Abstracts speakers seminar EU Citizenship@25: Main Achievements and Future Challenges

Paivi Neuvonen (University of Helsinki)

Reflecting on 25 years of EU citizenship

This paper maps the 25-year evolution of EU citizenship from the perspective of individual EU citizens. Although the legal status of EU citizenship has arguably transformed what it means to be a subject of the EU legal order, the analysis of EU citizenship law reveals significant inequalities between different groups of EU citizens. At the same time, the democratic critique of EU citizenship rights to free movement, residence, and equal treatment highlights their potentially depoliticising effects within the Member States. I will discuss how these different trajectories of EU citizenship rights imply that the role of individuals as subjects of European integration is still misconceived and why this is problematic to the future of EU citizenship.

Marie-Helene Boulanger (EU Commission)


Article 25 TFEU puts in place a requirement for the Commission to report to the Parliament, Council and EESC on EU Citizenship. This talk will look: (1) the key provisions relating to EU citizenship; (2) the institutional process surrounding the Commission's EU Citizenship Report; (3) at the priorities it set; and (4) at the progress made so far towards achieving such priorities, examining in particular the Commission's initiatives regarding democratic participation of mobile EU citizens in local elections, the proposal on ID cards and residence documents and promoting the right to consular protection in Article 23 TFEU.

Dominik Düsterhaus (ECJ & Catholic University of Lille)

Over-interpretation, under-enforcement and non-compliance: Institutional failures of EU citizenship

Zuzana Pandova (ECAS)

EU Citizens and Their Rights: Current Findings and Challenges

The presentation will focus on the right to move and reside in another EU country as an important and cherished part of EU citizenship. Emphasis will be added to entry and residence rights, the area in which EU citizens encounter the most difficulties when attempting to exercise their EU rights. The presentation will provide an overview of some issues caused by insufficient implementation of EU law by some Member States. Some of these have been recurring for years, and some only occurred after the Brexit vote.
Implementing Family Reunion in the EU

In this presentation we will examine the obstacles which still occur for EU nationals to enjoy family reunion in a host Member State with their third country national family members.

Family Reunification Rights of EU Citizens – The Role of Fundamental Rights

Residence rights of third-country nationals (TCNs) under EU law is first and foremost governed by the rules on immigration and asylum adopted under Title V of the TFEU. However, to family members of EU citizens (EUC) more favourable paths into the Union exist in the form of residence rights derived from the EU law rights of the EUC. Four main, interrelated, legal bases are relevant in that respect: 1) Directive 2004/38 – when the EUC resides in a host Member State; 2) Directive 2004/38 by analogy – when the EUC returns to his home Member State after residing in a host Member State (the Singh line of case law); 3) the Treaty provisions on free movement – if refusing family reunification in a home Member State discourages the EUC from effectively exercising his free movement rights in other Member States (the Carpenter line of case law); and 4) art. 20 TFEU – if denying family reunification in a home Member State entails that a minor EUC would be deprived of the “effective enjoyment of the substance” of his EU citizenship rights (the Zambrano line of case law). With the exception of 1), the evolution of these various derived residence rights of TCNs is case law based. The potential (significant) importance of fundamental rights in that regard was made clear by the 2002 Carpenter-case (C-60/00) where the CJEU held that art. 56 TFEU, read in light of the fundamental right to respect for family life in ECHR art. 8, precluded a refusal by the UK authorities of a right of residence to the Filipino wife of a UK citizen providing services to recipients based in other Member States. In the years following Carpenter fundamental rights held no prominent role in the case law on derived residence rights, but the relevance of exploring this question has revived with the entry into force of the EU Charter on fundamental rights and the CJEU maturing as a fundamental rights adjudicator. Indeed, cases such as Rendón Marín (C-165/14), CS (C-304/14) and Chavez-Vilchez (C-133/15) suggest an increased focus by the CJEU on particularly the right to respect for family life and the best interest of the child principle. Building on the body of legal scholarship on derived residence rights of TCNs, the paper will analyse the CJEU’s reasoning in recent case law and offer a perspective on the current and potential future role(s) of fundamental rights in this area of EU law.
Chiara Berneri (BPP University)

**Family reunification between EU citizens and third country nationals: a (potentially) powerful tool to help families caught in the current immigration crisis.**

According to the data available to the UN High Commissioner for Refugees (UNHCR), the number of refugees, asylum seekers and internally displaced people worldwide has recently exceeded 50 million people. Europe in particular has become the place to which immigrants direct themselves, in search of a better life for themselves and their families. There have been numerous efforts to introduce new legal channels of immigration and enhance existing ones at EU level. However, it is striking that family reunification between EU citizens and third country national family members has not at all been mentioned, let alone thoroughly explored, by the EU as a possible, tangible way to provide an alternative legal pathway to asylum. The scope of this work is to link family reunification between EU citizens and third country nationals to the broader current European immigration situation to investigate it as a possible way to channel safe immigration into Europe. In order to do so I will first give an overview of where we stand today in terms of the protection of families composed of EU citizens and third country nationals. I will then point out the practical advantages of the application of this tool as it stands today. Finally, I will explore how family reunification between EU citizens and third country nationals could be further developed in order to benefit families involved in the current refugee crisis.

Paul Minderhoud & Sandra Mantu (Radboud University)

**The rights of EU citizens under Directive 2004/38: main findings concerning social assistance rights and permanent residence rights**

In this presentation we discuss the main findings of an analysis of 28 national replies to a questionnaire concerning social assistance rights and permanent residence rights stemming from Directive 2004/38 over the time frame 2014-2016. This monitoring effort is part of the 2015-2018 work programme of the Jean Monnet Centre of Excellence implemented by the Centre for Migration Law (Radboud University Nijmegen). It is concerned with how the EU28 are implementing the provisions on social assistance and economically inactive EU citizens and the provisions on permanent residence with a view to identify issues relevant for the effective exercise of EU citizenship rights in these specific areas of law. Our analysis shows that asserting residence rights under Articles 7 and 16 of Directive 2004/38 is becoming problematic for certain categories of EU citizens and linked with the more restrictive position taken by some Member States in relation to accessing their national social assistance systems.
Now also against workers? EU-Citizens, Residence Rights and Solidarity in the post-
Dano/Alimanovic era in Germany

The Dano and Alimanovic decisions of the ECJ have triggered various developments in German social security law and (social) court decisions. While the German courts’ rulings regarding the rights of non-active EU-migrants are still varying, the legislator has meanwhile moved towards excluding more EU-citizens from receiving non-contributory benefits. In the aftermath of Dano and – more specifically – Alimanovic, the provisions of the Book II of the German Social Code have been revised at the end of 2016. The new rules not only “confirm” the ECJ-decisions, but also go beyond, as far as to excluding EU-migrants who have residence rights according to Reg. (EU) No. 492/2011.

The paper will discuss these recent developments. It will focus on the ECJ-case law regarding Art. 10 of Reg. (EU) No. 492/2011 (former Art. 12 of Reg. 1612/68), in particular the Ibrahim and Teixeira-rulings. It will be argued that soon a new discussion on the interrelation between Dir. 2004/38/EC and Reg. (EU) No. 492/2011 – an aspect ignored by the German legislator – might be emerging: What started as a restriction of access to national welfare for economically non-active persons has reached the “economically actives” (=workers) as well. Which residence rights do prevail – those according to Dir. 2004/38/EC or those based on Reg. (EU) No. 492/2011? And how should different residence rights be assessed in the light of the non-discrimination principle?

The Impact of recent ECJ case law on residence rights and right of access to social benefits of Union citizens and their family members in Austria

In Austria, there is an ongoing heated debate, under which circumstances and conditions economically inactive Union citizens and their family members can reside lawfully and receive social benefits in another member state (in this case: in Austria). Shortly after the judgements of Brey, Dano and Alimanovic, the Austrian Supreme Court ruled – with reference to especially the Dano judgement – that applications for the so called “means tested minimum pension allowance” (a supplement allowance up to an indicative rate similar to a minimum pension, technically a special non-contributory cash benefit according to Art 70 Reg 883/2004) of economically inactive union citizens who moved to Austria solely in order to obtain social assistance could be rejected on grounds of European law. The OGH stated that the Directive 2004/38/EC would allow the host Member State to impose restrictions on the provision of social benefits to economically non-active Union citizens in order to avoid that they would otherwise become an unreasonable burden to the Austrian social assistance scheme. The Supreme Court further stated that (starting with the Dano case) the ECJ had granted the host Member State the opportunity to examine the fulfilment of the requirements of the Directive 2004/38/EC and as appropriate to deny the application for social assistance without an expulsion if the Union citizens concerned being necessary. In the opinion of the Austrian Supreme Court, the Brey judgement was de facto derogated by the judgements of Dano and Alimanovic. Though this seems to be the prevailing opinion in Austria, I do not share this view: The ECJ did not explicitly overrule the ruling in the Brey Case, so to my view it cannot be argued the ECJ changed his view totally within a few months without providing at least a hint that his aim was to declare that the guiding principles of the Brey judgement would no longer be effective. I will highlight that there is a way to “combine” the judgements of Brey, Dano and Alimanovic in order to explain that there is still a scope for a Brey case. Secondly there was a very interesting judgement of the Austrian Supreme Court regarding residence rights and family benefits of a mother (who is a Third-Country-National) of an Austrian minor. According to the – by now settled – case law of ECJ about the genuine enjoyment of the substance of the rights conferred by virtue of their status as citizens of the Union,
Third-Country-Nationals can have a derivated residence right in a member state on grounds EU primary law, in case the Union citizen, as a consequence of refusal of such a right, would be obliged in practice to leave the territory of the European Union as a whole, thus depriving him of the genuine enjoyment of the substance of the rights conferred by that status. While – in the case of spouses – this applies only in exceptional cases, in case of minors other standards must be met. In line with the Chavez-Vilchez judgement, the Supreme Court ruled that in particular the mother – as (in this case) primary carer – would have such a right of residence and thus meet the prerequisites to receive family benefits in Austria.

Hanneke van Eijken (Utrecht University)

In Chavez-Vilchez the CJEU decided on the circumstances under which a minor, dependent EU citizen is forced to leave the territory of the European Union, if his/her third-country national parent is refused the right to reside in a Member State. Chavez-Vilchez continues where the case of Ruiz Zambrano left certain questions open. One of the questions was how to assess under what circumstances EU minor citizens are forced to leave the EU and what aspects need to be considered in that assessment. What is the relation with previous case law of the CJEU? Specific attention will be paid to the relation of dependency between the EU citizen and the third-country national parent, the inclusion of family life and the rights of the child in the assessment, as well as the relation between Art. 20 and Art. 21 TFEU.

Michal Meduna (EU Commission)

What protection against expulsions does EU citizenship offer to mobile EU offenders?

Solange Maslowski (Charles University)

From an ambiguous and elusive content of the public policy exception towards an EU public policy?

The public policy exception allows Member States to limit the exercise of freedom of movement of EU citizens whenever state fundamental interests are in danger. EU primary and secondary law does not provide a definition of this exception but only indicates different levels of severity of threat (public policy and security policy, serious grounds of public policy and security, imperative grounds of public security) while the European Commission encourages the Member States to distinguish the notion of public policy from the public security exception. Therefore, the content of public policy exceptions is defined at the national level in accordance with each Member State’s needs, which can vary from one Member State to another and from one period to another.

The paper will first address the question of relationship between national public policy measures and EU law and institutions. EU law and national restrictive measures will be examined through the prism of competence given to Member States by the EU and of the right of fundamental freedom of movement. The question of the scope of discretion of Member States for defining their fundamental interests and needs assessment will be dealt with into a context of growing dangers. The paper will therefore invoke the search of a just balance between two complementary, interdependent and sometimes contradictory concerns, the respect of states’ interests and the respect of the fundamental right of freedom of movement of persons. Then, it will consider the a posteriori control of the CJEU on the use of national public policy exceptions, ensuring that derogations are strictly interpreted, necessary and proportionate to the threat as well as respecting general principles of law and fundamental rights.
Secondly, it will address the issue of the relevance of the existence of public policy exceptions in the light of different EU concepts such as the citizenship of the Union, the principle of equality of treatment of EU citizens and EU values. Similarly, it will question the danger of the existence of various national conceptions of public policy exceptions, especially regarding the level of protection of EU citizens against expulsion, their right to equality of treatment and to legal security.

Finally, the paper will focus on the feasibility and pertinence of the building up of an EU concept of public policy revealing the existence of common EU values and the willingness of States to protect them (E.Néraudau-D’Unienville/C. Bertrand) or of an EU Ordre public which content is similar to a set of Russian dolls (T. Corthaud) or an Ordre public migratoire commun (L. Derepas) as some academics are suggesting. This would mean also to clear up the diversity of national conceptions of public policy (e.g. unitarian/dualist, ordre public de protection/direction, ordre public général/ordre public spécial) and the grey zone between public policy exceptions and similar institutes such as general interest, good moral or régime d’exception.

Stephen Coutts (Dublin City University)

Joined Cases C-316/16 and C-424/16 B & Vomero and Case C-184/16 Petrea: When Citizens become foreigners

Citizenship is generally characterised as a membership status by the extent of the rights granted that status and the quality of those rights; Individuals are granted a full set of rights to access and participate as full members of the polity and moreover those rights are constitutionally secured and entrenched and in particular protection from exclusion. It is the second aspect of citizenship rights that are called into question in the recent Court of Justice judgments of B & Vomero and Petrea dealing with the rights of individual Union citizens convicted of criminal offences and host member states. B & Vomero addressing the impact of imprisonment on the acquisition of heightened protection against expulsion, underlines the contingent nature of Union citizenship as a membership status in the host Member State, retaining the possibility for Member States to expel Union citizens long term resident in the host Member State on foot of a criminal conviction. Petrea stresses the ongoing exclusionary nature of expulsion measures, and upholds the legal effects of expulsion measures and the right of Member States to assimilate Union citizens subject to such measures to third country nationals. The result underlines the gaps that remain between Union citizenship and nationality as statuses of membership in the European Union.

Anita Heindlmaier (University of Salzburg)

EU Migrants and the “Unreasonable Burden”. How Member States Deal with ECJ Case Law on Equal Treatment and Lawful Residence on the Ground

As one of the four fundamental freedoms of the EU, the free movement of persons was already enshrined in the Treaty of Rome. It was, however, granted exclusively to economically active EU citizens, implying that only these EU citizens had the right to equal treatment with national citizens concerning social rights. This group was extended, mainly by the European Court of Justice (ECJ), finally also granting broad rights to economically inactive EU migrants. Still, the right of residence is not unconditional. EU migrants who claim social assistance may no longer fulfill the conditions of lawful residence and may be expelled – in case they form an “unreasonable burden” on the social assistance system of the host Member State. A measure terminating the residence may, however, not be the “automatic consequence” (Grzelczyk, C-184/99).

Little is known about how Member States deal with these vague legal provisions on the ground. In my contribution, I analyze to what extent and under what conditions they comply with EU case law.
A comparative study of German and French immigration authorities’ practices (based on data on measures terminating residences, interviews, judgments and documents) shows that Member States’ practices largely depend on salience as well as the acceptance of EU (case) law by national courts.

Patricia Brazil (Trinity College Dublin)

"'A Matter for the Minister?' A critical analysis of the decisions of the Irish courts in judicial review of removal and exclusion orders"

This paper will address the approach adopted by the Irish courts when judicially reviewing decisions of the Minister for Justice to make removal and exclusion orders in respect of EU nationals, with a particular focus on the extent to which the Irish courts are complying with the jurisprudence of the CJEU on the assessment of risk and proportionality.

Emiliano Garcia Coso

“The expulsion of EU citizens: legal grounds and judicial practice in Spain”

My intervention will be focus in an overview of the legal grounds to adopt an expulsion order by the Spanish authorities in conformity with the Royal Decree 240/2007 (as Spanish rule implementing the Directive 2004/38) and how the Spanish courts has interpreted and apply this rule in specific cases in Spain.

Sara Nyhlén (Mid Sweden University)

Negotiations on welfare and social security entitlements for EU migrants in Sweden – an analysis of the collaboration of state actors and voluntary organizations in the eviction of a EU-migrant camp

The aim of this article is to use the closing of an informal EU migrant camp to discuss how EU migrants fall through the cracks in the system—where humanitarian concerns being superseded by security ones. By taking a closer look at the ways in which discourses on welfare operate within the nexus of humanitarian care, social care and migration, it is possible to outline the role played by risk framing effects in allowing this shift to take place and how these apparently incompatible discursive regimes are intertwined and nourish one another. As a basis for our analysis, we use an ongoing EU-project which is a cooperation between three municipalities, NGOs and the Swedish church, aimed to increase social inclusion and empowerment among vulnerable EU-migrants. The project workers, both employed and voluntary, became the link in the communication between the authorities and the migrants making the eviction a “smooth” process without any disturbances making it possible to frame it as a “voluntary move” of the migrants. In this way, the project and the project workers became part of the reconfiguration of the state power, using the trust between the project and the migrants granting the actions legitimacy, as well as prohibiting critique of the actions from the project. The study show how the welfare discourse is used for risk and security measures, based on the notions of goodwill implicit in the welfare discourse, in reality it is legitimising exclusion and discrimination.

Cristina Juverdeanu (King’s College London)

Reversed mobility as an addition to EU citizenship
In this paper I explore how reversed mobility extends the contours of EU citizenship. From my sample of 17 ‘perceived as Roma’ EU citizens, three had received multiple expulsion orders, nine were encouraged to return voluntary, and six were engaging in a back-and-forth mobility (there was some overlap among the last two situations). I argue that their mere freedom of movement is both extending and asserting EU citizenship. It extends its contours by adding back-and-forth mobility, voluntary returns and expulsions to its repertoire. Furthermore, it highlights how EU citizenship is sometimes enacted through assertion either by disregarding the economic conditionality comprised within the Citizens’ Rights Directive or by repeatedly returning in spite of the expulsion order or voluntary return agreement.

Dion Kramer (Vrije Universiteit Amsterdam)

‘In Search of the Law’: Governing Homeless EU Citizens in the Netherlands

The ambiguous and complex nature of EU free movement law has troubled the protection of those Union citizens finding themselves without a home in another Member State. The legal relevance of homelessness for the exercise of free movement has risen to prominence since the United Kingdom has rolled out a program of ‘administrative removals’ targeting rough sleepers, thereby qualifying rough sleeping in itself as an ‘abuse’ of free movement rights and a ground for denying a right to residence under EU law.

A similar ‘pilot program’ expelling homeless Union citizens – albeit on different grounds – has already been operative in the Netherlands since 2011. The program is only a final building block of a coherent, nation-wide structure for the support, exclusion and removal of homeless Union citizens that has gradually been put in place since local authorities were confronted with rising numbers of homeless Union citizens after Eastern enlargement. Rather than a conscious challenge to EU law, however, this process of – what policy officials refer to as – ‘finding the law’ has been driven by a range of actors strategically exploring the possibilities and testing the limits of EU law before domestic courts. This contribution first discusses the sociological and legal position of the homeless Union citizen in the free movement framework. It secondly offers an empirical ‘state of affairs’ at Member State level for more normative approaches to the question of how the European Union should govern homelessness amongst its mobile citizens.

Iris Goldner Lang (University of Zagreb)

The Dark Side of Free Movement: When Individual and Social Interests Clash

This paper discusses EU citizenship and free movement rights from the perspective of a new Member State like Croatia, which has been experiencing a significant brain drain since its accession to the EU. Free movement rights are extensively exercised by Croatian nationals, who are moving to other Member States in order to work there. While these developments create a number of benefits for the emigrating population, the social, economic and political downsides for the sending Member State should not be underestimated. The discussion on the clash between individual and social interests in the context of free movement is placed in a broader perspective by addressing the future of EU citizenship and free movement rights.