

SCENES OF FUTURE OF UNION CITIZENSHIP

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Abstract: *The quite new construction of Union citizenship introduced into the EC Treaty by the Treaty of Maastricht is still under debates. Is it a 'pie in the sky' (Jessarun d'Oliveira) or a 'purely decorative and symbolic institution' (Carlos Closa)? Which aspects of the citizenship of the Union can be developed? And what kind of changes and characteristics will be the outcome of the enlargement of the Union and the constitutionalising process? In this paper I will try to give answers to these questions. I will group my findings into two parts: first of all, in order to imagine its future, we must understand the past of Union citizenship, and, especially, its meaning and role, including the recent developments of this institution, the effects of the 'Citizenship Directive'. In the second part of my paper I will focus on the impacts of the enlargement and the emergence of so called 'second class Union citizens' (Dimitry Kochenov). Modifications introduced by the Lisbon Treaty also will be presented in this paper.*

Keywords: *Union citizenship, Lisbon Treaty, Free movement of family members, Schengen visa system.*

JEL Classification: *K 36*

1. Introduction

More than fifteen years has passed that in a picturesque town of the Netherlands, in Maastricht, the heads of states and governments of the European Economic Communities agreed on the creation of the strangest organisation of the world called 'European Union'. This entity, which is neither a traditional international organisation nor even a state, was not granted legal personality, it was, however, awarded an own citizenship. This special status is directly linked to nationality of a Member State, as well as only persons holding the nationality of a Member State shall be citizens of the Union¹.

This article invites us to a fictitious journey. First of all, in order to imagine the future of Union Citizenship, we must clarify its regulation in Union legal order (see chapter 2.1) and the meaning given to it by the depository of interpretation of Community law, the Court of Justice (hereafter the Court; see chapter 2.2). After this brief clarification we can discuss the different possibilities for rethinking or reformulating its meaning and content in the light of the evolution went off in the European Union. This development must be understood

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¹ Article 17 (1) EC.

both in quantitative and qualitative ways. On the one hand quantitatively, the circle of Union citizens has widened considerably: their number increased from 350 million of 15 Member States to 490 million of 27 Member States. It must be noted however that the status of the 'new' citizens is considerably differs from the status of citizens of old Member States. I will address chapter 3.1 to this question.

On the other hand, a qualitative development has occurred in the European Union with the constitutionalising process. It can be dated back to the solemn proclamation of the Charta of Fundamental Rights of the European Union in Nice, in December 2000, throughout the failure of the ratification of Constitutional Treaty of the EU, until the signing the Reform Treaty in Lisbon, in December 2007. Throughout this long process, the rights of Union citizens was reinforced by human rights and got a human and social face and (see chapter 3.2).

2. The starting point: past and present

2.1. Rules governing Union citizenship and their evolution

Primary dispositions governing Union Citizenship can be found in Articles 17-22 of the EC Treaty. Article 17 EC prescribes that every national of a Member State is a Union citizen. Citizens of the Union shall enjoy the rights conferred by the Treaty and shall be subject to the duties imposed thereby. They have economical and political rights which ones are specified by the following secondary dispositions:

Type of the right	Right	Primary legislation	Secondary legislation
Economical right	<i>Right to free movement</i>	Article 18 EC	Directive 2004/38 ²
Political rights deriving from free movement	<i>Right to vote and to stand as a candidate in municipal elections</i>	Article 19 (1) EC	Directive 94/80 ³
	<i>Right to vote and to stand as a candidate in European Parliament elections</i>	Article 19 (2) EC	Directive 93/109 ⁴
Political rights inside the EU	<i>Right to address a petition to European Parliament</i>	Articles 21 and 194 EC	Articles 191-193 of Rules of Procedure of the European Parliament
	<i>Right to address a complaint to European Ombudsman</i>	Articles 21 and 195 EC	European Ombudsman's Statute ⁵

² 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 (OJ L 158, 30.4.2004, p. 77).

³ Council Directive 94/80/EC of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals (OJ L 368, 31.12.1994, p. 38).

⁴ Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals (OJ L 329, 30.12.1993, p. 34).

⁵ Council Decision 94/114/ECSC, EC, Euratom of 7 February 1994 approving the Decision of the European Parliament on the regulations and general conditions governing the performance of the Ombudsman's duties (OJ L 54, 25.02.1994, p. 25).

	<i>Access to documents</i>	Article 255 EC	Regulation 1049/2001 ⁶
Political right outside the EU	<i>Right to diplomatic and consular protection in the territory of third countries</i>	Article 20 EC	Decision 95/553 ⁷

The most important development in this field is that from 30th April 2004 there is a single Directive which regulates the free movement of Union citizens and their family members. It must however bear in mind that Workers' Regulation⁸ is still in force. This new Directive which must have been implemented until the end of April 2006 realises a codification of nine directives and the former case law of the Court of Justice and the European Court of Human Rights as well. At the same time, it contains some innovations also.

In the first issue, it must be emphasised that this secondary source of law does not deal with the persons as nationals of the Member States but as citizens of the Union.⁹ It is also reinforced by the title of the Directive which is the free movement of *Union citizens*. Moreover, until now it had to distinguish at least six categories of persons: workers, independent workers, retired workers, other former workers who had a right to stay in the host Member State, students and, finally, other economically not active persons, and, additionally, a seventh category is third country national family members of these persons. Although this new Directive does not cease with fragmentation and differentiation between Union citizens and their rights, it approaches them to each others, and from now it has to distinguish only four different categories: workers or self-employed persons, persons having sufficient resources, students and, finally, family members accompanying or joining a Union citizen¹⁰.

Regarding the codification of the case law, it can be mentioned *inter alia* Article 14 (4) point b)¹¹ which refers to judgement delivered in case Antonissen¹². Furthermore, the Directive makes a clear reference to judgement MRAX¹³ in Article 5 (4). We can recognize letters of judgement Grzeczyk¹⁴ in the third recital of the preamble of the Directive. In the dispositions of the Directive relating to the expulsion of Union citizens, not only the case law of the Court of Justice can be recognized¹⁵, but also the case law of European Court of Human Rights¹⁶.

Innovation of this new Directive that it facilitates the free movement of family members who are not nationals of a Member State and eases the administrative burdens on citizens staying for a period longer than three months in the host State, moreover it

⁶ Regulation 1049/2001/EC of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

⁷ Decision 95/553/EC of the Representatives of the Governments of the Member States meeting within the Council of 19 December 1995 regarding protection for citizens of the European Union by diplomatic and consular representations (OJ L 314, 28.12.1995, p. 73).

⁸ Regulation 1612/68/EEC of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ L 257, 19.10.1968, p. 2).

⁹ De Bruycker, Philippe: La libre circulation des citoyens européens entre codification et réforme. Présentation général de la directive 2004/38. In: Carlier, Jean-Yves – Guild, Elspeth (eds.): L'avenir de la libre circulation des personnes dans l'UE – The Future of Free Movement of Persons in the EU. Bruylant, Bruxelles, 2006, p. 23.

¹⁰ Article 7 (1).

¹¹ This disposition provides that "Union citizens and their family members may not be expelled for as long as the Union citizens can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged".

¹² Case C-192/89 Antonissen [1991] ECR I-745.

¹³ Case C-459/99 MRAX [2002] ECR I-6591.

¹⁴ C-184/99Grzelczyk [2001] ECR I-6193.

¹⁵ See especially cases 36/75 Rutili [195] ECR 1219, 30/77 Boucherau [1977] ECR 1999, joint cases 115/81 and 116/81 Adoui and Cornuaille [1982] ECR 1665 and C-348/96 Calfa [1999] ECR I-11.

¹⁶ Bruycker, op.cit., pp. 28-30.

introduces right of permanent residence for Union citizens who have resided in the host Member State during a continuous period of five years.

2.2. Case law

Until now, case law on Union citizenship essentially dealt with two questions¹⁷. In the one hand, it reinforced in several times that definition of conditions of acquisition and loss of nationality, and, consequently, the circle of Union citizens, is within the competence of each Member State, however, this competence must be exercised with due regard to Community law¹⁸. In the last time it was repeated by the Court in judgements delivered in cases *Zhu and Chen*¹⁹ and *Spain v. United Kingdom*²⁰.

The most judgements of the Court of Justice concerning Union citizenship regarded the application of Article 18 EC by the Member States.

Article 18 EC guarantees to every Union citizen the right to free movement, irrespectively of their economic activity, and, by the way, it was raised to the level of primary legislation the right of economically not active persons' right to move freely. Consequently, the right of these persons is not secondary and functionally anymore, but direct and general.

At the same time, interpretation of this article by the European Court of Justice is still secondary; it only deals with the interpretation of this provision only if none of the special provisions regarding free movement (Article 39, 52 or 59 EC) is applicable.²¹

The application of Article 18 requires a cross border, or more precisely, an intra-community element amongst the facts of the case. This condition fulfils if a citizen of a Member State wishes to return into his or her country, even with a third country national spouse or other family member,²² or if such a citizen wishes to have accepted his professional qualification²³ or education²⁴ obtained in another Member State. According to the Court, this requirement was also fulfilled when a third country national did not effectively change her country of residence, but by virtue of her child who was born in a certain Member State (in the United Kingdom) and acquired the nationality of an other Member State (Irish)²⁵.

Article 18 EC has direct effect, although this provision is not unconditional: the Court repeated in several cases that the exercise of that right is subject to the limitations and conditions referred to in that provision, but it must be ensured that those limitations and conditions are applied in compliance with the general principles of Community law and, in particular, with the principle of proportionality²⁶.

The most important innovation of the case law is that a citizen of the European Union who resides lawfully in the territory of an other Member State can rely on prohibition of discrimination (now, after amendment, Article 12 EC) in all situations that fall within the

¹⁷ It must be added that the Court also faced with the question of responsibility of European Ombudsman (see case C-234/02 P *European Ombudsman v. Frank Lamberts* [2004] ECR I-2803). Theoretically it accepted that in very exceptional circumstances European Ombudsman could be hold responsible for damages which he has been committed with a sufficiently serious breach of Community law in the performance of his duties.

¹⁸ Case C-369/90 *Micheletti* [1990] ECR I-4329, para 10.

¹⁹ C-200/02 *Zhu and Chen* [2004] ECR I-9925.

²⁰ C-145/04 *Spain v. United Kingdom* [2006] ECR I-7917.

²¹ *Kovar, Robert, Le droit de citoyen de l'Union européenne de circuler et de séjourner librement sur le territoire des Etats membres*, in: *Libertés, Justice et Tolérance, Mélanges en hommage au Doyen Gérard Cohen-Jonathan*, vol. 2, Bruylant, Bruxelles, 2004, p. 1050. Only Fries and Show give raise their doubts concerning the general nature of Article 18 EC. See Fries, Sybilla – Show, Jo, *Citizenship of the Union: First Steps in the European Court of Justice*. *European Public Law* (1998) 4 (4): pp. 533- 559.

²² See case C-370/90 *Singh* [1992] ECR I-4265; and, from the recent case law, see especially case C-291/05 *Eind* [2007], not yet reported.

²³ See case 115/78 *Knoors* [1979] ECR 399.

²⁴ See case C-224/98 *D'Hoop* [2002] ECR I-1691.

²⁵ See case *Zhu and Chen*.

²⁶ See case *Baumbast*.

scope *ratione materiae* of Community law²⁷. These two requirements were broadly interpreted by the Court. Thus, it held in several cases that either the situation in question falls under the scope of Community law²⁸, or it held that although the situation at hand does not fall under the competence of Community law, however it must be exercised with due regard to Community law²⁹.

It means that the Union citizenship is not at all a symbolic institution, an 'empty shell',³⁰ it has a real power. Regarding a Belgian non-contributory social benefit called 'minimex', in case *Grzelczyk* the Court reinforced this ruling:

*"Union citizenship is destined to be the fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for."*³¹

This means that Union citizenship grants broader rights than the former status of 'citizen of the Member States' or 'Community citizen'. It must be noted however that the simple status of Union citizenship does not place the person into the absolutely same situation as the nationals of a Member State. Where are its limits? According to the findings of the Court of Justice, a citizen coming from another Member State and applying for a social allowance must have an established link with the host country. This link can be based either on belonging to the labour market³² or on the period of residence and integration into the host society.³³ Without these factors the host Member State can refuse the right of residence from Union citizen.

This argumentation was reinforced by the judgements which concerned not a right for a social allowance but the right of residence of Union citizens and their third country national family members. In these cases the Court of Justice has shown itself clearly more favourable vis-à-vis the exclusionary ambitions of the host Member State than in respect of social benefits³⁴. It accepted the right to residence of Union citizens and their family members unless if they consider that the presence of a citizen would be unreasonable burden for the social system of the Member State. This favourable treatment even goes beyond the literal interpretation of secondary legislation, more precisely, it means an interpretation *ad contrario* when it declared in case *Baumbast* that refuse to allow to exercise the right of residence on the ground that his sickness insurance does not cover the emergency treatment given in the host Member State would amount to a disproportionate interference with the exercise of that right, although Article 1 (1) of Directive 90/364³⁵ expressly required sickness insurance in respect of all risks in the host Member State.

²⁷ See Case C-85/96 *Maria M. Sala v. Freistaat Bayern* [1998] ECR I-2691.

²⁸ See for example, in case *Sala* a child raising allowance or, most recently, in case C-209/03 *Bidar* [2005] ECR I-2119 a student loan felt under the competence of Community law.

²⁹ See for example cases concerning direct taxation (case C-224/02 *Pusa* [2004] ECR I-5763, C-403/03 *Schempp* [2005] ECR I-6421), right to use maternal language before administrative and criminal courts (C-274/96 *Criminal proceedings against Horst Otto Bickel and Ulrich Franz* [1998] ECR I-7637), determination of surname (C-148/02 *Garcia Avello* [2003] ECR I-11613) and allowances for civil war victims or prisoners of war (cases C-192/05 *Tas-Hagen and Tas* [2006] ECR I-10451 and C-386/02 *Baldinger* [2004] ECR I-8411).

³⁰ Groenendijk, Kees, *Citizens and Third Country Nationals: Differential Treatment or Discrimination?* In: Carlier– Guild (eds.), *op. cit.*, pp. 94-95.

³¹ Case C-184/99 *Grzelczyk* [2001] ECR I-6193, para 31.

³² See abovementioned case *D'Hoop*, and cases C-413/01 *Franca Ninni-Orasche* [2003] ECR I-13187, C-138/02 *Collins* [2004] ECR I-2703.

³³ See abovementioned *Sala*, *Grzelczyk* and *Bidar* cases.

³⁴ Guild, Elspeth, *Citizenship and Fundamental Rights*. In: Carlier – Guild, *op. cit.*, p. 51.

³⁵ Council Directive 90/364/EEC of 28 June 1990 on the right of residence (OJ L 180, 13.7.1990, p. 26). Repealed by Directive 2004/38. It must be noted that Article 7 (1) b) of Directive 2004/38 repeats the same requirement.

3. Ways forward

3.1. Effects of enlargement of the European Union

At the accession of the Central and Eastern European Countries (hereinafter CEECs) in 2004 and 2007, the European Union limited the rights to free movement of the new Union citizens'. This limitation appeared in two ways.

First, the Accession Treaty extended only partly the Schengen *acquis* to the territory of the new Member States. It means that only provisions listed in Annex I was binding and applicable from the date of accession, provisions concerning, *inter alia*, controls at the external borders, cross border forms of police cooperation, extradition. It meant that new Member States must had to apply the visa policy and EU provisions on border checks, whilst controls at their borders with other Member States was lifted only at a further date, in the case of CEECs acceded in 2004, in the December of 2007. Romania and Bulgaria does not still participate in the Schengen cooperation.

The outcome of this legal situation is well known for us. As the Parliamentary Assembly of the Council of Europe considered this issue that after the enlargement "Europe [is] administratively divided in two as a result of the expansion of the Schengen visa system"³⁶. In this transitional period, visas were required from nationals of neighbouring non-EU member countries, and they were obliged the reaching of an authorized border crossing point – which might be sometimes very far³⁷. The first proposition of the Commission on facilitating the movement of these persons failed³⁸; finally it was in 2006 when a Regulation was adopted by the Council and the European Parliament in this subject matter³⁹.

The other limitation opposing the free movement of new Union citizens concerns their working possibilities, their access to the labour market of the former Member States. According to the Accession Treaties, this fundamental freedom enjoyed derogation from the general prohibition of restriction laid down in Article 39 EC. Thus, former Member States could apply national measures or those resulting from bilateral agreements, regulating access to their labour markets. Although the inclusion of transitional measures relating to the free movement of workers in the Acts of Accessions to the European Union is not unusual: a long transitional period was established, for instance, with regard to access to work of Spanish and Portuguese citizens. However, the regime established in respect of the CEECs significantly differs from those previously introduced, especially because of the large amount of discretion left to the old Member States⁴⁰.

The main characteristics of this transitional period are the following:

- duration of transitional period is 2+3+2 years. In the first five years Member States can freely decide whether they apply restrictions (in the form of requiring work permit or by the application of quotas), while in the last two years only in case of 'serious disturbances' of the labour market of the Member State in question, and after notifying the Commission, may continue to apply restrictive measures;
- principle of stand still: old Member States cannot apply provisions that are more restrictive than those in force at the time of signing of the Accession Treaty;
- principle of preference: old Member States have to give preference to workers of CEECs over workers of third national countries;

³⁶ Recommendation n° 1648 (2004) of the Council of Europe, adopted on 30 January 2004 (8th sitting).

³⁷ Adinolfi, Adelina, Free Movement and Access to Work of Citizens of the New Member States: The Transitional Measures. *Common Market Law Review* (2005) 42: pp. 4682-482.

³⁸ Proposal for a Council Regulation on the establishment of a regime of local border traffic at the temporary external land borders between Member States [COM(2003)502 final].

³⁹ Regulation 1931/2006/EC of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention (OJ L 405, 30.12.2006, p. 1).

⁴⁰ Adinolfi, op.cit., pp. 470-471.

- principle of reciprocity: new member States can also apply restrictions on the free movement of workers of old member States;
- 12 months rule: legally working in an old Member State at the date of accession for an interrupted period of 12 months or longer enjoys access to the labour market of that Member State and the same rights;
- safeguard clause: old Member States which was not restoring to transitional measures, when “foresees disturbances on its labour market which could seriously threaten the standard of living or employment in a given region or occupation,” that Member State, after informing the Commission and other Member States, may apply transitional measures.

The most Member States applied transitional measures against the workers of the CEECs in the first period, in the first two years, although most of the new Member States did not apply them on the base of reciprocity (with the exception of Hungary and Poland). The free movement of workers was full between the labour markets of the CEECs⁴¹.

Otherwise, the fear of the ‘Polish plumbers’ was unfounded. More recent studies show that the expected volume of migration from new Member States did not expanded significantly. Furthermore, the need for migrant workers by the old Member States will increase in order to ensure Europe’s prosperity⁴².

The requirements established by the Accession Treaty gave rise to a treatment less favourable than that conferred on non-EU citizens on the basis of Council directive 2003/86 on family reunification⁴³. That’s why Kochenov refers to the nationals of the new Member States as ‘secondary Union citizens’, since the most important right deriving from their status of Union citizenship is deficient. They do not enjoy equal treatment in access to work. This discrimination is more questionable, as well it neither pursues a legitimate aim with proportionate means, and it cannot be justified.

Furthermore, empirical evidence shows that legal and administrative barriers often do not create an efficient obstacle to immigration⁴⁴. On the contrary, they favour illegal immigration and black market. Another consequence of this regulation is that in many cases citizens of CEECs are overqualified for the jobs they find in the host country, since highly skilled workers are more mobile than those lower skills⁴⁵.

3.2. Union citizenship facing fundamental and social rights

The question of protection of fundamental rights was under debates in the last 30 years of the European Communities⁴⁶. In my view, the creation of the European Union and its citizenship accelerated this debate and contributed to the expression of the Union’s commitment in the field of the protection of fundamental rights. In Maastricht, the Treaty on European Union declared this commitment in Article F. Then the Treaty of Amsterdam established a procedure of the heads of governments and states for the establishment of the violation of fundamental rights by a Member State,⁴⁷ and the Treaty of Nice completed this procedure in the case of danger of violation of these rights.

⁴¹ See in more details: Nagy Boldizsár, *Enlargement and the Free Movement of Persons*. In: Carlier – Guild (eds.) , op. cit., pp. 127-157.

⁴² Green Paper of the Commission on an EU approach to managing economic migration [COM (2004) 811].

⁴³ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ L 251, 3.10.2003, p. 12).

⁴⁴ Farkas, Orsolya – Rymkevitch, Olga, *Immigration and the Free Movement of Workers after Enlargement: Contrasting Choices*. *International Journal of Comparative Labour Law and Industrial Relations*, 2004 Autumn, p. 390.

⁴⁵ *Ibid*, pp. 390-391.

⁴⁶ For a comprehensive study of this question, see von Bogdany, Armin, *The European Union as a Human Rights Organisation? Human rights and the core of the European Union*. *Common Market Law Review* (2000) 37: pp. 1307-1338.

⁴⁷ Article 7 EU.

Although the Treaty provides that Union citizens “shall enjoy the rights conferred by [the] Treaty”⁴⁸, the Court has never ever stated unambiguously that *Union citizens* have a right for the protection of their fundamental rights. However, it must be noted, that Advocate General Jacobs suggested in case Konstantinidis that fundamental rights ought to have been included in the list of citizenship rights:

“A person subject to the application of Community law should be entitled to say ‘*civis europeau sum*’ and to invoke the status to oppose any violation of his fundamental rights⁴⁹.”

Although human rights and fundamental economic freedoms are on the same level and in the same hierarchy of norms in the European Union, their protection is not fully guaranteed under Community law⁵⁰. The Court of Justice has jurisdiction only if the question arises Community interest and competence⁵¹. Furthermore, even if the question is in Community competence, it is not sure that the person has right to bring an action before the Court of Justice. Thirdly, the European Court of Human Rights in Strasbourg could only deal with cases which concerned the national implementing measures, and not with the Community legislation itself.

The Lisbon Treaty resolves some of the abovementioned problems and reinforces the protection of fundamental rights of Union citizens. Firstly, after a long period of uncertainty of the future of the Charter of Fundamental Rights of the European Union, the Treaty of Lisbon empowers it with binding force⁵². This Charter repeats the rights of Union citizens, completed with the right to good administration.

Secondly, the Lisbon Treaty will expand the *locus standi* to bring action. New Article 230 EC will provide that any natural or legal person may institute proceedings against an act addressed to that person or which is of direct and individual concern to them. Third innovation of the Lisbon Treaty in the field of reinforcement of protection of fundamental rights is the decision on accession to European Convention for the Protection of Human Rights and Fundamental Freedoms. It will not be true anymore that Union citizens do not have any possibility to invoke their fundamental rights against the Community law on European level.

Principle of non-discrimination is at the core of the fundamental rights of Union citizens. The Lisbon Treaty will reinforce it, since it takes into one part, into Part Two of the EC Treaty the provisions governing prohibition of discrimination and Union citizenship, under the following heading: ‘Non-Discrimination and Citizenship of the Union’. Afterwards, it will not be possible to argue for that this provision must be interpreted that it extends to non-Community nationals also⁵³.

As regards social rights of Union citizens, these were reinforced under the case law of the Court of Justice. Without a formal requirement of Community dispositions, it accepted the social claims of Union citizens who were deeply integrated into the host society. Some authors consider it like ‘social citizenship’.⁵⁴ Without contesting this opinion, I would like to call the attention on the single fact that there are Union citizens who are ‘more equal’ than the others: firstly, there is still distinction between economically active and non-economically active citizens, and even if the Court effaces this distinction in some cases – with a not too convincing methodology, as Hailbronner points it out⁵⁵ – secondary law still maintains this inequality.

⁴⁸ Article 17 (1) EC.

⁴⁹ Case C-168/91 [1993] ECR I 1191, para 46.

⁵⁰ Neussl, Peter, European citizenship and human rights: an interactive European concept. Legal Issues of Economic Integration, 1997/2. p. 60.

⁵¹ Accordingly, the Court did not have jurisdiction among others to rule on the question whether the abortion is contrary to Community law (see case C-159/90 Grogan [1991] ECR I-4685).

⁵² OJ C 303, 14.12.2007.

⁵³ Groenenedijk, op.cit., pp. 84-85.

⁵⁴ Hailbronner, Kay, Union Citizenship and Social Rights. In: Carlier – Guild (eds.), op. cit., p. 73.

⁵⁵ Ibid, p. 75.

4. Closing remarks

The rights of Union citizens became a reality. This institution is not a mere symbol of a Union on half way forward a European federal state; it is neither an empty shell. Due to the judgements of the Court of Justice and in spite of the efforts of the Member States to make obstacles for it, it has real power and dynamic, evolutionary nature. The European Union consists of the Member States and *its* citizens; they are not only the nationals of the Member States anymore.

It seems to me that in spite of this evolution, the development of this institution always will be hindered by the financial interests of the Member States, which can be regarded as a rationality if we do not want to jeopardize the present level of social services. But the fear of a Union based on several reinforced cooperation and, consequently, with a different meaning and content of Union citizenship(s) is real.

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