

Citizenship of the European Union

- 1992: An extraordinary European Council is held in Birmingham, United Kingdom. It adopts a declaration entitled 'A Community close to its citizens'.
- 1992: Maastricht Treaty introduces EU citizenship as a distinct concept guaranteeing additional rights.
- 1997: Treaty of Amsterdam extends the *rights of EU citizenship*. Introduces *anti-discrimination clauses to protect*
- EU citizens. The Schengen Agreement removing frontiers (except for those of Denmark, Ireland and the UK) is incorporated into the Treaty.
- 1999: Case C-85/96 *Martinez Sala*: *The European Court of Justice held that European citizenship provides substantive rights in addition to those already available in the Treaty.*
- 2000: Charter of Fundamental Rights of the EU proclaimed at Nice Summit.
- 2002: The Convention on the Future of Europe starts its work with the objective of drafting a Constitutional Treaty to the European Union.
- 2007: Lisbon Treaty agreed
- 2009: Lisbon Treaty enters into force, with Charter being given equal legal status as the Treaties within the Union

Citizenship of the European Union was established in the Maastricht Treaty of the European Union.

Citizenship of the EU is added value to the citizenship of the member state, but does not replace it. It enlarges rights (not duties) of those reflecting from the national citizenship = **derivation principle**

PERSONAL SCOPE

Article 20 TFEU (ex Art 17(1) EC)

1. *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..*
2. *Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties provided for in the Treaties.*

In the original EC Treaty (as amended by the Maastricht IGC), Article 17(1) EC stated that citizenship was to complement and not replace European Citizenship; in the Lisbon Treaty, Citizenship of the Union would now be additional to, rather than complement, national citizenship, and the reference to 'duties' has been removed.

TERRITORIAL SCOPE

Article 349 TFEU sets out the territory in which the Treaty applies. For the main part individuals with Treaty rights and obligations have those rights when in these specified territories.

The Treaty rules on free-movement for both economically and non-economically active persons, apply only when the person moves (or seeks to move) from their own (home) Member State and to another Member State (host). There must be a trans-national element; no protection is provided in the wholly internal situation.

Joined Cases C-64/96 and C-65/96 Uecker and Jacquet [1997] ECR I-3171

Ms Uecker, a Norwegian national, and Ms Jacquet, a Russian national, teach Norwegian and Russian respectively in German universities. They are married to German nationals and live in Germany. Their husbands live and work in Germany. Ms Uecker and Ms Jacquet are employed on fixed term contracts, and consider that the terms offered are discriminatory. In proceedings questioning the validity of their contract terms the nation court asked whether the national of a non-member country married to a worker having the nationality of a Member State can rely on rights conferred by [Community citizenship provisions] within that same Member State.

Judgment of the Court

(16) It has consistently been held that the Treaty rules governing freedom of movement and regulations adopted to implement them cannot be applied to cases which have no factor linking them with any of the situations governed by Community law and all elements of which are purely internal to a single Member State [Joined Cases 35/82 and 36/82 Morson and Jhanjan v State of the Netherlands [1982] ECR 3723, paragraph 16; Case 147/87 Zaoui v Cramif [1987] ECR 5511, paragraph 15; Case C-332/90 Steen v Deutsche Bundespost [1992] ECR I- 341, paragraph 9; Case C-153/91 Petit v Office National des Pensions [1992] ECR I-4973, paragraph 8; and Case C-206/91 Koua Poirrez v Caisse d'Allocations Familiales [1992] ECR I-6685, paragraph 11).

MATERIAL SCOPE

Under the Treaties, Union citizens have the following rights, some of which are considered in as below:

- the right to vote and to stand as a candidate in elections to the European Parliament and in municipal elections in the Member State in which he resides, under the same conditions as nationals of that State (Article 22 TFEU (ex Article 19 of the EC Treaty));
- the right to petition the European Parliament (Article 24 TFEU (ex Article 21 of the EC Treaty)) and the right to apply to the ombudsman (Article 24 TFEU) in order to bring to his attention any cases of poor administration by the Community institutions and bodies, with the exception of the legal bodies.
- the right to apply to the European institutions in one of the official languages and to receive a reply in that language (Article 25 TFEU (ex Article 22 of the EC Treaty));
- the right to access to all documentation of any institution, body, office or agency of the Union. (Article 15(3) TFEU (exArticle 255 of the EC Treaty)).
- the right, in the territory of a third country in which his country is not represented, to protection by the diplomatic or consular authorities of another Member State, on the same conditions as the nationals of that State (Article 23 TFEU (ex Article 20 of the EC Treaty));
- the right, subject to certain limitations, to move freely and to reside on the territory of the Member States (Article 21 TEU (ex Article 18(1)(2) of the EC Treaty));
- non-discrimination on grounds of nationality between citizens of the Union (Article 18 TFEU (ex Article 12 of the EC Treaty));
- non-discrimination based on sex, race, religion, disability, age or sexual orientation (Article 19 TFEU (Article 13 of the EC Treaty)).

- 1/ Freedom of movement of workers
- 2/ The Right to move and reside in another Member State

Ad 1) Freedom of movement (Art. 45 TFEU)

- (1) Freedom of **movement for workers** shall be secured within the Community

- (2) Such freedom of movement shall entail the **abolition of any discrimination** based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

(3) It shall entail the right, subject to **limitations justified on grounds of public policy, public security or public health:**

- (a) to accept offers of employment actually made;
- (b) to move freely within the territory of Member States for this purpose;
- (c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
- (d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in implementing regulations to be drawn up by the Commission.

Worker:

- the Court has stressed that the term 'worker' has an autonomous Community definition and is not determined by national law; to permit a national definition of the term would be to allow varying degrees of protection in each MS. Since there is no Treaty definition of the term, it was left to the Court of Justice to define the boundaries of this freedom.

Case 75/63 Hoekstra [1964] ECR 177

'The Treaty, having by Articles [45-48] instituted the free circulation of workers, has thereby conferred on this term a Community meaning. If this could arise from internal law, each State would then have the power to modify the content of the concept of 'migrant worker' and to eliminate certain categories of persons at will from the protection of the Treaty. [...] nothing in Articles [45-48] of the Treaty leads to the admission that these texts have left the definition of the term 'worker' to the national laws [...] Articles [45-48] would thus be deprived of all meaning, and the abovementioned aims of the Treaty hampered, if the content of such a term could be unilaterally fixed and modified by internal law.'

Worker as **“an employed person, irrespective of whether he is wage-earning or salaried, blue collar or white collar, an executive or unskilled labourer,”** and has, in subsequent cases, gone on to expand the definition in a series of cases to include par-time workers, work-seekers, and under certain circumstances those undertaking a period of study.

Conditions for working stating in ECJ jurisdiction:
1/ the work must be genuine and effective
2/ the work must not be marginal and ancillary

Ad 2) The Right to move and reside in another Member State

The rights to enter, move freely, seek, and take up employment are governed by a combination of Art 45(3) TFEU, Regulation 1612/68 Arts 1-5, and Directive 2004/38 Arts 4-14. Directive 2004/38 provides the rules to regulate the conditions by which work-seekers can leave one Member State and enter the territory of another. Article 4 Directive 2004/38 gives the right to **leave a state and Article 5 of the Directive provides the right to enter another** Member State.

Family members are defined by Article 2 Directive 2004/38 as

- (a) the spouse;
- (b) the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State;
- (c) the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner as defined in point (b);
- (d) the dependent direct relatives in the ascending line and those of the spouse or partner as defined in point (b);

Family members are guaranteed:

1/ right to work

Article 23 Directive 2004/38 refers to family members, and give the workers' family members the right to take up any activity as an employed person in the host state, by virtue of the worker having those rights. The nationalities of the family members are irrelevant. However, the rights are derivative - they are dependent on the status of the worker.

2/ right for education

Article 12 of Regulation 1612/68 confirms that right of the workers children to access to host state's general educational, apprenticeship or vocational training courses and to educational grants: **Case 9/74Casagrande [1974] ECR 773 states that this includes benefits to facilitate access.**

With regard to the new rights, there are three distinguishing categories:

- the right to vote and stand for election in local and European elections;
- the right to diplomatic and consular protection;
- the right to out-of-court methods for the protection of citizens' rights.

With regard to the right to vote and to stand for election, this now applies to all citizens of the Union residing in another Member State of which they are not nationals, as far as European Parliament elections are concerned. However, this was far from being the case in 1996 for local elections. By 1 January 1997 only eight Member States had fully implemented **Directive 94/80/EC on municipal elections**. In order to counteract the low participation rate recorded at the European elections of 1994 and of 1995/1996 in the new Member States, the Commission proposes two measures:

- improving the information to be provided in good time to citizens, through campaigns such as "Citizens First";
- promoting the participation of citizens in the political life of their country of residence.

With regard to the **right to diplomatic and consular protection**, this right founded on the provisions of the Treaty (Decision of the Representatives of the Governments of the Member States of 19 December 1995 introducing this protection and Decision of 6 July 1996 on the establishment of an emergency travel document) was already introduced and is in contrary but benefited the **Vienna convention on consular relations** and **Vienna convention on diplomatic relations**.

The out-of-court methods for the protection of EU citizens' rights comprise two parts:

- the right to petition the European Parliament;
- the right to apply to the Ombudsman.
- The right to petition, which is open to all persons legally residing in the Union, whether or not citizens of one of the EU Member States, generates a constant influx of petitions.
