

EU CITIZENSHIP IN THE LIGHT OF BREXIT

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ABSTRACT: *The Brexit was an extraordinary event that envisaged new situations and their adequate solutions. It is therefore essential to examine the legal issues that will arise during the exit, of which I will examine the impact of Brexit on the status of EU citizens, referring to both for EU27's EU citizens living in the United Kingdom and for British citizens residing in the remaining Member States. For the latter, the EU citizen status is likely to cease ipso iure by the UK's exit.*

During my researches, I have given high priority to the freedom of movement and residence, which is, on the one hand, a partial right of Union citizenship, on the other, one of the foundations of the internal market.

I examine the general effects of Brexit, and the situation of British citizens living in the United Kingdom, then of those Brits who live in the EU, and finally of EU citizens living in the UK, with special attention to the student mobility. With the exit of the UK, millions of British citizens, who have previously been also EU citizens, will be bereft of this right and be considered as third-country nationals. Thus, I consider necessary to present the status of third-country nationals.

KEYWORDS: *Brexit, union citizenship, study mobility*

JEL CODE: *K33*

1. POSSIBLE EFFECTS OF BREXIT ON THE LEGAL INSTITUTION OF EU CITIZENSHIP

Under the Art. of 9 of the Treaty on European Union (TEU) and the Art. of 20 of Treaty on the Functioning of the European Union (TFEU) every citizen of a Member State is a citizen of the Union. (Mindus, 2017)¹ According to this, on the part of the individual the conditions for citizenship of the Union are to be a citizen of one of the Member States and, on the part of the State to establish a legal relationship with the Member States in the EU. The content of the EU citizenship is currently laid down in Art. 20 of TFEU, and further detailed in Art. 21 to 24. The loss of EU citizenship status has so far been limited to an individual case, involving the loss of citizenship of a

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¹ According to Mindus, it would be more accurate to formulate EU citizenship as "citizens of the Union are citizens of the Member States for the purposes of EU law

Member State. The new situation: a state will cease to be a Member State, leaving 68 million British without additional status.

The United Kingdom joined the European Union on 1 January 1973 and became a determining member of it, but after 43 years, exercising their right under Art. 50 (1) of TEU², the people in the referendum of 23 June 2016 decided to leave the European Union. Member States' right of withdrawal (Angyal, 2016) has been transported into EU law by the Lisbon Treaty (LT). Of course, this does not mean that it would not have been possible to leave the EU before that, since Member States are sovereign members of international organizations and they may withdraw at the same sovereign decision. In this case it should have been conducted in accordance with the rules of international law, namely the Vienna Convention on the Law of Treaties of 1969.

Brexit has created a new situation that is not only a challenge for the legislator and the law applying but also has an impact on society and the economy. The social impact cannot be interpreted only with regard to British citizens, but also with regard to the British population and the immigrant population, who may be in a precarious position as a result of Brexit. The United Kingdom has always been a destination for immigrants from both third countries and Europe. The UK has always been an attractive host country for economic migration. This factor could also be a source of many tensions. (EU, 2020). It can be stated that, when the United Kingdom actually left the European Union, it caused not only legal but also serious economic and social consequences. The United Kingdom left the European Union on 31 January 2020. According to that from the following day, i.e. from 1 February, the UK will no longer be the member state of the EU, and the transitional period, planned until 31 December, has officially begun which function is to settle the framework of future cooperation between the parties (EU and UK). Currently one of the most urgent issue in the EU is the arrangement of the negotiations with the United Kingdom. Because of the current situation (handing of the coronavirus) the Brexit negotiations have been de-emphasized compared to previous years, therefore the possibility of extending the transitional period is conceivable. (Kiss, Lilla Nóra – Laczik, Anna, 2020)

In my research I examine EU citizenship and the impact that Brexit has on EU citizens. The most important effect is the loss of British EU citizenship with the withdrawal of the United Kingdom, which will affect the position of British citizens in the EU27 and the situation of EU citizens residing in the UK.

It is a fact that Brexit puts both the legislator and the practitioner into a new position, as it has been interpreted so far that *„EU citizenship can only be lost in the event of the loss of national citizenship, while the withdrawal of a Member State ceases that legal basis, from which the union citizenship originates. Also, Brexit means a collective forfeiture for all British citizens. The question is whether could there be a circumstance with regard to which the acquired EU citizenship status can be distinguished from the underlying national citizenship status. Or could the withdrawal of a member state – as a completely new situation – justify the reinterpretation of EU citizenship? I mean, a broad interpretation could allow the British citizens who have become EU citizens before leaving the Union to retain the acquired bundle of rights or at least some of its parts. I would add that so far the CJEU has not interpreted the content of EU citizenship in this*

² This paragraph applies the decision to leave the EU in accordance with constitutional traditions.

way. *It would be quite a futuristic perspective if we were to allow a larger group of EU citizens to retain their EU citizenship once the Member State of their nationality exited from the EU (so abolished its membership status)*". (Kiss, 2019) I believe that, in the view of the specific nature of the situation, this possibility should also be examined, as the Brexit would affect millions of people not only in the UK but throughout the European Union, including EU citizens living, working or studying in the UK.

After that, I would like to move on to examining the impact of Member State withdrawal on EU citizenship.

2. SITUATION OF BRITISH CITIZENS LIVING IN THE UK AND EU27 CITIZENS

As a result of Brexit, millions of individuals lost their EU citizenship from day to day as one of the legal bases for their status ceased with the withdrawal of the Member State. However, such an extraordinary change could not take place in today's European Union. The European Union and the United Kingdom also strive to protect EU citizens in the negotiations, which is why a transitional period was provided for in the draft contract for the development of the new form of co-operation and the transition to it. It was planned to take two years (more precisely twenty-one months (Morgan, 2018)) and it would last until 31 December 2021³. However, on the basis of the current situation, the moratorium period is only eleven months and it would take until 31 December 2020 (Commission, 2020), unless it is extended. Although, as the two-year exit period has been extended several times, it is conceivable that there will not be enough time to negotiate a future relationship, thus the transition period may be extended.

In my opinion, a British citizen born before the entry into force of the agreement is also an EU citizen within the meaning of the TEU and the TFEU. Thus, while this right merely provides subsidiary status beside national citizenship, these individuals should be guaranteed certain elements of EU citizenship for the rest of their lives, which could result in a moratorium of up to sixty to seventy years. Thus, British nationals who become British citizens after the entry into force of the Withdrawal Agreement would not acquire EU citizenship and would be treated by the European Union as originating from a third country.

In the followings, I will examine how some of the rights deriving from EU citizenship can be exercised by an ex-Union citizen, a British citizen, who will lose his or her EU citizenship as a result of Brexit.

Directive 2004/38 / EC on the right of citizens of the Union and their family members to move and reside freely determines the conditions for the exercise of the right of free movement and residence within the territory of the Member States by Union citizens and their family members, the right of permanent residence in the territory of the Member States; and restrictions on the right to free movement and residence and the right of permanent residence for reasons of public policy, public security or public health. The directive also states who can be considered as a citizen of the EU. The directive allows a

³ Art. 126 of Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as agreed at negotiators' level on 14 November 2018.

non-EU citizen family member of an EU citizen to exercise the rights attached to EU citizenship. These are primarily due to the fundamental rights to the undistributed functioning of family life.

The Directive grants third-country family members several rights related to Union citizenship status under EU citizens' derivative rights. „*This already means an extension of EU citizenship, on the condition that the third country national family member of an EU citizen may lose the right to exercise a status comparable to that of EU citizens. For example, if the EU citizen terminates his marriage to a third-country spouse, the former spouse¹⁷ may not exercise his or her EU citizenship rights.*” (Kiss, 2019)

In the following, I would detail the rights of EU citizens living, working, studying or otherwise legally residing in the United Kingdom. Of course, their EU citizen status is not affected by the Brexit, but the fact is that they have lived in one of the EU Member States so far, whose legal status is changing, and then should be considered as a third country from the EU perspective.

Their situation will also be settled by a withdrawal agreement that may be concluded at the end of the negotiations, but it is in the interest of both parties - and their duty - to protect their citizens' rights. On the side of the European Union, because we are talking about its citizens, to whom it wants to continue the four freedoms and stability that they have enjoyed so far. And for the United Kingdom, it is important to protect the rights of those who are still living, working or studying there, because it also serves its interests.

EU citizens living in the UK are also entitled to the same right to undistributed functioning of family life, fundamental human rights as in the other states, and respect for universal human rights do not depend on the relationship of one state within the EU. Thus, even if they have no recourse to the European Court of Justice after Brexit to enforce any rights they may have been violated by the UK, the European Court of Human Rights (ECHR) in Strasbourg will continue to provide a means of redress.

3. SITUATION OF BRITISH CITIZENS LIVING IN EU27

According to the latest figures, nearly 1.3 million British citizens live in the EU27. (Schraer, 2020)⁴ The withdrawal agreement will necessarily settle their legal situation somehow, but there is no doubt that their status will change and their entitlements will be reduced.

British citizens who wish to live, reside, provide services or work in a Member State of the European Union after Brexit, the rules on third-country citizens will need to be applied. After all, if the EU citizenship is not reconsidered and reformed to create a new status for ex-EU citizens, the British will lose their EU citizenship status. These people can only regain EU citizenship by becoming a citizen of an EU Member State. Also, they may enjoy certain partial rights if they are close relatives of an EU citizen under Directive 2004/38 / EC and thus enjoy certain Union citizenship rights on a derivative of the EU citizen. Such as the right of free movement and residence enjoyed by close relatives of a third country, together with an EU citizen. This does not mean that after Brexit, British citizens will not be able to enjoy their right to free movement or residence. Until now, there were treaties (Commission, 2020) between the European Union and a

⁴ Statistics data from the British citizens living in EU 27

third country under which third-country citizens were subject to rights and obligations. In the present case, however, the withdrawal agreement would provide for an eight-year moratorium on EU citizens. Rights and obligations would be developed during a transitional period after the exit.

The situation may be different for people who were already living in a Member State of the European Union before the Brexit. Although these people will lose their EU citizenship after the Brexit, the length of time spent in the host state and the assertion of a right which made their stay possible must be examined in their case (eg. labour relationship). Besides, it is worth mentioning the human rights which are respected by international and EU law, such as the right to undistributed functioning of family life, which allows the ex-EU citizen to reside after the Brexit. (Mindus, 2017) (VIDMAR, 2016)⁵ In the case of the British citizens, of course, the Withdrawal Agreement can be considered as the governing source of legal status and related rights, as well as any additional documents that may be concluded during the transitional period.

To examine the situation of British nationals, the affirmation of a right is that on which grounds they reside in the Member State concerned as an employee, student or researcher, or as a close relative, dependent, etc. These affirmations of rights are governed by the secondary sources of EU law, the directives. Five years' residence is decisive for the duration, as after that the person is entitled to a long-term residence which is due to a person from any third country within the meaning of Directive 2003/109 / EC⁶. If the five-year period has not elapsed before acquiring the right of long-term residence, British citizens who have resided in another Member State as EU citizens will receive different benefits. Such benefits may include the fact that the time spent there continues without interruption, irrespective of the loss of EU citizenship status and, after five years, become eligible for long-term residence. I came to these conclusions based on the existing legislation⁷, as it is not possible to know what the UK and the European Union will agree until the negotiations are concluded and the final contract is signed.

⁵ The *Kurič doctrine* was elaborated by the ECtHR in case 26828/06., *Kurič v Slovenia*. The right to respect the private and family life within the meaning of Article 8 (1) of the ECHR may be violated by a State that makes a decision on immigration. In connection with the case (in which the ex-Yugoslav citizen lost his right to reside in Slovenia), *Mr. Vidmar* stated: "once you have lawfully acquired the right of residence, you can keep it, even if the legal status of your host country or your country of origin has changed and due to the change, your status will change as well, and, as a result, your new status alone would not provide you the right to reside there". For an extended application of the *Kurič doctrine*, see: (G.M., 2016)

⁶ COUNCIL DIRECTIVE 2003/109/EC concerning the status of third-country nationals who are long-term residents

⁷ Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as agreed at negotiators' level on 14 November 2018;

COUNCIL DIRECTIVE 2003/86/EC on the right to family reunification;

COUNCIL DIRECTIVE 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service

4. STATUS OF THIRD-COUNTRY CITIZENS IN THE EU

After Brexit, as British citizens lose their EU citizen status, they will be considered as third-country nationals whose status is determined by EU directives. The current EU legislation is as follows:

1. Council Directive 2003/86/EC on the right to family reunification;
2. Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents
3. Council Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service

The common element of these directives is that it ensures the right of residence and free movement to some extent to third-country citizens. However, a closer examination of the provisions of the Directives shows that, despite the provisions of the Directives, Member States may still significantly restrict⁸ the achievement of the objectives of the Directives. (Schiffner, 2015)

First I would like to mention Directive 2003/86 / EC, which states that: "following the adoption of an application for family reunification, Member States shall ensure that family members have all the means to obtain the necessary visas; issue a renewable residence permit to the family member for at least one year; family members in that Member State are entitled to pursue education, employment and independent entrepreneurial activity, however, in the case of the latter two entitlement, Member States may determine the conditions in accordance with their national law. It is also an important provision that after a maximum period of five years, if the family member has not been granted a residence permit for reasons other than family reunification, or, in the event of divorce, separation or widowhood, the family member shall be entitled to an independent residence permit, the conditions of which shall be determined by national law." (Schiffner, 2015) Thus, the purpose of the family reunification directive is to define the essential minimum conditions under which third-country family members legally residing in a Member State may stay in the territory of that Member State.

Now I would like to touch on Directive 2003/109 / EC on the status of third-country nationals who are long-term residents. According to this directive "after a period of five years of continuous and uninterrupted stay, the third country shall have the right of permanent residence, provided that the non-EU citizen has a regular and stable source of income and health insurance. Residents with long-term residence permits receive permanent residence permits, which is uniform in all EU Member States, valid for at least five years and is automatically renewable. These people shall enjoy equal treatment with citizens as regards the right of residence, the right to work and the right to social benefits." (Schiffner, 2015) This means that the third-country citizen if he or she fulfils the conditions set out in the directive, may stay for more than three months in a Member State other than the one which granted him or her long-term resident status.

⁸This means, that for example EU Member States may restrict the number of residence permits, the second EU Member State may require the presentation of certain documents or recheck almost all the conditions attached to the status of the Directive, may require integration, and may refuse to reside on grounds of public policy or public security.

Finally, I would like to refer to Directive 2004/114 / EC, which allows students to continue or complete part of their studies in another Member State and allows students to stay in another Member State automatically under the conditions of the directive. (Schiffner, 2015) As a student, I think it's important to highlight one of the opportunities for mobility in the EU, which topic I will explain later.

EU law on third-country citizens provides affirmation of a right for the European Court of Justice to clarify the true legal position of third-country citizens, specify the available entitlements and with the consistent application of the principle of equal treatment approximate the status of third-country citizens subject to Union law to the EU citizens. (Piet Jan Slot - Mielle Bulterman, 2005)

I think I had to talk about this topic, because, in the event of an inadequate settlement of the Brexit Agreement, British citizens who have lost their citizenship of the Union may be considered as coming from a third country within the European Union, with which they can lose many of their acquired rights so far. I wrote this in conditional form because I expect that a successful agreement will not require the application of these directives.

5. STUDY MOBILITY

I believe that, as a university student, one of the great benefits of EU citizenship is our right to student mobility. Among others, I am currently participating in the Erasmus + program in Poland. As I mentioned during my research, my student status is motivated to examine this topic as well.

The question may come up why it is important to emphasize student mobility for Brexit because the mobility contract with a non-EU Member State was known so far. The United Kingdom is a popular destination (Vangelis Tsiligiris and Alex de Ruyter, 2018) for students wishing to participate in student mobility, which is also supported by statistics (Eurostat, 2019)⁹ from 2016, with 26% of students coming to the European Union studied in the United Kingdom. The states of the nationality of these students so far it has been sufficient enough to conclude a mobility agreement only with the EU, but, this will change after the Brexit and new agreements will be needed. Until now, there was no need for an agreement between EU Member States, as they were guaranteed by European law. To protect the Member States, there will be a need for an EU-UK agreement to this effect, which will also have to be settled upon exit, at least for a transitional period after the Brexit.

Students who have already begun their studies in the UK may retain the status they have enjoyed so far. For them nothing will change, on this issue several British universities have reassured their student of it in communication eg. including Edinburgh Napier University. (Nolan, 2019) Many students also inquired about tuition fees, where Cambridge University stated (Cambridge, 2020) that students who applied to college before Brexit would be treated the same as British citizens, so where training was free for the British, EU citizens are also exempt from tuition fees, and where they are reimbursed, the same conditions must apply.

⁹ „A total of 432 thousand students from abroad (26 % of the total number of students from abroad in the EU) were studying in the United Kingdom in 2016, far more than the number in any other EU Member State.”

In fact, the problem will arise among students who wish to pursue their higher education studies in the United Kingdom after the Brexit. As I have already mentioned, the United Kingdom is a popular destination (Vangelis Tsiligiris and Alex de Ruyter, 2018) for students wishing to participate in educational mobility. However, with the exit from the EU, the UK will be deprived of several EU funding (Marginson, 2017) for higher education, which could cause further economic problems. That is why an agreement concerning the higher-education after the Brexit is needed. For this agreement, Cherry James (James, 2016) outlines three options that I would like to introduce because I see in the same way.

The first possibility is that the United Kingdom remains the member of the Single Market after the Brexit, however, this requires that the UK need to be the member of both the European Free Trade Association (EFTA) and the European Economic Area (EEA). This requires the signature of the EEA Convention and the consent of the EU Member States, the EEA and the EFTA States. However, given the current political situation, I see little chance of the UK signing the EEA Convention, as at present it does not seem to want to remain part of the internal market because of the free movement of people. Despite the fact that in this case, the situation of students participating in student mobility would not change after Brexit. (James, 2016)

Under the second option, the United Kingdom would not remain a member of the Single Market after the Brexit. In this case, students from the EU would lose many of their rights as EU citizens, and on that basis, students from the United Kingdom would be treated as coming from a third country within the European Union. Therefore, students will face higher tuition fees and the need for a student visa. Furthermore, among the EU legal requirements ensuring equal treatment within the meaning of the prohibition of discrimination after Brexit will not be available to students in terms of their obligations (primarily tuition fees). (James, 2016) To eliminate this, several agreements between the EU and the UK would need. In my opinion, this outcome is the most unfavourable and unlikely, since the situation of the students must settle fairly.

In her last theory, according to Cherry James, the post-Brexit relationship between the EU and the United Kingdom could be settled in the same way as the EU-Switzerland relationship. In pursuance of this, an agreement between the EU and the UK would come to existence on the free movement of people, as it was the case with Switzerland and it would include student status. Based on the Swiss model, the rights of students would be almost similar to the present ones. (James, 2016) However, the free movement of people also includes the issue of internal (within the EU) migration, which was one of the reasons for the UK's withdrawal. The UK also wants to leave the internal market in its current position, therefore, it is unlikely to opt for this what would otherwise seem like a reasonable solution.

In my opinion, the first option - staying in the Single Market - would be the most beneficial for students after the Brexit. I also believe that the issue of student mobility cannot be left and need to be settled during the transition period.

6. LEGAL EFFECTS OF THE TRANSITIONAL PERIOD ON EU CITIZENSHIP

Following the withdrawal, the United Kingdom entered a transitional period with the European Union after 31 January 2020, which provides an opportunity to establish and negotiate their future relationship. This means that during this time, the right of free movement will remain unchanged, which will ensure that EU citizens settle and work in the UK and British citizens the same in any EU Member State. (UK, 2020)

For those EU citizens who were already living in the UK before Brexit, the British government has promised to protect the rights they have acquired so far. This affects around 3.5 million EU citizens. (Schraer, 2020) However, in order to retain their pre-existing rights, a new legal status has been created, for which those EU citizens, who are live in the UK, are entitled to apply. This is the EU Settlement Scheme, which provides the opportunity to apply until 30 June 2021. (Schraer, 2020) Anyone who can prove they have been in the UK continuously for five years or more should be eligible for settled status.¹⁰ Those living in the UK for shorter periods of time should qualify for pre-settled status, which can be upgraded to settled status once the applicant has reached the five-year milestone.

British citizens living in the EU will be able to live, study or work without interruption during the transition period in the same way as before the Brexit. This includes the right of free movement among different EU Member States. However every British citizens need to apply for a residence status to confirm that they were already resident in the EU country before 31 December 2020. (UK, 2020) They will, like EU citizens in the UK, have until at least 30 June 2021 to do so. The EU states have the opportunity to set up a system for applying for a residence status, during which British citizens must provide documents evidencing their residence status.¹¹ The same rules apply to family members, so they also need to settle their legal status.

British citizens who do not wish to remain in the EU after the end of the transitional period can return to the UK at any time under their citizenship rights. Non-British family members of these British citizens will have the opportunity to join them in the UK and apply to the EU Settlement Scheme until 31 March 2022 as long as the relationship began before 31 January 2020. (UK, 2020)

7. CONCLUSION

We can see that the exit of a Member State raises a number of human issues. Perhaps one of the tasks of jurisprudence is to examine the extensibility of frameworks in addition to the current framework. Brexit has brought a lot of legal and social changes, which in some ways can have a developmental effect on society, the handling of social conflicts, through them to develop new legal solutions, but they can also lead to setbacks and new conflicts. It is particularly important to assess the role and place of EU

¹⁰ AGREEMENT on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community

¹¹ COUNCIL DECISION (EU) 2020/135 of 30 January 2020 on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community

citizenship in Europe, in the EU. Brexit is a break in social and economic development that can cause final damage but also bring the peoples of Europe closer together. (Kiss, Lilla Nóra – Laczik, Anna, 2020)

The Withdrawal Agreement of the United Kingdom settles the free movement and residence of EU and British citizens in respect of their previously acquired rights and those acquired during the transitional period in a way that can be considered relatively adequate. The massive loss of EU citizenship until the Brexit was an unprecedented event in the history of the EU, which necessarily raises the theoretical and scientific possibilities of expanding the framework. (Kiss, Lilla Nóra – Laczik, Anna, 2020)

In my research, I highlighted the impact of Brexit on EU citizenship; however, this is not possible without examining the various situations that result from it, during which I also touched on the right of free movement and residence, and EU citizenship status granted to third-country family members by the derivative rights of EU citizens. The purpose of my article was to present the social and legal impacts of the exit of a Member State for the development of EU citizenship, in consideration of the current legal framework.

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Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community highlighting the progress made (2018) Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Art. 50 TEU.
