

The Concept Of European Citizenship And Its Evolution

Avrupa Vatandaşlığı'nın Konsepti ve Evrim Kavramı

Esra Ağralı

Marmara Üniversitesi, AB Enstitüsü, AB Hukuku Anabilim Dalı, İngilizce Tezli Yüksek Lisans Öğrencisi

Yrd. Doç. Dr. Gerçek Şahin Yücel

Marmara Üniversitesi, AB Enstitüsü, AB Hukuku Anabilim Dalı Öğretim Üyesi

ABSTRACT

The applications while the beginning of development process of the European Union had considered the individuals only by their contributions to the economy. However, after it was realized that the political union in Europe cannot be achieved without the active participation of European communities, new policies on “building a closer Union between European communities” have been started to applied. Establishing a democratic and balanced Europe requires the direct participation of Union citizens, as well as Union institutions, to the process. In this regard, it is possible to say that the future of Union citizenship depends on the integration process of European Union. Therefore, the concept of European Union citizenship has been evolved since 1970s and still evolving especially by the important rulings of the European Court of Justice.

Keywords: European Union, European Union citizenship, ECJ case laws, Free Movement, Rights of EU citizens.

INTRODUCTION

The Europe was re-constructed after World War II, and the establishment of the European Union has strengthened this construction and built a cooperation between the European countries. After that, now its time to build the “Europeans”. To build a common European identity and a citizenship concept in frame of common values and equal rights, the Union had started to work since the first times. However, the Union firstly passed to process of economic integration. Besides, the Union has evolved by strengthening its political integration together

with its economic power. Therefore, Member States' nationals became the main factor to provide the political integration, who were not a part of decision making process of economic integration in first times of the Union.

As a further development, Maastricht Treaty in 1993 is a milestone to build a "Union citizenship". By Maastricht Treaty, better protecting the rights and interests of Member State nationals has become a new obligation and aim of the Union. Before Maastricht there were many attempts on conferring rights to the citizens; however, those rights only had an economic perspective and stipulated in frame of free movement and residence. The other political and rights were not considered in the beginning. On the other hand, the right to free movement and residence has been the most problematic right which the European Court of Justice has faced many times, and Member States has conflict not only between each other, but also with individuals and Union institutions. However, the other rights conferred to the citizens also have importance in case of citizens. Those political rights became a subject of Union law after building an economic integration between Member States.

Maastricht Treaty brought a new approach to the concept of Union citizenship. By Maastricht, the concept of Union citizenship was included into Union law and became one of the most important subjects of the Court of Justice. Before Maastricht, the concept of Union citizenship were not in agenda of Union. However, it has gained importance by the provisions of Maastricht Treaty and become one of the main issues of Union law. It can be seen that the relationship of Union and individuals is not an output of a conscious policy, but it occurs depending on the cycle of Union's evolution. By years, the Union has used the terms of "An Union closer to its citizens" and "A Union for the citizens" has become such a motto and a principle in its official documents. In post-Maastricht process, the concept of Union citizenship and the rights of citizens has continued to develop by the attempts of the Court of Justice and new Treaty provisions, such as Amsterdam Treaty, Draft Constitution of Union and lastly Lisbon Treaty. However, there were many provisions on Union citizenship, but in those resources, there were not any definition of Union citizenship. It was just defined as that Union citizenship is not replace but the complementary of national citizenship. The concept of Union citizenship is different from concept of classical citizenship. Those differences are based from the European Union and its sui generis legal order. The supranational structure of European Union caused such a sui generis process on construction of legal basis and content of citizenship concept. As a result, a concept was occurred which is dependent and complementary to the citizenship of Member States.

European Union has power over Member States, and imposes rights and legal obligations to them. The Union gains this power and legitimacy by individuals who are the fundamental subject of states to gain legitimacy. Therefore, it is impossible to think a Union without individuals. On the other hand, the Court of Justice also contributes on protecting the statue and rights of the citizens by its jurisprudences. However, there has been conflicts between the provisions or decisions of the Court and national laws. the interests of Member States and provisions of the Union law has been conflicted in years and still it does not reached a final solution and certain implications.

The concept of European Union citizenship is still evolving and especially the case laws occurs as a proof of this evolution. The Court of Justice gives different decisions case by case, even the cases have similar subjects, the appliants are in different situations. The situation of family members, students, non-workers and immigrants differs on provisions and directives. While the Court rules in favor of one applicant, it can rules against another applicant in frame of Union law. This perspective shows us that the concept of Union citizenship still continues its evolutionary process, and the statue and rights of the individuals in European Union is still transforming. Therefore, it is possible to say that the situation and statue of Union citizens in Union legal order may change in future implementations and attempts of the Union.

1- The Characteristics of EU Citizenship and its Historical Evolution

The concept of European Union citizenship has a wide context. It is different from classical term of citizenship; however, it also has similarities in case of individuals. Every national of a state has citizenship rights on the state they reside. However, in European Union the citizens of Member States have different and additional rights rather than non-Union nationals. Citizenship in general terms is that determines the institutionalized relationship between the citizen and the state. Although today the national borders have been removed and globalization becomes widespread, citizenship still maintains its importance as a legal status. As this feature, citizenship separates a state's nationality from another state's nationality, foreigners and stateless persons. The concept of "state" cannot be thought apart and independent from individuals and a particular community. The "humanity constituent" of a state, in other words a permanent population which is dependent a state, is one of the most important and essential grounds which founding a state.¹

1) Rona AYBAY, Vatandaşlık Hukuku, 5. Edition, Istanbul (2004), Istanbul Bilgi Üniversitesi Yayınları, p.3.

There are many definitions on “humanity constituent” of the state: Nation, people, population etc. However, according to the international law, today the only valid measure is “nationality bound”.² The link between the state and the individual for international law purposes has historically been the concept of nationality. Each state has the capacity to determine who are to be its nationals and this is to be recognized by other states in so far as it is consistent with international law.³

In this frame, the EU adopts the individuals who are the nationals of Member States, as the citizens of the Union either. However, the EU is different from classical state and international organization concepts, its citizenship concept is different too. The EU refers a different structure, which The principle of “supranationality” defines this sui generis structure of the EU. In other words, the EU imposes rights and obligations for member states and individuals, has direct effect on national laws and has the capacity to make regulations over the national laws.⁴ Besides, the EU may have decisions which are effective in social and economic life of individuals.

The EU has this power and legitimacy by individuals who are the basic grounds of states. Therefore, it is impossible to think the EU independent from individuals.⁵ On the other hand, the EU has focused on individuals and prioritize them since the first times of the Union, yet one of the subjects of the Union law is individuals. The fact of “the statue of individuals is only determined by the state which he is its national” has been changing and evolving in frame of the EU. As a result of the sui generis relation between the EU and individuals is emerged a citizenship status which is exclusive to the EU.

In official documents of the EU, the relationship between the Union and individuals is mentioned as motto such as “a Union closer to the citizens” or “a Union for citizens and by the citizens.” On the other hand, there are three points occurs in legal relationship between the EU and individuals.⁶ These are;

- Legal status of the citizens in the EU and the rights vested by this statue,
- Protection of the fundamental rights of the citizens,
- Providing the freedom and security of the citizens.

2) Hüseyin PAZARCI, Uluslararası Hukuk, 2. Edition, Ankara (2004) Turhan Kitabevi, p.141.

3) Malcolm. N. SHAW, International Law, 5. Edition, Cambridge (2005), Cambridge University Press, p.232.

4) Ercüment TEZCAN, Avrupa Birliği Hukuku'nda Birey, 1. Edition, İstanbul (2002), İletişim Yayınları, p.13.

5) TEZCAN, a.g.e., p.13.

6) TEZCAN, a.g.e. p.16.

These three points are the ground of much questions on the concept of Union citizenship. The evolutionary process of the Union citizenship and its current status can clarify these points and their implementation in the EU law.

1- Towards Union Citizenship

The most important step in evolutionary process of Union citizenship is Maastricht period. The developments has not only happened after Maastricht Treaty, but also there were many developments and efforts before Maastricht Treaty entered into force.

The EU citizenship has been the center of the debates during the integration process since 1980s, but the Union citizenship entered to the positive law of the EU with the Maastrich Treaty.⁷ Before the Maastricht Treaty, the citizenship status was not involved in founder treaties; however, some rules on the base of this status were envisaged. The most significant example of this the article 12 of the Treaty Establishing the European Community (TEC) which is on prohibition of national discrimination, and Article 14 on providing free movement in internal market.⁸

On the other hand, according to Article 17(1) EC, *'every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship'*. So, two points should be emphasized here. First, EU citizenship depends on Member State nationality. As such, only a person holding the nationality of an EU Member State can become an EU citizen. This means that there are currently 28 ways of becoming an EU citizen. Second, and it is a consequence of the derivative nature of EU citizenship, it does not replace national citizenship. EU citizenship should not therefore be confused with a state-like pan-European form of citizenship nor be understood as giving rise to a European nationality. It is conceptually decoupled from nationality and as a matter of fact from any form of European nationalism.⁹ Article 17(2) EC identifies EU citizenship with a legal relationship between the Union and Member State nationals to which are attached specific rights and duties. These correspond to the rights and duties which are already guaranteed by the Treaty and secondary legislation. As such, Articles 18–21 EC can be equated to a standstill clause that prevents the erosion of the *acquis com-*

7) Haluk GÜNUĞUR, *Avrupa Birliği ve Hukuk Düzeni*, Ankara (2006), EKO Avrupa Yayınları, p.47.

8) TEZCAN, a.g.e., p.23.

9) Samantha BESSON, André UTZINGER, "Introduction: Future Challenges of European Citizenship-Facing a Wide-Open Pandora's Box", *European Law Journal*, Vol.XIII, No.5, (September 2007), p.576.

munautaire. It also follows, however, that EU citizenship is evolutionary and can expand to new rights together with the expansion of the scope of the EC Treaty. The list of rights attached to EU citizenship in Articles 18–21 EC mostly recapitulates pre-existing rights and is not exhaustive.¹⁰

At the beginning, individuals were evaluated within the scope of economic freedoms rather than member state nationals. The citizens of a member state who reside in another member state were not considered as a third country citizen. However, this was a limited approach, but it provided rights to the individuals such as free movement and non-discrimination on citizenship and gender. Those rights were also provided to the workers who are member state nationals. However, this citizenship approach which includes only economic rights was not sufficient for building ‘People’s Europe’, whereas at the beginning of European integration, Jean Monnet, who is one of the most important founders of this project, said that “we are not building a coalition between the states, but a union between the people.”¹¹, the integration project were executed far from the people of Europe; therefore, it was successful in economic and technical points, but it had many deficits in political and cultural perspectives. In other words, although a union between people were envisaged rather than states, an integration process which is disconnected from Europeans was occurred.

Although many developments were reached until 1990s, the most significant and important step is taken by the Maastrich Treaty, which was signed in 1992, and entered into force in 1993. In 1970s the citizenship status was based on the idea of creating a common European identity, on the other hand in 1980s, citizenship regulations were based on principles of equality and solidarity. However in 1990s, citizenship was evaluated as a concrete element which directly effects the evolution of European Political Union.¹²

The 1993 amendments to the EC Treaty introduced by the Treaty of Maastricht put in a place a new and rather novel section on citizenship.¹³ The concept of “Citizenship of the Union”, introduced at Maastricht, formed a key part of the Community’s response, aiming to provide the glue to help bind together nationals of all the member states.¹⁴ The preamble to the Treaty on European

10) BESSON, UTZINGER, a.g.m., p.576.

11) Pascal FONTAINE, *Citizen’s Europe*, Brussels, COM.Ec. (1993), p.5.

12) Antje WIENER, *European Citizenship Practice-Building Institutions of a Non-State, USA* (1998), Westview Press, p.252.

13) Jo SHAW, “European Citizenship: The IGC and Beyond”, *European Integration online Papers (EIoP)*, Vol.I, No.003, (1997), p.2.

14) Catherine BARNARD, *The Substantive Law of the EU: The Four Freedoms*, 2. Edition, Oxford (2007), Oxford University Press, p.409.

Union (TEU) states that the High Court Contracting Parties “resolved to establish a citizenship common to nationals of their countries.” In Article B, under the heading ‘Common Provisions’, one of the objectives of the Union is stated to be “to strengthen the protection of the rights and interests of the nationals of its member states through the introduction of a citizenship of the Union”.¹⁵ The detailed TEU provisions on citizenship are contained in a new Part Two of the EC Treaty. Articles 8-8e EC, as inserted by the TEU, contain the provisions on Union citizenship. A citizenship of the Union is established, to be conferred on every person holding the nationality of a member state. The Article 9 under the heading ‘Provisions on Democratic Principles’ in the “Consolidated Version of the Treaty on European Union”¹⁶ refers that;

“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.”

The TEU does not create a nationality of the Union, but rather a complementary citizenship to citizenship of a member state. The reference to the nationalities of the member states is important. It states clearly the limited nature of EU citizenship. It links back directly to one of the framework ‘constitutional’ provisions of the Treaty of Maastricht itself.¹⁷

In short, a Union citizenship is established with the Maastricht Treaty, and by the addition of ‘every person holding a nationality of a member state shall be a citizen of the Union’ the fundamental principle on the issue is determined.¹⁸ The citizenship status which is granted by Maastricht Treaty is a supplementary statute to the national citizenship of a member state. Thus, the Article 8 of the Treaty showed a structural approach by determining that the Union citizenship is dependent to holding a nationality of a member state. In other words, acquisition or loss of the Union citizenship is not independent from acquisition or loss of the nationality of a member state.¹⁹

The concept of European Union citizenship requires specific principles to define its content; thus, as it is defined in Maastricht Treaty and Article 2 of the Draft Constitution; the common values of Europe are freedom, democracy, equality, respect to human rights and rule of law. Alongside those values, it is emphasized that the European communities are loyal to the principles of plural-

15) Twomey O’KEEFFE (Ed.), Legal Issues of the Maastricht Treaty, UK (1994), Wiley Chancery Law, p.89-90.

16) Consolidated Version of Treaty on European Union, O.J., C 83/13, 30.03.2010.

17) SHAW, “The IGC and Beyond”, p.2.

18) TEZCAN, a.g.e., p.27.

19) Gülören TEKİNALP and Ünal TEKİNALP (Eds.), Avrupa Birliği Hukuku, İstanbul (1997), Beta Yayınları, p.21.

ism, discretion, justice, solidarity and non-discrimination. However, the future of the Union citizenship cannot be depend only those principles and, it would become more clear by the rights granted to the Europeans.²⁰

In the beginning, the Founder Treaties thought the individuals only in economic perspective and had showed a limited approach on citizenship; however, this limited approach has become to change by the courageous jurisprudence of the ECJ, such as its decisions on protection of fundamental rights, prevention of non-discrimination, protection of privacy, immunity of domicile, legal protection against executive actions, right to objection and freedom of expression.²¹ At this point, by the Maastricht Treaty, the concept of citizenship gained a legal statue and validity, and it reinforced the courageous approach of the ECJ, by granting important rights to the European citizens.

The Maastricht Treaty brought a legal validity to the Union citizenship for the first time. The rights which the Maastricht Treaty granted to the Union citizens are virtually as; right to move and reside freely within the Union territories, right to vote or stand in municipal elections for those citizens residing in member states of which they are not nationals, diplomatic and consular protection, and right to petition the EP and to apply to the Ombudsman. Those rights were set by the TEC and Maastricht Treaty, and continued to protect in draft constitution and Lisbon Treaty.²²

1- Rights of EU Citizens

The European citizens have four basic rights such as; right to free movement and residence, right to vote and stand as a candidate in the European Parliament and municipal elections, right to diplomatic and consular protection, right to petition the Parliament and apply to the European Ombudsman.

3-1- Right to Free Movement and Residence

The free movement of persons is the cornerstone of the Union citizenship provisions, as it had been throughout the evolution of the concept of European citizenship. The right to free movement is regarded a right for citizens within the concept of Union citizenship, and it is granted to all Member States due to the reason of Union citizenship. The right to free movement is not general and unlimited, it may be subject to Union law limitations. Therefore, the right to free

20) Maurice ROCHE, "Citizenship and Exclusion: Reconstructing the European Union", Maurice Roche and Rik Van Berkel (Eds.), in *European Citizenship and Social Exclusion* (3-23), England (1997), Ashgate Publishing Limited, Aldershot, p.15.

21) TEZCAN, a.g.e., p.20-21.

22) ROCHE, a.g.e. p.26.

movement is determined in accordance with the Union conditions, and it would be established in an area of without internal borders.²³

The other perspective on the right to free movement is “right to residence”. Without granting right to residence, the application of right to free movement is practically impossible; therefore, these two rights are related and dependent each other. In accordance with the Treaties, these two rights has been issued together, also the ECJ ruled in its *Raulin*²⁴ judgement in 26 February 1992, the persons are allowed to enjoy “right to free movement” and “right to residence” together, and these two rights are not independent from each other.

The right to move and reside freely within the territories of the Member State was regulated and resolved to explicit provision by the Article 18 of TEC. By this provision, this right has been evaluated as independent from an economic activity, and considered as a fundamental individual right.²⁵ The idea of elimination of the borders between member states and individuals is based on the foundation period of the European Economic Community (EEC). In the beginning, free movement of individuals was only considered as an economic actor; however, later it became to evaluate within a wider perspective. In this frame, wider interpretation of the ECJ on “economic activity” and “social advantages”, played an important role on this improvement; as a result, the right of free movement and residence has gotten wider through students, job-seekers, family members of the workers and anyone who wants to benefit from this right.²⁶

The right to free movement and residence is the most problematic part of the four fundamental rights which the EU citizenship grants. The provisions of Treaties and rulings of the ECJ have big importance on shaping the conditions of the right to free movement and residence.

Free movement of persons is one of the fundamental freedoms enshrined in the Agreement on the European Economic Area (the EEA Agreement). It includes the right for EEA nationals to enter, move within, reside and, where appropriate, remain in an EEA State other than the State of which the EEA national is a citizen. In exercising this right, any discrimination on grounds of nationality is prohibited. Within the European Community this right was originally subject to that the person exercising the right was engaged in an economic activity

23) Semra Eren SAYLAN, “Avrupa Birliği Vatandaşlığı ve Gelişim Süreci”, Yüksek Lisans Tezi, Ankara Üniversitesi Sosyal Bilimler Enstitüsü Avrupa Birliği ve Uluslararası Ekonomik İlişkiler (Hukuk) Anabilim Dalı, Ankara, (2007), p.82.

24) V. J. M. Raulin v Minister van Onderwijs en Wetenschappen, Case C-357/89 (1992), ECR I-1027.

25) TEZCAN, a.g.e., p.31.

26) TEZCAN, a.g.e., p.32.

in that State. It was in 1990 when the three residence directives were adopted. These were Directive 1990/364 on a general right to residence²⁷, Directive 1990/365 on retired persons²⁸ and Directive 1993/96 on students.²⁹ The right of residence was conditional according to two criteria: first, the non-economic migrant needed to have comprehensive medical insurance; second, he needed to have sufficient resources so as not to become a burden on the social security system of the host Member State. The introduction of the European Union citizenship together with the development of the ECJ's decision ended up in a situation of an outdated legislation. Therefore, in 2004 the specifics of the EU citizenship were written down in the so-called "citizenship directive".³⁰ It repealed and replaced most of the relevant secondary legislation that existed before to provide a single and coherent framework detailing the Union's citizen's rights.³¹

By entering into force those directives, the beneficiaries of the right to free movement and residence were defined. The Union citizens and their family members are entitled to the right of residence within the territories of Member States. However, some limitations were set on application of this right; according to the Commission's submission, a Union citizen can only be deported, other than in the case of decisions on grounds of public policy, public security or public health, if he/she does not meet the conditions laid down by the Union law for the grant of a right of residence or no longer meets those conditions. On the other hand, Union citizens shall have the right of residence, provided that they themselves and the members of their families are covered by sickness insurance and have sufficient resources to avoid becoming a burden on the social assistance system of the host Member State during their period of residence.³²

At present the right of residence is governed by a number of different regulations and directives. In keeping with the new policy of the Union institutions of making Union law more accessible, the Commission intends to propose the codification of these provisions.

27) Council Directive of 28 June 1990 on the right of residence, O.J., L 180/26, 13.7.1990, p.26-27.

28) Council Directive of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity, O.J., L 180, 13.7.1990, p.28-29.

29) Council Directive of 29 October 1993 on the right of residence for students, O.J., L 317, 18.12.1993, p.59-60.

30) Council Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004, O.J., L 158, 30.4.2004.

31) Lehte ROOTS, "European Union Citizenship or Status of Long-Term Resident: A Dilemma for Third Country Nationals in Estonia", *Baltic Journal of European Studies*, Talinn University of Technology, Vol.II, No.1(11),p.69.

32) Geschrieben von Daniel NAUJOKS, ECJ: Union citizens, move and reside freely, C-408/03, Directive 90/364/EEC.

While it is true that the general right of nationals of Member States to reside in other Member States was laid down in Community law well before the Treaty of Maastricht came into force, that Treaty has placed this right on a new conceptual basis by enshrining it in the Treaties themselves. Accordingly, it has now been put on a par with other rights central to Union law and is thus in general to be construed broadly.³³

Besides, Article 21 (1) of the TFEU provides its citizens with the rights that forms an essential element of European citizenship – the right to move and reside freely and to settle anywhere within the European Union’s territory. Its importance has been also enshrined in the preamble of the Charter of Fundamental Rights. There are important legislative texts that reflect the situation; one is removing barriers to free movement, a second is allowing the EU citizens and their family members to travel and reside anywhere in Europe, a third one ensures that they are covered by social security and the fourth one recognises their professional qualifications.³⁴

All the previous and separated and complex Directives on right to free movement and residence has been repealed by 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. The Council Directive 2004/38³⁵ aims to provide citizens, and their family members, that are not EU nationals, with protection when moving and residing around the territory of the European Union. It extends, under certain conditions, family reunification rights to partners and family members and they are given autonomous rights in case of death or departure or termination of family ties (termination of marriage or registered partnership). However, Member States may impose certain restrictions upon the right of free movement and residence when it is justified on grounds of public policy, public security and public health. The right to reside in the other Member States is granted as long as the conditions of the right to reside are met; in addition, after fulfilling the certain conditions, there is a possibility after that time period to be granted a right of permanent residence. Then the EU citizens and their family members have increased protection against expulsion.

3-1-1- Debates and Conflicts on Right to Free Movement and Residence

The right to free movement and residence between the Member States of the EU is the most problematic and disputable subject of the concept of Europe-

33) Report from the Commission on the Citizenship, Commission of the European Communities, 1993, p.5.

34) The Right to Free Movement, European Citizens’ House Official Website.

35) Council Directive 2004/38.

an citizenship. The right to free movement and residence has been one of the most important and core subject of the Union law and continues its evolution by ECJ's jurisprudences on several cases besides that the Articles of Treaties, Council Regulations and Directives. In the beginning, the right to free movement and residence was considered and applied as an economic factor; however, later the Union needed to extend its scope into other areas such as social and political aspects. Due to the Union's aim to establish a "political Union" they realized that the only an economic frame in free movement will not be sufficient, especially in a Union which continually integrates and enlarges.

The ECJ has faced many disputes on the application of the right to free movement and residence, especially because of the dependent regulations of the Member States. The Court faced with many conflicts in different beneficiary groups of right to free movement and residence, such as non-workers, students and family members. In case of "non-workers", the ECJ had an important jurisprudence in 1998: The case of *Maria Martinez Sala v. Freistaat Bayern*³⁶ which is the first major case dealing with this aspect of Union citizenship.

Martinez Sala was a Spanish national resident in Germany for 25 years, who had previously worked in Germany but was not presently working and was receiving social assistance there. She applied for a child-raising allowance but was refused on the basis that she did not have German nationality, a residence entitlement, or a residence permit in Germany. The ECJ found that the requirement of a residence permit for receipt of a benefit was discriminatory where a Member State's own nationals were not subject to the same condition. German government argued that even if this was so, the facts of the case did not come within the scope of the Treaty, and therefore the applicant could not rely on Article 6 of the EC Treaty, which prohibits discrimination on grounds of nationality only within the scope of application of the Treaty. The ECJ held that a child-raising allowance was within the scope "ratione materiae"³⁷ of the Treaty, and went on to consider the argument concerning EU citizenship.³⁸ The ECJ gave its decision emphasizing by Article 8(a) of TEU which provides that "Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty

36) *Maria Martiez Sala v. Freistaat Bayern*, Case C-85/96, Judgement of the Court of 12 May 1998, ECR I-2691.

37) Jurisdiction Ratione Materiae, otherwise known as subject-matter jurisdiction refers to the court's authority to decide a particular case. It is the jurisdiction over the nature of the case and the type of relief sought; the extent to which a court can rule on the conduct of persons or the status of things.

38) Case C-85/96, prg.13-19.

and by the measures adopted to give it effect". Due to Mrs. Sala is a Member State national, she deemed to be a Union citizen as well. The Court stated that "As a national of a Member State lawfully residing in the territory of another Member State, the appellant in the main proceedings comes within the scope *ratione personae* of the provisions of the Treaty on European citizenship."³⁹

In *Sala* case, the ECJ applied the general principle of non-discrimination on grounds of nationality, on the basis of her EU citizenship. It has been said that the ECJ in this case was willing to explode the linkages which had previously been required in order for the principle of non-discrimination to apply.⁴⁰ Given that all parties agreed that the German decision was sound from a purely national perspective, but void when considered from a Union perspective, the key question was whether the case was governed by domestic German law or by Union law. Before Maastricht Treaty, this may have been a clear-cut case. Martínez Sala was not a worker or an economically active person, and under such circumstances, Union law simply did not apply.⁴¹ However, the ECJ concluded that the denial of child allowance by German authorities was a breach of Union law; concretely, it led to a discrimination based on nationality against a person who was entitled to equal treatment. After Maastricht Treaty-in particular, after European citizenship was established- the relations between a Member State and legally resident nationals of another Member State were governed by EU law, even if the European citizen was economically inactive.⁴²

On the other hand, another proof and issue that the ECJ extended the scope of Union citizenship from an 'economic factor' to a European citizenship concept, is the case of students. According to the Council Directive 2004/38 in 2004, the Member States shall recognize the right of residence to any student who is a national of a Member State and who does not enjoy the right to residence under other provisions of Community law where the student assures the relevant national authority, by means of a declaration or by such alternative means as the student may choose that are at least equivalent, that he or she has sufficient resources to avoid becoming a burden on the social security system of the host Member State during his or her period of residence. The student must also be enrolled at an accredited establishment for the principal purpose of following a

39) Case C-85/96, prg.61.

40) Paul CRAIG, Garainne de BURCA, EU Law: Text, Cases and Materials, Fourth Edition, Oxford (2008), Oxford University Press, p.859.

41) Agustin José MENÉNDEZ, "European Citizenship After Martinez Sala and Baumbast: Has European Law Become More Human but Less Social?", Arena Working Paper, No.11, Arena Center for European Studies, University of Oslo, (June 2009), p.16.

42) MENÉNDEZ, a.g.m., p.17.

vocational training course there and must be covered by sickness insurance in respect of all risks in the host Member State. Related to this issue, the argument of *Grzelczyk*⁴³ determines the opinion of the Court on the case of students in scope of Union citizenship.

Grzelczyk was a French national studying in Belgium. In his 4th year of study, he applied to the CPAS (Public Social Assistance Centre for Ottignies-Louvain-la-Neuve) for payment of the minimex, a non-contributory minimum subsistence allowance. The CPAS initially granted this, but withdrew it after the Belgian minister decided that Grzelczyk was not entitled to it since he was not a Belgian national.⁴⁴

The ECJ found in its ruling that Mr. Grzelczyk satisfies the conditions for obtaining minimex.⁴⁵ The fact that Mr. Grzelczyk is not of Belgian nationality is the only bar to its being granted to him. It is not therefore in dispute that the case is one of discrimination solely on the ground of nationality. Within the sphere of application of the Treaty, such discrimination is, in principle, prohibited by the Article 6, which must be read in conjunction with the provisions of the Treaty concerning Union citizenship in order to determine its sphere of application. Due to 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.⁴⁶ Therefore, as a lawfully resident EU citizen, Grzelczyk was entitled to equal treatment on grounds of nationality under the Article 12 EC, in relation to benefits which fall within the scope of application of the Treaty.

Here the ECJ made its novel move, although it had previously ruled that assistance for students fell outside the scope of the EC Treaty, the combination of a new EC Treaty title on education and the new provisions on EU citizenship had introduced relevant changes. Despite the fact that the rights in Article 18 EC are subject to limitations and conditions, and that the Students' Residence Directive had imposed relevant conditions of sufficient resources and sickness insurance, there was no provision expressly precluding students from entitlement to social security benefits. The ECJ clearly indicated that the advent of Union citizenship has changed the earlier restriction on the entitlement of students to social wel-

43) Rudy Grzelczyk v. CPAS, Case C-184/99, Judgement of the Court of 20 September 2001, ECR I-6193.

44) Case C-184/99, prg.10-12.

45) CRAIG, BURCA, a.g.e., p.863.

46) Case C-184/99, prg.29-31.

fare and to maintenance grants in a host Member State. Additionally, the ECJ in this case indicates that the concept of citizenship will be expanded.⁴⁷

However, in “*Baumbast*”⁴⁸ decision in 2002; the Court had a different approach. Mr. Baumbast was a German national married to a Colombian national with two children. They resided in United Kingdom (UK) from 1990 on, during which time Baumbast worked as an employed person and then as head of his own company. After the company failed he obtained employment in 1993 from German companies based in China and Lesotho. Mrs Baumbast and the two children lived in the UK. They received no social benefits and enjoyed comprehensive medical insurance in Germany where they travelled occasionally for treatment. In 1995 the Home Secretary refused to renew Mr Baumbast’s and the family’s residence permit and documents.⁴⁹ When the case was appealed and came before the ECJ, the Court was asked whether an EU citizen who no longer enjoys a right of residence as a migrant worker in the host Member State can, as a citizen of the EU, enjoy there a right of residence by direct application of Article 18 EC.⁵⁰

The ECJ gave its decision on *Baumbast* by referring that “A citizen of the European Union who no longer enjoys a right of residence as a migrant worker in the host Member State can, as a citizen of the Union, enjoy there a right of residence by direct application of Article 18 EC. The exercise of that right is subject to the limitations and conditions referred to in that provision, but the competent authorities and, where necessary, the national courts must ensure that those limitations and conditions are applied in compliance with the general principles of Community law and, in particular, the principle of proportionality.”⁵¹

In *Baumbast*, the ECJ ruled that the ‘limitations and conditions’ accepted by the Treaty on the right to free movement and residence must be interpreted and applied in a proportionate way. Thus, the new Treaty status of the right to free movement and residence may require a change in the interpretation of the secondary legislation to avoid any disproportionate interference with the Treaty rights; it means that the conditions and limitations set by the State is to be read in the light of the fundamental right to free movement and residence established by the Treaty. According to Craig and Burca, this reasoning recurs often in the Court’s case law, and in particular in those cases concerning access to social benefits for Union citizens.⁵²

47) CRAIG, BURCA, a.g.e., p.864-865.

48) *Baumbast and R v. Secretary of State for the Home Department*, Case C-413/99, Judgement of the Court of 17 September 2002.

49) Case C-413/99, paras. 16-27.

50) CRAIG, BURCA, a.g.e., p.851.

51) Case C-413/99, para. 97.

52) CRAIG, BURCA, a.g.e., p.852-853.

Another important point is that the Union citizenship is evolving not only by the Treaty provisions, but also by the case laws which the ECJ rules. In this frame, the situation of non-workers, students and family members were considered and took part in Union law in case of citizenship.

The ECJ had its first serious problem with *Rottmann*⁵³ case in 2010. The Court faced in this case that the situation of an individual who lost his Member State nationality and also lost his Union citizenship. In *Rottmann*, the dispute was only a Member State nationality problem; however, by losing Union citizenship status, the case became the problem and subject of EU law due to the fundamental status of EU citizenship⁵⁴ was disappeared either.⁵⁵

The reference was made in connection with proceedings between Dr Rottmann and the Freistaat Bayern, concerning the latter's withdrawal of the naturalisation of the applicant in the main proceedings. Accused of occupational fraud in his native Austria in 1995, Dr. Janko Rottmann, an Austrian citizen from birth, and EU citizen since the accession of Austria to the Union in 1995, used his EU citizenship rights to move to Germany, where he successfully naturalised in 1999. He lost his Austrian nationality *ex lege* from the moment of naturalisation. An interesting situation occurred, when a European citizen as a result of moving from his native Member State to another and naturalising there lost not only his initial and the newly-acquired nationality, but also his EU citizenship, which made the move and subsequent naturalisation possible in the first place. Faced with imminent statelessness, Dr. Rottmann appealed, arguing that the withdrawal of nationality was contrary to international law, which prohibits statelessness and also contrary to EU law, as it entails the loss of EU citizenship.⁵⁶

The main problem in *Rottmann* case is whether the situation of Dr. Rottmann (withdrawal of naturalisation) is the subject of EU law or a domestic and internal problem. In this frame, according to Advocate-General Poiares Maduro, "This reference for a preliminary ruling raises for the first time the question of the extent of the discretion available to the Member States to determine who their nationals are."⁵⁷

53) Janko Rottmann v. Freistaat Bayern, Case C-135/08, Judgement of the Court of 2 March 2010.

54) The fundamental status of EU citizenship is "Every person holding the nationality of a Member State is a citizen of EU."

55) Francesca STRUMIA, "Remedying the Inequalities of Economic Citizenship in Europe: Cohesion Policy and the Negative Right to Move", *European Law Journal*, Vol.XVII, No.6, (November 2011), pp.725-743.

56) Dimitry KOCHENOV, Case C-135/08, Janko Rottmann v. Freistaat Bayern, Judgment of 2 March 2010 (Grand Chamber), *Common Market Law Review*, Vol.XLVII, (November 2010), p.2.

57) Opinion of Advocate General Poiares Maduro, Case C-135/08, delivered on 30 September 2009, p.1.

The ECJ referred to Article 15 of Universal Declaration of Human Rights (UDHR)⁵⁸ and “The Convention on the Reduction of Statelessness⁵⁹.” The Article 7 of the Convention states that “*If the law of a Contracting State permits renunciation of nationality, such renunciation shall not result in loss of nationality unless the person concerned possesses or acquires another nationality.*” The Court admitted this Article and stated, by referring *Grzelczyk* that “As the Court has several times stated, citizenship of the union is intended to be the fundamental status of nationals of the Member States,⁶⁰ and the Member States must, when exercising their powers in the sphere of nationality, have due regard to European Union law.”⁶¹

It indicated that it is not necessary to construct any cross-border situation when the status of EU citizenship is at stake; the ECJ is competent to exercise judicial review of nationality decisions of the Member States; the principle of proportionality, which applies in this context; covers both the cases of loss and (re)acquisition of EU citizenship.⁶² The Court ruled in *Rottmann* that “It is not contrary to EU law for a Member State to withdraw from a citizen of the Union the nationality of that State acquired by naturalisation when that nationality was obtained by deception, on condition that the decision to withdraw observes the principle of proportionality.”⁶³ Due to the Court took the issue as a subject of Union law, it made its judgement in light of Union law as well. The Member States must consider Union law on nationality issues, and in case of naturalisation, the case shall be examined in frame of the principle of proportionality, because according to the ECJ, loss of German nationality will effect the loss of Union citizenship as well, so such a penalty will not be proportionate compared to the crime.

The most important output of *Rottmann* is the obligation of Member States to take Union law into consideration on issues relating to acquisition of nationality. In this frame, a Member State shall not bring additional conditions to recognize the nationality which other Member States naturalized, and also while a Member State is taking a decision, the principle of proportionality must be regarded if the decision withdraws the individuals Union citizenship.

58) Article 15 of UDHR refers that: “Everyone has the right to nationality, and no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”

59) Text of the 1961 Convention on the Reduction of Statelessness, adopted by the General Assembly of the United Nations, done at New York on 30 August 1961, <http://www.unhcr.org/3bbb286d8.html>.(10.05.2014)

60) Case C-135/08, para.43.

61) Case C-135/08, para.46.

62) KOCHENOV, “Case C-135/08”, p.6.

63) Case 135/08, para.66.

As the most recent ECJ jurisprudence, *Ymeraga*⁶⁴ case is important to understand. The applicants in the main proceedings are all from Kosovo. In 1999, Mr Kreshnik Ymeraga arrived in Luxembourg at the age of 15 to live with his uncle, a Luxembourg national, who became his legal guardian. Although Mr Kreshnik Ymeraga's application for asylum was rejected by the Luxembourg authorities, his situation was regularised in 2001 and, thereafter, he went on to study and found regular employment. Between 2006 and 2008, Mr and Mrs Ymeraga and Mr Kreshnik Ymeraga's two brothers arrived in turn in Luxembourg. They all applied for international protection in accordance with the law on the right of asylum and complementary forms of protection.⁶⁵ Their application for international protection having been rejected by the Luxembourg authorities, Mr and Mrs Ymeraga and Mr Kreshnik Ymeraga's two brothers applied, on 8 May 2008, for residence authorisations on grounds of family reunification with Mr Kreshnik Ymeraga.⁶⁶ In 2010, Mr and Mrs Ymeraga sought a residence permit for Mr Kreshnik Ymeraga's two brothers. By three decisions of 12 July 2010, the Minister rejected those applications. The action for annulment those decisions was also dismissed by judgment of the Administrative Court of 6 July 2011.⁶⁷

The Court rejected the application based on the reason that although Mr. Ymeraga had made a financial contribution to the expenses of his family members who had remained in Kosovo, his parents could not be regarded as his 'dependants' for the purposes of the Law on freedom of movement. It was rejected as unfounded the alleged breach of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms⁶⁸, on the ground that the refusal to grant residence to Mr. Ymeraga's parents and two brothers could not prevent them from continuing their family life with him as it had been after Mr. Ymeraga had left Kosovo and before they arrived in Luxembourg.⁶⁹

The legal conflict on *Ymeraga* case is whether, on the basis of Article 20 TFEU and, potentially, certain provisions of the Charter a right to family reunifi-

64) *Kreshnik Ymeraga and Others v Ministre du Travail, de l'Emploi et de l'Immigration*, Case C-87/12, Judgement of the Court of 8 May 2013.

65) Case C-87/12, paras.11-12.

66) Case C-87/12, para.13.

67) Case C-87/12, paras.14-16.

68) Article 8 of the Convention states that "Everyone has the right to respect for his private and family life, his home and his correspondence; and there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

69) Case C-87/12, para.18.

cation in Luxembourg may be conferred on the family members of Mr Kreshnik Ymeraga.⁷⁰ Except this question of the referring Court, the ECJ emphasized that the Charter makes no difference in this regard. The Court held that on the question of referring court on family reunification, held that according to its Article 51(1)⁷¹, the Charter applies to Member States only when they are implementing Union law. As Mr. Ymeraga has not exercised his right of movement, his situation and that of his family are not governed by Union law, and the Charter remains inapplicable.⁷² The Court emphasized, however, that “such a finding does not prejudice the question whether, on the basis of an examination in the light of the provisions of the Convention, to which all Member States are parties, to the third country nationals in the main proceedings may not be refused a right of residence.”⁷³ Consequently, it is affirmative that the conflict was interpreted in perspective of human rights. The ECJ stated that Mr. Ymeraga may apply to the European Court of Human Rights (ECHR).⁷⁴

As its previous judgements, the ECJ did not reach a certain solution to the conflicts on Union citizenship; however, had a step forward to express the content of citizenship concept. The Court made its examination in *Ymeraga* in perspective of human rights and allow the citizens to apply ECHR; therefore, it became obvious that the importance and effect of the Convention and Charter provisions have increased in judgements on Union citizenship.

Consequently on right to free movement and residence, Since 1993, the Court of Justice has pushed the margins of Union citizenship gradually outwards, concluding that the right to reside in the Member States guaranteed by Article 21 TFEU (Article 18 EC) is directly effective and is therefore enforceable by individual citizens in the national courts against the public authorities of the Member States. Member States may place only proportionate restrictions upon EU citizens' right of residence, even with respect to those persons who are not economically active. The range of coverage provided the principle of non-discrimination, which was historically linked to the applicant carrying out some form of econom-

70) Case C-87/12, para.21.

71) The Article 51(1) of the Charter states that “The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.”

72) Frield WEISS and Clemens KAUPA, *European Union Internal Market Law*, Cambridge (2014), Cambridge University Press, p.107.

73) Case C-87/12, para.44.

74) Gerçek Şahin YÜCEL, “Avrupa Birliği Adalet Divanı'nın Avrupa Birliği Vatandaşlığı ile İlgili Son Yaklaşımları”, *Marmara Avrupa Araştırmaları Dergisi*, Vol.XXI, No.2, (2013), p.51.

ic activity in another Member State, even if this only involved being a tourist, has been extended so that the applicant need no longer show an economic concern. Now, this range has been extended so that the applicant need no longer show an economic concern. The equal treatment rights of students moving within the single market have been substantially increased. Professor Dora Kostakopoulou has argued that European citizenship has not been the purely symbolic institution which many initially expected it to be.⁷⁵ Instead, it has evolved, in the hands of the ECJ in particular, in very significant ways beyond the confines of a concept of market citizenship to become both a more political and a more institutionalized figure.⁷⁶

The Union citizenship is not only based on right to free movement, although the right to free movement and residence is the most important pillar of the concept of the EU citizenship. As Jo Shaw stated, by the years, the Union has gained a political perspective in addition to its economic structure. Therefore, the political rights has started to be conferred to the citizens, such as participation to the Union's political life by EP and municipal elections of the Member State where they reside, conferring diplomatic and consular protection to the citizens, and writing petition and apply to the European Ombudsman to declare and solve their complaints. Due to those political rights are also important, it will be studied below, but not in a wider concept and explanation as much as the right to free movement and residence.

3-2- The Right to Vote and Stand for Election in EP and Municipal Elections

The right to vote and stand for election is the most significant right which shows that the European citizenship is the legal and political bond between the individuals and the EU. According to the classical citizenship concept, the right to vote and stand for election is directly related with the citizenship. However, in the EU perspective, this right is not only for the citizens, but also for other individuals who are from another Member State; for individuals, the place where they born is not determinative, but where they reside is determinative. In this frame, the persons gained the right to join the political process in another member state; however, there is a condition that those individuals also have to hold the nationality of another EU Member State, in other words they also have to be in EU citizen status. Thus, a fully equal treatment between the Union citizens is

75) Dora KOSTAKOPOULOU, "Ideas, Norms and European Citizenship: Explaining Institutional Change", *The Modern Law Review*, Vol.LXVIII, No.2, (March 2005), Wiley Online Library, p.233.

76) Jo SHAW, "EU Citizenship and Political Rights in an Evolving European Union", *Fordham Law Review*, Vol.LXXV, No.5, (2007), p.2551.

aimed to provide in case of EP and municipal elections. However, this right is not in general, this right is only pertain to the EP and municipal elections.⁷⁷

Due to the right to vote and stand for election is considered as directly related with the states' sovereignty power; granting people a right to participation to their political life who are not their national is an important step, which also means to approve people to contribute a formation of a nation state's sovereignty which they do not have any citizenship bond. Therefore, the context of the right to participate in political life and statues of foreigners are determined by states' own national legal regulations.⁷⁸

According to the Article 8b of Maastricht Treaty and Article 22 of the TFEU, the Union citizens shall enjoy the right to vote and stand for election in the Member State which they reside but not the national of that State. This right is is a tool for providing a tight integration, and an aim for a more democtaric Union; then, as well as the right to free movement and residence, the right to vote and stand for election is also at the crossing point of Union law and national laws; therefore, it has effects on national laws. As a result, the right to vote and stand for election created important developments and changings on some Member States' Constitutions, who granted this right only to its nationals.

3-3- Right to Diplomatic and Consular Protection

The right to diplomatic and consular protection is another important right which is conferred to Union citizens. It gives protection to the citizens in a non-EU country by consultate or national agency of any other Member State.

A person who resides in a foreign country may face several problems and obstacles, and these may damage him. This kind of a situation creates the idea of protection of individuals, and diplomatic protection seems as the most effective model to provide it.

Diplomatic protection consists of the invocation by a State, through diplomatic action or other means of peaceful settlement, of the responsibility of another State for an injury caused by an internationally wrongful act of that State to a natural or legal person that is a national of the former State with a view to the implementation of such responsibility.⁷⁹The right to diplomatic and consular protection for EU citizens which was granted by Maastricht Treaty is of capital importance, because all of the EU Member States together have embassies only

77) TEZCAN, a.g.e., p.56.

78) Gözde KAYA, "Avrupa Vatandaşlığı", Yayınlanmış Yüksek Lisans Tezi, Dokuz Eylül Üniversitesi Sosyal Bilimler Enstitüsü, (2003), p.91.

79) Draft Articles on Diplomatic Protection, Report of International Law Commission, Supplement No: 10(A/61/10), United Nations, 2006.

in USA, China, Russia, Japan and Switzerland. In other countries except those at least one or more Member State do not have a representative office. Therefore, citizens of one of these countries may have obstacles and risk when they go there in any reason. The importance of the right to diplomatic protection would be understood better by considering all these circumstances.⁸⁰

3-4- Right to Petition and Apply to The Ombudsman

The right to petition the EP and apply to the Ombudsman is a right beyond being one of the rights granted to Union citizens, it may be evaluated as the guardian and protector of other rights as well.⁸¹ On the other hand, both right to petition the EP and apply to the Ombudsman has been granted to not only the Union citizens who are the national of the Member State, but also to all natural and legal persons who reside in a Member State.⁸²

In principle, in accordance with the Annual Report of the Ombudsman in 1995⁸³, while having a dispute, it is up to Union citizen's choice to apply whether to right to petition or apply to the Ombudsman, he/she shall decide which way of application is appropriate for his/her situation. Also in the Report, it was clearly stated that "the right to petition the European Parliament and the faculty to address complaints to the European Ombudsman are complementary, in that they both respond to the same need, and aim at setting up as comprehensive, simple and effective a system as possible for European citizens and residents to find extra-judicial redress and assistance in the European system. The text correctly observes that, 'in cases where the mandate of the Ombudsman is too narrow, the European Parliament (in practice the Committee on Petitions) often has the power to act'".⁸⁴

Although there are legal differences between the right to petition the EP and right to apply to the Ombudsman, in practice, there is a strict cooperation between the Committee of Petitions of the EP and the Ombudsman. In frame of this cooperation, the Committee of Petitions sends the petitions on maladministration of activities of Union institutions or bodies to the Ombudsman to evaluate them as a complaint, by the consent of petitioner. Similarly, by the consent of the applicant, the Ombudsman sends the applications to the EP, which may be evaluated as a complaint.⁸⁵

80) TEZCAN, a.g.e., p.69-70.

81) SAYLAN, a.g.e. p.131.

82) Carlos CLOSA, "The Concept of Citizenship in the Treaty on European Union". *Common Market Law Review*, Vol.XXIX, No.6, (1992), pp.1137-1169, p.1165.

83) Report on the Annual Activity Report (1995) of the Ombudsman of the European Union, C4-0257/96, 30 May 1996, EP Official Website.

84) Annual Report of the Ombudsman (1995), Chp.III, para.7.

85) TEZCAN, a.g.e., p.84.

1- Compendium

The European Integration moves with more intensive and comprehensive steps in institutional, social and political relations, and these steps determines the future enlargement plans and concept. the Union citizens are in center of this process as the most important actors. Their contribution to this process seems as a necessity for a democratic and balanced Europe.⁸⁶ To provide the contribution of citizens to the process, they should be aware of their rights and implementations of the Member States.

The EU has conferred four fundamental rights to its citizens: Right to free movement and residence, right to vote and stand as candidate in EP and municipal elections, right to diplomatic and consular protection, and right to petition the EP and apply to the European Ombudsman. As Union citizens, according to the fundamental status and condition of concept of EU citizenship, every person holding nationality of a Member State shall be a citizen of the Union. All citizens of the Union shall be acted in equal treatment and a national of a Member State who reside another Member State have the same rights with nationals of that state.

Those rights conferred to the Union citizens provides a harmonization between the Member States and their nationals. The rights are in favor of citizens and gives many advantages to them. However, in practice, several conflicts and queations have arisen between Member State legislations. Member States have very different traditions and legislations regarding citizenship, and until we have harmonisation in this area this kind of conflicts will continue to come up. Inflexible clinging to the principle that the rights and duties attached to the concepts of nationality and citizenship are completely left to the free will of each state will simply not do.⁸⁷

While right to free movement and residence mostly seemes as an economic based right to the Union citizens, other rights mostly have political aspects. In the begining, the EU was established based on economic concerns and aims, so the rights conferred to the citizens were also thought by economic activities. Other rights except right to free movement were conferred too, but they were not active as much as right to free movement, in practice. The reason behind, the Union focused on improving and developing its internal market before 1980s. According to *Kochenov*, “Should the system start noticing human beings, and

86) Europe for Citizens Programme, European Commission Official Website.

87) Malin KARVONEN, “The Gibraltar Case: A Critical test of rules concerning EU citizens and franchise in elections to the European Parliament”, Master Thesis, University of Lund, Faculty of Law, 2005, p.72.

paying serious attention to their situation, the coherence of a presentation of people as merely one of the means of production weakens quite naturally.”⁸⁸ Therefore, political rights has been conferred to the Union citizens, and their impact has increased since they have started being active and the citizens became aware of their political rights.

While the provisions included in Part II TFEU establish economic freedoms alongside non-economic rights and also contain general references to ‘other’ rights contained in the Treaties, plentiful non-economic elements allow for a clear separation between the logic of Part II and the other Parts of the TFEU focusing on the economic freedoms. The distinct nature of the concept is also confirmed by the Preamble and Article 3 EU, which refers to EU citizenship in the context of building an area of freedom, security and justice for the citizens, rather than the internal market.⁸⁹

Conclusion

The concept of European citizenship has been followed a paralel course with the consolidation of Europe in political and legal grounds. During the period from European Communities to Maastricht Treaty, individuals were concerned with their contribution of economic life, not with their citizenship status. In that period, right to free movement and residence of persons who are in an economic activity became the current issue in frame of individual rights. However, this limited approach has been considered comprehensively by the judgements of the ECJ, which were beyond the Community policies.

However, the main problems arise between the Member States are mostly about right to free movement and residence, which is closer to the economic concerns of the Member States rather than other rights, the market ideology ups again. According to *Kochenov*, citizenship and the market are in conflict with each other, producing particularly strange outcomes and ruining the coherence and the very workability of the European project. The Court’s jurisdictional deployment of EU citizenship is seen in case laws. To cut a long story short – it is meticulously analyzed in the literature anyway – suffices it to say that the Court builds jurisdiction for the supranational legal order based on the need to protect the status of EU citizenship and the rights stemming there from. In this context one should not be misled by the outcomes: even in the cases where the test does not bring the Court – for one reason or another – to satisfactory results enabling

88) Dimitry KOCHENOV, “The Citizenship Paradigm”, University of Groningen Faculty of Law Research Paper Series, No.08, (June 2013), p.25.

89) KOCHENOV, “The Citizenship Paradigm”, p.26-27.

it to take the side of the claimant, the very deployment of the new EU citizenship- based jurisdiction test is of fundamental importance, notwithstanding all the problems it potentially brings about in the context when lawyers are too used to the internal market ideology to instantly comprehend the logic of EU citizenship as an alternative tool of EU integration.⁹⁰

The ECJ has had many conflicts and faces many questions on the implementation of the rights by Member States. Both politically and economically, many of the EU Member States find themselves in increasing difficulties. The activism of the Court of Justice EU citizenship has in recent years become something of a leader or driver of integration processes, e.g. in areas where case law has resulted in significant protections against deportation for the third country national family members of EU citizens. Although the Courts activism has developed the concept of EU citizenship in some interesting ways since the late 1990s (such as the case of *Martínez Sala*, which first established the space within which the concept of citizenship could evolve independently of existing constraints of the free movement rights established by the Treaties and subsequent legislation) in practice the Court cannot and should not usurp the role of the Member States as the masters of the Treaties in this and other areas, for to do otherwise would be to risk its entire legitimacy. There are, therefore, normative boundaries to the concept of EU citizenship, although recent case law has meant that it is not entirely clear where these are located.⁹¹

Consequently, it is obvious that there are still problems on implementation of the rights conferred by the Treaty. The EU has been tried to solve the conflicts and make clarify the content of the implementation of the rights by the Union institutions and Member States. Although the Treaty provisions set the fundamental character of the concept of Union citizenship, the case laws of the ECJ has also important role to determine that content. When the former jurisprudences of the ECJ are examined, it can be seen that the evolution process of Union citizenship is both dependent to the Treaty provisions, case laws and cooperation between Member States and Union institutions.

90) Kochenov, "The Citizenship Paradigm", p.38.

91) Jo SHAW, "EU Citizenship and the Edges of Europe", CITSEE Working Paper, No.2012/19, University of Edinburgh, (29.6.2012), p.6.

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ÖZET

Avrupa Birliği'nin gelişim sürecinin başında yapılan uygulamalarda, bireyler yalnızca ekonomiye sağladıkları katkılar çerçevesinde düşünülmüşlerdir. Ancak, Avrupa'daki siyasi birliğin Avrupa halklarının aktif katılımı olmadan gerçekleşmeyeceğinin farkedilmesiyle birlikte, "Avrupa halkları arasında daha yakın bir Birlik kurulması" amacıyla yeni politikaların uygulanması gündeme gelmiştir. Demokratik ve dengeli bir Avrupa kurabilmek için AB Kurumlarının olduğu kadar Birlik vatandaşlarının da sürece doğrudan katılımı gereklidir. Bu bağlamda, Avrupa vatandaşlığının geleceğinin AB bütünleşme sürecine bağlı olduğunu söylemek yanlış olmaz. Bu nedenle, AB vatandaşlığı kavramı 1970'lerde başlayan serüvenini, özellikle Avrupa Birliği Adalet Divanı'nın önemli içtihatlarıyla günümüzde de gelişerek sürdürmektedir.

Anahtar Sözcükler: Avrupa Birliği, Avrupa Birliği Vatandaşlığı, ABAD Kararları, Serbest Dolaşım, AB Vatandaşlarının Hakları.