal treatment under Article 24 TFEU if there is no right of residence under the Citizenship Directive (Article 7 on the right of residence for more than three months). In other words, the Court did not undertake any further examination of factors that would prove some kind of connection between the person and the host State⁵³.

Similarly, in the case Alimanovic⁵⁴ the CJEU remained in its Dano judgment and in the text of the 2004 Directive, on the basis of which the rights invoked were assessed, neglecting the importance of primary EU law⁵⁵.

The third decision in a row which demonstrates the shift in the CJEU's jurisprudence is the relevant case García-Nieto⁵⁶ (2016) in which once again it excluded a Spanish national residing in Germany from entitlement to a minimum subsistence allowance on the ground that his residence did not exceed three months. The Court's judgment was based on Article 24 of the Citizenship Directive, according

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 (Text with EEA relevance).

⁵¹ Lanceiro, Rui, 2017, p. 68.

⁵² see (47).

⁵³ Jesse, Moritz, and Daniel William Carter. "Chapter 7 Life after the 'Dano-Trilogy': Legal Certainty, Choices and Limitations in EU Citizenship Case Law". *European Citizenship under Stress*. Leiden, The Netherlands: Brill | Nijhoff, 2020. https://doi.org/10.1163/9789004433076_008 Web, p. 148.

⁵⁴ see (48).

⁵⁵ Jesse, Moritz, and Daniel William Carter, 2020, pp. 148-9.

⁵⁶ CJEU, C-299/14, *Vestische Arbeit Jobcenter Kreis Recklinghausen v Jovanna García-Nieto and Others* (25 February 2016), ECLI:EU:C:2016:114.

to which there is no obligation on the State to provide social assistance during the first three months of a national's stay in the host Member State⁵⁷.

V. Conclusions

The institution of European citizenship has evolved over time through the renewal of the European Treaties, but primarily thanks to the jurisprudence of the European Court of Justice, which has not hesitated from the outset to extend the rights guaranteed to the benefit of European citizens. Of course, any development in the granting of rights to citizens of Member States has taken place in accordance with the Treaty, which stipulates that European citizenship is complementary to the citizenship of the Member States, from which the former derives. Nevertheless, the attitude of the Court, as expected, raised concerns among Member State governments and the concerns revolved around the question of whether the granting of social rights could amount to a significant financial burden on national social assistance systems.

It is not easy to answer what the factor is of Court's turnaround, whether it is the European Union legislator himself, who placed a restriction on the granting of European citizenship rights, or perhaps the Member States themselves, who have acted with great pressure. However, it cannot be overlooked that the Court decided to limit the social rights granted by the TFEU when, on the contrary, it was already on the road to extending them, a road that it had itself charted.

Evaluating the attitude of the Court of Justice of the European Union, we cannot fail to mention that in substance its change means the implementation of the secondary EU law over the primary one. Clearly, adherence to the letter of the law gives legal certainty. However, what is expected from the Court's judgments is to enlighten as to its jurisprudential understanding of the status of European citizenship and its place in European law.

⁵⁷ Jesse, Moritz, and Daniel William Carter, 2020, pp. 149-150; see also C-89/17, *Secretary of State for the Home Department/Rozanne Banger* (12 July 2018), ECLI:EU:C:2018:570; C-230/17 *Erdem Deha Altiner and Isabel Hanna Ravn/Udlændingestyrelsen* (27 June 2018), ECLI:EU:C:2018:497.

We can therefore only argue that the fact that the Court of Justice is moving towards a course whereby it refuses to grant rights deriving from the Treaties of the European Union by adhering to secondary law has given the impression that it is abdicating its role as the constitutional court of the European Union, since in reality what is happening is that rights deriving from the Treaties themselves are being restricted without checking whether this restriction is in accordance with them or not. Therefore, despite the legal certainty and the establishment of a specific legal framework within which the rights of European citizenship can be granted, following the new policy of the Court of Justice, we have actually nevertheless, ended up restricting the rights that are enshrined in the primary law of the Union.

The course that the institution of European citizenship has taken, has led to conflicting criticisms. The limited protection has been criticized and the disparity in the protection within the Member States makes European citizenship questionable as to whether it can actually lead to the granting of rights to nationals of the Member States.

In any case, it is undeniable that European citizenship plays a key role in promoting European principles and extends the ideas of freedom and equality, as well as undoubtedly being an important aspect of the ultimate goal of European integration. Indeed, through the institution, the movement of citizens of the Member States has also been greatly facilitated, leading to the social and economic development of the Member States and, by extension, of the Union itself.

It should also be noted that, although the Court of Justice's attitude is considered to be a step backwards in terms of protecting the rights of European citizenship, it nevertheless implies going along with the will of the Member States, which should not be discouraged from submitting preliminary questions to the Court of Justice. We can therefore expect that a balance between competences will gradually be achieved, which is necessary in important matters, such as this one, where rights conferred by the primary law of the Union are at stake.

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