THE ROLE OF THE CJEU IN SOLVING THE PROBLEMATIC ASPECTS RELATED TO THE ACQUISITION AND LOSS OF EUROPEAN CITIZENSHIP

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Abstract

Granted automatically to anyone who holds the nationality of any EU country, European citizenship generates a variety of rights and benefits derived both from domestic and EU law. If the first ones may differ from country to country, the others are the same all over the EU countries, being enshrined in The Treaty on the Functioning of the European Union and the EU Charter of Fundamental Rights. It is exactly this multitude of rights that makes third States' citizens to aspire to EU citizenship and there are legal procedures that regulate such a demarch. Nevertheless, some problematic issues could occur on these occasions and sometimes the Court of Justice of the European Union is requested to intervene in order to solve these kind of situations, on the basis of preliminary rulings. The present paper intends to depict and analyse relevant case-law of the CJEU in this field, dealing, for instance, with topics like discrimination on grounds of nationality, derived right of residence of third-country nationals who are family members of a Union citizen or loss of citizenship of the Union on account of loss of nationality of a Member State.

Keywords: *European citizenship, non-discrimination, freedom of movement, social rights, CJUE's case-law.*

1. Introduction

Being a permanent link between the individual and the State to which he or she belongs, generating mutual rights and obligations between these two entities, citizenship has acquired a much wider dimension since its consecration at the EU level. Thus, European citizenship was enshrined by the Maastricht Treaty, being regulated in art. 17-22 TEEC. Currently, the status of the European citizens is regulated by art. 20-25 TFEU[1].

European citizenship is a quality that does not annihilate national citizenship and does not replace it[2], but joins it, enriching the values of the relationship between the individuals and the European public entities. It is essential to keep in mind that the national citizenship is a *sine qua non* condition (or a pre-condition) for acquiring European citizenship.

As it is generally known, citizenship is a key concept of national constitutional law, being inextricably linked to the idea of State. Citizenship presupposes a biunivocal relationship between the natural person and the State of which he or she is a citizen, implying both a political and a legal dimension, which inevitably interfere.

Thus, regarding the political component of this notion, it should be noted that acquiring the quality of citizen represents an act of State sovereignty[3], being exclusively a matter of the State[4], in which it will prevails. According to the established CJEU case-law, it is for each Member State, having due regard to European law, to lay down the conditions for the acquisition and loss of nationality[5]. In this light, Member States must have in mind that the importance of the rights conferred through the citizenship of the Union should be taken into

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[1] A. Fuerea, *Dreptul Uniunii Europene. Principii, acțiuni, libertăți*, Universul Juridic Publishing House, Bucharest, 2016, p. 192-194.

[2] G. Fábián, *Drept instituțional al Uniunii Europene*, 3rd ed., Hamangiu Publishing House, Bucharest, 2023, p. 95.

[3] C. Ionescu, in C. Ionescu, C.A. Dumitrescu (coord.), *Constituția României. Comentarii și explicații*, C.H. Beck Publishing House, Bucharest, 2017, p. 121.

[4] I. Muraru, E.-S. Tănăsescu, *Drept constituțional și instituții politice*, 14th ed., vol. I, C.H. Beck Publishing House, Bucharest, 2011, p. 122.

[5] *Micheletti and Others*, para. 10; Case C-179/98 *Mesbah* [1999], para. 29; and Case C-200/02 *Zhu and Chen* [2004], para. 37, Case C-135/08, *Janko Rottman v. Freistaat Bayern* [2010], para. 39.

consideration by national authorities when exercising their discretion. All the more since, as shown in the doctrine, human rights and freedoms are dynamic, being sensitive to the dynamics of the society of each state[6].

The present paper intends to underline the importance of the European citizenship and to draw attention on the CJEU case-law in this area. In order to achieve this goal, there will be depicted several label-like cases that set genuine benchmarks in the way the law professionals should handle the issues in this field.

As CJEU has held on numerous occasions, the status of citizens of the Union is intended to be the fundamental status of nationals of the Member States, enabling those among such nationals who find themselves in the same situation to enjoy, within the scope *ratione materiae* of the Treaty, the same treatment in law irrespective of their nationality[7].

The EU citizenship is considered to be both a resonant political ideal and a legal status attached to individuals[8]. Due to these characteristics, it was subject to various analysis in the doctrine, most scholars who dedicated their researches to the study of European law have inevitably approached the issue of Union's citizenship. But the CJUE case-law is the most relevant from a practical point of view, because it deals with real problems raised by the potential conflict of national citizenship of Member States, for instance when one of them do not accept the double citizenship and the risk of statelessness arises, or when rights and freedoms usually granted to European citizens are no longer applicable.

2. Content

2.1. European citizenship - a gate wide opened to rights and freedoms

Citizenship proves the belonging of an individual to a certain human community organised as a State. It creates a basically indestructible and perpetual link between the natural person and that State, integrated into the set of concrete economic, social and cultural realities. Moreover, in the doctrine it was noted that citizenship is a complex notion, and traditions and approaches to it have varied throughout history, depending on the specificity of the societies, cultures and ideologies of different countries[9].

Yet, EU citizenship is not a citizenship in the classical sense, because it is not inextricable related to a unique People or Nation, but to each and every EU Member State. It is automatically acquired once the individual gets the citizenship of at least one Member State. As mentioned before, Member States enjoy the sovereign right to grant and withdraw national citizenship. The consequence of States actions in this sense is open access to the totality of rights and freedoms granted by the European legislation or, in case of withdrawal, sometimes complete loss of them and even the occurrence of statelessness.

Crucial in the analysis of this issue is the golden rule of non-discrimination[10], according to which all European citizens have equal rights, no matter their nationality[11]. This rule derives from another essential one, that involves the Member States themselves. It implies that, within the Union, the Member States have an equal position, and no preferential status can be applied. Moreover, the citizens of the Member states are equal before the law and the institutions of the Union[12].

In the following pages, we will present some of the most resonant recent CJEU case-law and we will see how the issues raised by the acquisition and loss of national citizenship influence the statute of the individuals from the complex point of view of the European citizenship.

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[6] L.-C. Spătaru-Negură, *Protecția internațională a drepturilor omului. Note de curs*, 2nd ed., Hamangiu Publishing House, Bucharest, 2024, p. 9.

[7] See, judgment of 02.06.2016, *Bogendorff von Wolffersdorff*, C-438/14, para. 29 and 30, or judgment of the Court, Fifth Chamber, 25.07.2018, *A. intervener Espoon kaupungin sosiaali*, C-679/16, para. 56.

[8] J. Shaw, *Citizenship: Contrasting Dynamics At the Interface Of Integration And Constitutionalism*, in The Evolution Of EU Law, edited by Paul Craig and Gráinne de Búrca, Oxford University Press, 2nd ed., first published in 2011, p. 575.

[9] R. Popescu, *Aspecte generale privind reglementarea cetățeniei în dreptul internațional și în dreptul intern*, in Buletinul de informare legislativă al Consiliului Legislativ nr. 2/2022, Tipografia „Monitorul Oficial" R.A. Publishing House, Bucharest, p. 24.

[10] M.-C. Cliza, *What Means Discrimination In A Normal Society With Clear Rules?*, in CKS e-book, 2018, p. 458 *et seq*.

[11] For a detailed presentation of the principle of equal rights, but as it was developed in the CCR case-law, see E. Anghel, *The Principle Of Equal Rights: Concept And Reflection In The Case Law Of The CCR*, in CKS e-book, 2022, p. 199-200.

[12] L.-C. Spătaru-Negură, *Dreptul Uniunii Europene – o nouă tipologie juridică*, Hamangiu Publishing House, Bucharest, 2016, p. 213.

2.2. Issues regarding the acquisition and loss of Member States' nationality and the consequences on the European citizenship

2.2.1. Loss of original nationality by reason of naturalisation. Loss of nationality acquired by naturalisation on account of deception practised in that acquisition. Statelessness leading to loss of the status of citizen of the Union (Case C-135/08, *Rottman*, 2010)

The interplay of obtaining and losing the citizenship of various Member States may lead to sometimes awkward situations. For instance, the CJUE pronounced a preliminary ruling concerning the case of a person who initially had Austrian citizenship obtained by birth, then he transferred his residence to Munich and applied for German nationality (Case C-135/08, *Janko Rottman v. Freistaat Bayern*, Judgment of the Court, Grand Chamber, 02.03.2010). During the naturalisation procedure he failed to mention that in Austria he was subject to a criminal investigation opened on account of suspected serious fraud on an occupational basis in the exercise of his profession. The naturalisation in Germany was granted to the applicant and, in accordance with Austrian law, it had the effect of losing Austrian nationality. Later on, the city of Munich was informed by the municipal authorities of Graz, Austria, that a warrant for Dr. Rottmann's arrest had been issued in Graz. In the light of those circumstances, and after hearing the applicant, German authorities decided to withdraw the naturalisation with retroactive effect, on the grounds that the applicant had not disclosed the fact that he was the subject of judicial investigation in Austria and that he had, in consequence, obtained German nationality by deception.

The Court noted (para. 32) that the problem is that when naturalisation obtained by deception is withdrawn, a person becomes stateless, with the result that he loses the citizenship of the Union. It suffices, for the proviso formulated by the Court in Case C-369/90 *Micheletti and Others* [1992] ECR I-4239 - to the effect that Member States must exercise their powers in the sphere of nationality having due regard to European Union law - to be observed, that the importance of the rights conferred through that citizenship of the Union should be taken into consideration by the competent German authority when exercising its discretion. According to that court, the effect of assuming that there existed, in European Union law, an obligation to refrain from withdrawing naturalisation obtained by deception would be to strike at the heart of the sovereign power of the Member States, recognized by art. 17(1) TEC, to define the detailed rules for the application of their nationality law.

The Court stated (Rottman, para. 59) that it is not contrary to EU law, in particular to art. 17 TEC, for a Member State to withdraw from a citizen of the Union the nationality of that State acquired by naturalisation when that nationality has been obtained by deception, even if that withdrawal deprives the person concerned of the status of citizen of the Union and of the benefit of the rights attaching thereto by rendering him stateless, acquisition of that nationality having caused that person to lose the nationality of his Member State of origin. Though, the crucial condition is that the decision to withdraw observes the principle of proportionality. In this context, the Court underlined the importance which primary law attaches to the status of citizen of the Union and, when examining a decision withdrawing naturalisation it is necessary, therefore, to take into account the consequences that the decision entails for the person concerned and, if relevant, for the members of his family with regard to the loss of the rights enjoyed by every citizen of the Union.

From this perspective, The Court stressed that a decision withdrawing naturalisation because of deception corresponds to a reason relating to the public interest. In this regard, it is legitimate for a Member State to wish to protect the special relationship of solidarity and good faith between it and its nationals and also the reciprocity of rights and duties, which form the bedrock of the bond of nationality (para. 51).

From the Court's point of view (para. 52), that conclusion relating to the legitimacy, in principle, of a decision withdrawing naturalisation adopted in circumstances such as those in the main proceedings is borne out by the relevant provisions of the Convention on the reduction of statelessness. Art. 8(2) thereof provides that a person may be deprived of the nationality of a Contracting State if he has acquired that nationality by means of misrepresentation or by any other act of fraud. Likewise, art. 7(1) and (3) of the European Convention on nationality does not prohibit a State Party from depriving a person of his nationality, even if he thus becomes stateless, when that nationality was acquired by means of fraudulent conduct, false information or concealment of any relevant fact attributable to that person.

2.2.2. Loss of the nationality of a Member State and of citizenship of the Union by operation of law. Consequences. Proportionality (Case C-221/17, *Tjebbes*, 2019)

The Court examined the Netherlands Law on Nationality[13] which provides that an adult loses his Netherlands nationality if he also holds a foreign nationality and if, after attaining his majority and while holding both nationalities, he has his principal residence for an uninterrupted period of 10 years outside the Netherlands and outside the territories to which the EU Treaty applies. It also provides that a minor loses, in principle, Netherlands nationality if his father or mother has lost his or her Netherlands nationality pursuant, *inter alia*, of the aforementioned reason.

The goal of the Netherlands legislature was to introduce a system to avoid the undesirable consequences of one person having multiple nationalities. One of the objectives of the Law on Nationality is also to preclude persons from obtaining or retaining Netherlands nationality where they do not, or no longer have, any link with the Kingdom of the Netherlands and is intended to restore unity of nationality within the family (para. 34).

The situation of citizens of the Union who, like the applicants in the main proceedings, are nationals of one Member State only and who, by losing that nationality, are faced with losing the status conferred by art. 20 TFEU and the rights attaching thereto falls, by reason of its nature and its consequences, within the ambit of EU law.

Nevertheless, when exercising its competence to lay down the conditions for acquisition and loss of nationality, it is legitimate for a Member State to take the view that nationality is the expression of a genuine link between it and its nationals, and therefore to prescribe that the absence, or the loss, of any such genuine link entails the loss of nationality. It is also legitimate for a Member State to wish to protect the unity of nationality within the same family (para. 35).

The Court noticed (para. 36) that a criterion such as the one in question, which is based on the habitual residence of nationals of the Kingdom of the Netherlands, for an uninterrupted period of 10 years, outside that Member State and outside the territories to which the EU Treaty applies, may be regarded as an indication that there is no such link. Similarly, the lack of a genuine link between the parents of a child who is a minor and the Kingdom of the Netherlands can be understood, in principle, as a lack of a genuine link between the child and that Member State.

The legitimacy, in principle, of the loss of the nationality of a Member State in those situations is indeed supported by the provisions of art. 6 and art. 7(3) to (6) of the Convention on the Reduction of Statelessness which provide that, in similar situations, a person may lose the nationality of a Contracting State in so far as he does not become stateless. The risk of becoming stateless is precluded, in the present case, by the national provisions at issue in the main proceedings, given that their application is conditional on the possession by the person concerned of the nationality of another State in addition to Netherlands nationality. Similarly, art. 7(1)(e) and (2) of the Convention on Nationality provides that a State Party may provide for the loss of its nationality, inter alia, in the case of an adult, where there is no genuine link between that State and a national habitually residing abroad and, in the case of a minor, for children whose parents lose the nationality of that State (para. 37).

The Court highlighted (para. 40) that, however, it is for the competent national authorities and the national courts to determine whether the loss of the nationality of the Member State concerned, when it entails the loss of citizenship of the Union and the rights attaching thereto, has due regard to the principle of proportionality so far as concerns the consequences of that loss for the situation of the person concerned and, if relevant, for that of the members of his or her family, from the point of view of EU law.

In the light of the foregoing considerations, the Court ruled that the answer to the question referred is that art. 20 TFEU, read in the light of art. 7 and 24 of the Charter, must be interpreted as not precluding legislation of a Member State such as that at issue in the main proceedings, which provides under certain conditions for the loss, by operation of law, of the nationality of that Member State, which entails, in the case of persons who are not also nationals of another Member State, the loss of their citizenship of the Union and the rights attaching thereto, in so far as the competent national authorities, including national courts where appropriate, are in a position to examine, as an ancillary issue, the consequences of the loss of that nationality and, where appropriate, to have the persons concerned recover their nationality *ex tunc* in the context of an application by those persons for a travel document or any other document showing their nationality. In the context of that

[13] Judgment of the Court (Grand Chamber), 12.03.2019, C-221/17, *M.G. Tjebbes, G.J.M. Koopman, E. Saleh Abady, L. Duboux v. Minister van Buitenlandse Zaken*.

examination, the authorities and the courts must determine whether the loss of the nationality of the Member State concerned, when it entails the loss of citizenship of the Union and the rights attaching thereto, has due regard to the principle of proportionality so far as concerns the consequences of that loss for the situation of each person concerned and, if relevant, for that of the members of their family, from the point of view of EU law.

2.2.3. Loss of the nationality of the Member State by operation of law for nationals born abroad, who have never resided on the Member State's territory (Case C 689/21, *X. v. Udlændinge-og Integrationsministeriet*, 2023)

A recent case, C 689/21, *X. v. Udlændinge-og Integrationsministeriet*, Judgment of the Court (Grand Chamber) of 05.09.2023, regards the situation of Danish nationals born abroad, who have never been resident in Denmark and have also not spent time there in circumstances indicating a genuine link with Denmark, are to lose, by operation of law, Danish nationality at the age of 22, unless they would thereby become stateless. In these circumstances, the objective of the Danish Law on Nationality is to prevent Danish nationality being handed down from generation to generation to persons established abroad who have no knowledge of or link with the Kingdom of Denmark.

The Court stated (para. 59) that the answer to the question referred is that art. 20 TFEU, read in the light of art. 7 of the Charter, must be interpreted as not precluding legislation of a Member State under which its nationals born outside its territory who have never been resident there and have not spent time there in circumstances demonstrating a genuine link with that Member State lose, by operation of law, the nationality of that State at the age of 22, which entails, for persons who are not also nationals of another Member State, the loss of their citizenship of the European Union and the rights attaching thereto, provided that the persons concerned are given the opportunity to lodge, within a reasonable period, an application for the retention or recovery of the nationality, which enables the competent authorities to examine the proportionality of the consequences of the loss of that nationality from the point of view of EU law and, where appropriate, to allow the retention or recovery *ex tunc* of that nationality. Such a period must extend, for a reasonable length of time, beyond the date on which the person concerned reaches that age and cannot begin to run unless those authorities have duly informed that person of the loss of his or her nationality or of the imminence of that loss, and of his or her right to apply, within that period, for the maintenance or recovery of that nationality. Failing that, those authorities must be in a position to carry out such an examination, as an ancillary issue, in the context of an application by the person concerned for a travel document or any other document showing his or her nationality.

2.2.4. Renunciation of the nationality of one Member State in order to obtain the nationality of another Member State in accordance with the assurance given by the latter to naturalise the person concerned. Revocation of that assurance on grounds of public policy or public security. Statelessness (Case C 118/20, *JY v. Wiener Landesregierung,* 2022)

On the case[14], JY, an Estonian national, applied for Austrian nationality. The Government of the Province of Lower Austria, Austria assured JY that she would be granted Austrian nationality if she could prove, within two years, that she had relinquished her citizenship of the Republic of Estonia. JY, who had since moved her primary residence to Vienna (Austria), provided, within the two-year period stipulated, confirmation by the Republic of Estonia that her citizenship of that Member State had been relinquished by decision of the government of that Member State of 27.08.2015. JY has been a stateless person since relinquishing that citizenship. Later on, the Government of the Province of Vienna, Austria, which had become competent to examine JY's application, revoked the decision of the Government of the Province of Lower Austria and justified that decision by stating that JY had committed, since receiving the assurance that she will be granted Austrian nationality, two serious administrative offences (failing to display a vehicle inspection disc and driving a motor vehicle while under the influence of alcohol) and that she had committed eight administrative offences between 2007 and 2013, before that assurance was given to her. Therefore, according to that administrative authority, JY no longer satisfied the conditions for grant of nationality laid down in the Austrian Law on Citizenship. In accordance with this law, a foreign national who satisfies the conditions laid down in that provision is to be given the assurance that he or

[14] Judgment of the Court, Grand Chamber, 18.01.2022, C 118/20*, JY v. Wiener Landesregierung*.

she would be granted Austrian nationality if, within two years, he or she provides proof of having relinquished the citizenship of his or her State of origin. It follows that, in the naturalisation procedure, the grant of Austrian nationality to that foreign national, following such assurance, requires, as a precondition, the loss of his or her previous nationality.

The Court noted (para. 35) that it is, however, important, that, in a situation such as that of JY, although the loss of the status of citizen of the Union stems from the fact that the Member State of origin of that person, at that person's request, has dissolved the bond of nationality with the latter, that application was made in the context of a naturalisation procedure seeking to obtain Austrian nationality and is the consequence of the fact that that person, taking account of the assurance given to him or her that he or she will be granted Austrian nationality, complied with the requirements of both the Austrian nationality Law and the decision concerning that assurance.

The Court stated (para. 36) that in those circumstances, a person such as JY could not be considered to have renounced voluntarily the status of citizen of the Union. On the contrary, having received from the host Member State the assurance that he or she will be granted the nationality of the latter, the purpose of the application for dissolution of the bond of nationality with the Member State of which that person is a national is to enable that person to fulfil a condition for the acquisition of that nationality and, once obtained, to continue to enjoy the status of citizen of the Union. Where, in the context of a naturalisation procedure, the competent authorities of the host Member State revoke the assurance as to the grant of nationality of that State, the person concerned who was a national of one other Member State only and renounced his or her original nationality in order to comply with the requirements of that procedure is in a situation in which it is impossible for that person to continue to assert the rights arising from the status of citizen of the Union. Consequently, such a procedure, taken as a whole, even if it involves an administrative decision of a Member State other than that of which nationality is sought, affects the status conferred by art. 20 TFEU on nationals of the Member States, since it may result in a person in a situation such as that of JY being deprived of all the rights attaching to that status, although, at the time when the naturalisation procedure began, that person held the nationality of a Member State and thus had the status of citizen of the Union.

The Court ruled (para. 44) that the situation of a person who, having the nationality of one Member State only, renounces that nationality and loses, as a result, his or her status of citizen of the Union, with a view to obtaining the nationality of another Member State, following the assurance given by the authorities of the latter Member State that he or she will be granted that nationality, falls, by reason of its nature and its consequences, within the scope of EU law where that assurance is revoked with the effect of preventing that person from recovering the status of citizen of the Union.

Moreover, the Court held (para. 70) that, in view of the nature and gravity of the two administrative offences committed by the applicant and of the requirement that the concepts of 'public policy' and 'public security' be interpreted strictly, it does not appear that JY represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society or a threat to public security in the Republic of Austria. Traffic offences, punishable by mere administrative fines, cannot be regarded as capable of demonstrating that the person responsible for those offences is a threat to public policy and public security which may justify the permanent loss of his or her status of citizen of the Union. That is all the more so since, in the present case, those offences resulted in minor administrative fines and did not deprive JY of the right to continue to drive a motor vehicle on the public highway.

The Court ruled (para. 74) that art. 20 TFEU must be interpreted as meaning that the competent national authorities and, as the case may be, the national courts of the host Member State are required to ascertain whether the decision to revoke the assurance as to the grant of the nationality of that Member State, which makes the loss of the status of citizen of the Union permanent for the person concerned, is compatible with the principle of proportionality in the light of the consequences it entails for that person's situation. That requirement of compatibility with the principle of proportionality is not satisfied where such a decision is based on administrative traffic offences which, under the applicable provisions of national law, give rise to a mere pecuniary penalty.

2.3. Issues regarding the rights and duties that derive from the citizenship of the European Union

2.3.1. The right to vote for the European Parliament (Case C-650/13, *Delvigne*, 2015)

The largest transnational elections in the world, the European elections are the chance of citizens of the EU to have their say on the future of Europe[15]. The right to vote for the European Parliament elections was at stake in a case concerning the situation of a French citizen who was convicted of a serious crime and given a custodial sentence of 12 years by a final judgment and the ancillary penalty of the loss of civic rights, consisting, inter alia, in his being deprived of his right to vote and of his right to stand for election[16].

The Court noted that art. 8 of the 1976 Act provides that, subject to the provisions of that act, the electoral procedure is to be governed in each Member State by its national provisions[17].

In the case, the plaintiff was removed from the electoral roll because, as a result of his conviction of a serious criminal offence, he is among those who, under the provisions of the French Electoral Code, do not fulfil the conditions for eligibility to vote in national elections. Or, the conditions for the election of representatives to the European Parliament are similar to those conditions.

The Court has held that the provisions of art. 20(2)(b) TFEU is confined to applying the principle of non-discrimination on grounds of nationality to the exercise of the right to vote in elections to the European Parliament, by providing that every citizen of the Union residing in a Member State of which he is not a national is to have the right to vote in those elections in the Member State in which he resides, under the same conditions as nationals of that State[18].

In the case, the Court noticed that the deprivation of the right to vote to which Mr. Delvigne is subject under the provisions of national legislation at issue in the main proceedings represents a limitation of the exercise of the right guaranteed in art. 39(2) of the EU Charter of Fundamental Rights.

In that regard, the Court stated (paragraph 46) that it must be borne in mind that art. 52(1) of the Charter accepts that limitations may be imposed on the exercise of rights such as those set forth in art. 39(2) of the Charter, as long as the limitations are provided for by law, respect the essence of those rights and freedoms and, subject to the principle of proportionality, are necessary and genuinely meet objectives of general interest recognized by the European Union or the need to protect the rights and freedoms of others[19].

But a limitation such as that at issue in the main proceedings is proportionate in so far as it takes into account the nature and gravity of the criminal offence committed and the duration of the penalty (Delvigne, para. 49).

On those grounds, the Court ruled that the Charter of Fundamental Rights of the European Union[20] must be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, which excludes, by operation of law, from those entitled to vote in elections to the European Parliament persons who, like the applicant in the main proceedings, were convicted of a serious crime and whose conviction became final before 1 March 1994.

2.3.2. Free movement and residence rights of EU citizens and their families[21]

A. Exercising the right of free movement without risk of being extradited (Case C-473/15, *Adelsmayr*, 2017)

According to art. 19(2) of the EU Charter of Fundamental Rights, no one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment. Analysing the request of a preliminary ruling, the CJEU

[15] *https://www.europarl.europa.eu/topics/en/article/20240429STO20939/voting-in-the-european-elections-how-and-why*.

[16] Judgment of the Court (Grand Chamber), 06.10.2015, Case C-650/13, *Thierry Delvigne v. Commune de Lesparre-Médoc, Préfet de la Gironde*.

[17] For a detailed presentation of the Romanian regulations in this area, see M. Enache, Șt. Deaconu, V. Bărbățeanu, *Sistemul electoral și referendumul în jurisprudența Curții Constituționale*, C.H. Beck Publishing House, Bucharest, 2022, p. 159-174.

[18] See, to that effect, judgment in *Spain v. United Kingdom*, C-145/04, EU:C:2006:543, para. 66.

[19] See, to that effect, judgments in *Volker und Markus Schecke* and *Eifert*, C-92/09 and C-93/09, EU:C:2010:662, para. 50, and *Lanigan*, C-237/15 PPU, EU:C:2015:474, para. 55.

[20] More precisely, art. 39(2) and the last sentence of art. 49(1) of the Charter.

[21] See Directive 2004/38/EC on the right of EU citizens and their families to move and reside freely.

confronted the situation of the possible extradition of a national of a EU Member State to a third State where he risks being subjected to the death penalty[22].

The case concerned an Austrian physician residing in Austria who was about to travel to Germany to speak at a conference on working conditions and litigation in the United Arab Emirates, where he had practised as an anaesthesist and intensive care physician and where he was sentenced for the death of a patient to life imprisonment in interim proceedings which could be resumed at any time and in which he would still be liable to the death penalty.

The Court noticed (para. 24) that in so far as the competent authority of the requested Member State is in possession of evidence of a real risk of inhuman or degrading treatment of individuals in the requesting third State, it is bound to assess the existence of that risk when it is called upon to decide on the extradition of a person to that State, on the basis of information that is objective, reliable, specific and properly updated[23].

In the case, the Court took note that the referring court states that the public prosecution service requested the death penalty in respect of Mr. Adelsmayr in the proceedings involving him in the United Arab Emirates. It follows that Mr. Adelsmayr runs a 'serious risk' within the meaning of art. 19(2) of the Charter of being subjected to the death penalty in the event of extradition.

Therefore, the Court stated (para. 27) that a request for extradition originating from a third country concerning a Union citizen who, in exercising his freedom of movement, leaves his Member State of origin in order to reside on the territory of another Member State, must be rejected by the latter Member State where that citizen runs a serious risk of being subjected to the death penalty in the event of extradition.

B. Extradition of a Union citizen having also the nationality of a third State (Case C-237/21, *S.M.*, 2022)

In the area of the same topic, the Court rendered a preliminary judgement in connection with the request sent to a Member State (Germany) by a third State (Bosnia-Herzegovina) for the extradition of a Union citizen who is a national of another Member State (Croatia), but who also holds the nationality of that third State, and who has exercised his right to free movement in the first of those Member States[24].

The Court noted that the fact that a national of a Member State other than the Member State to which an extradition request was submitted also holds the nationality of the third State which made that request cannot prevent that national from asserting the rights and freedoms conferred by Union citizenship, in particular those guaranteed by art. 18 and 21 TFEU. The Court has repeatedly ruled that holding dual nationality of a Member State and a third State cannot deprive the person concerned of those rights and freedoms[25].

Secondly, according to the case-law of the Court, a Member State's rules on extradition which give rise to a difference in treatment depending on whether the requested person is a national of that Member State or a national of another Member State, in so far as they have the consequence that nationals of other Member States who are lawfully resident in the territory of the requested Member State are not afforded the protection against extradition enjoyed by nationals of the latter Member State, are liable to affect the freedom of the nationals of other Member States to move and reside in the territory of the Member States[26].

The Court stated (para. 34, 35) that in a situation such as that in the main proceedings, the unequal treatment involved in permitting the extradition of a Union citizen who is a national of a Member State other than the requested Member State gives rise to a restriction on the freedom to move and reside in the territory of the Member States, within the meaning of art. 21 TFEU. Such a restriction can be justified only where it is based on objective considerations and is proportionate to the legitimate objective of national law.

Art. 18 and 21 TFEU require that nationals of other Member States who reside permanently in the requested Member State and whose extradition is requested by a third State for the purpose of enforcing a custodial sentence should be able to serve their sentence in the territory of that Member State under the same conditions as nationals of that Member State (para. 42).

Following a complex analysis, the Court ruled (paragraph 58) that a Member State to which a request for extradition has been made by a third State for the purpose of enforcing a custodial sentence imposed on a

[22] Order of the Court (First Chamber), 06.09.2017, Case C-473/15, *Peter Schotthöfer & Florian Steiner GbR v. Eugen Adelsmayr*.

[23] See, to that effect, judgment of 06.09.2016, *Petruhhin*, C-182/15, para. 58 and 59.

[24] Judgment of the Court (Grand Chamber), 22.12.2022, Case C-237/21, S.*M. other party: Generalstaatsanwaltschaft München*.

[25] See, to that effect, judgment of 13.11.2018, *Raugevicius*, C-247/17, para. 29, and judgment of 17.12.2020, *Generalstaatsanwaltschaft Berlin* (Extradition to Ukraine), C-398/19, para. 32.

[26] *Raugevicius*, para. 39.

national of another Member State residing permanently in the first Member State, the national law of which prohibits only the extradition of its own nationals out of the European Union and makes provision for the possibility that that sentence may be enforced in its territory provided that the third State consents to it, is required by those provisions actively to seek such consent from the third State which made the extradition request, by using all the mechanisms for cooperation and assistance in criminal matters which are available to it in the context of its relations with that third State. Also, the Court decided that if such consent is not obtained, that first Member State is not precluded by those provisions, in such circumstances, from extraditing that Union citizen, in accordance with its obligations under an international convention, in so far as that extradition does not infringe the rights guaranteed by the Charter of Fundamental Rights of the European Union.

C. Freedom of movement in conjunction with the right to education and social assistance provided to people with disabilities (Case C-679/16, *A.*, 2018)

The plaintiff, A., applied to the municipality of Espoo, Finland, under the Disability Services Law, for personal assistance amounting to about five hours per week. At the time of that application, A. was in the process of moving to Tallinn in Estonia to attend a three-year, full-time law course there: as a result of that move, the services that he applied for would therefore have had to be provided outside Finland, and for this reason, the application was rejected.

The Court stated[27] that EU law does not impose any obligation on the Member States to provide a system of funding for higher education pursued in a Member State or abroad. However, where a Member State provides for such a system which enables students to receive such grants, it must ensure that the detailed rules for the award of that funding do not create an unjustified restriction of the right to move and reside within the territory of the Member States[28].

The Court also reminded[29] that from settled case-law that national legislation which places certain nationals at a disadvantage simply because they have exercised their freedom to move and to reside in another Member State constitutes a restriction on the freedoms conferred by art. 21(1) TFUE on every citizen of the Union[30].

According to the Court's judgement (para. 61-63), the opportunities offered by the Treaty in relation to freedom of movement for citizens of the Union cannot be fully effective if a national of a Member State can be dissuaded from using them by obstacles resulting from his stay in another Member State, because of legislation of his State of origin which penalises the mere fact that he has used those opportunities. That consideration is particularly important in the field of education, in view of the aims pursued by art. 6(e) TFEU and the second indent of art. 165(2) TFEU, namely, amongst other things, encouraging mobility of students and teachers. The case-law mentioned is applicable even though the personal assistance at issue in the main proceedings is not granted exclusively for the pursuit of studies, but for the social and economic integration of persons who are severely disabled in order to enable them to make their own choices, including as to whether to follow a course of study.

In the case, the personal assistance at issue in the main proceedings was refused solely because the course of higher education that A. - who was otherwise eligible for that assistance - was intending to follow took place in a Member State other than Finland. Such a refusal must be regarded as a restriction on the freedom to move and reside within the territory of the Member States, which art. 21(1) TFEU affords to every citizen of the Union. Such a restriction can be justified in the light of EU law only if it is based on objective considerations of public interest independent of the nationality of the persons concerned and if it is proportionate to the legitimate objective of the provisions of national law. It follows from the Court's case-law that a measure is proportionate when, while appropriate for securing the attainment of the objective pursued, it does not go beyond what is necessary in order to achieve it.

On those grounds, the Court ruled that art. 20 and 21 TFEU preclude the home municipality of a resident of a Member State who is severely disabled from refusing to grant that person a benefit, such as the personal

[27] Judgment of the Court, -Fifth Chamber, 25.07.2018, *A. intervener Espoon kaupungin sosiaali*, C-679/16, para. 59.
[28] Judgment of 26.02.2015, *Martens*, C-359/13, EU:C:2015:118, para. 24.
[29] *A. intervener Espoon kaupungin sosiaali*, cited above no. 9, para. 60.
[30] Judgment of 26.02.2015, *Martens*, C-359/13, EU:C:2015:118, para. 25.

assistance at issue in the main proceedings, on the ground that he is staying in another Member State in order to pursue his higher education studies there.

D. Restriction on free movement and different treatment on the basis of nationality in what concerns the participation in the national championship of a Member State by an amateur athlete holding the nationality of another Member State (Case C-22/18, *TopFit eV and Daniele Biffi,* 2019)

The case[31] was about an Italian national who lived in Germany and competes in amateur running races in the senior category, being a member of the Berliner Leichtathletik-Verband (Berlin Athletics Association). Since 2012, Mr. Biffi, who is no longer affiliated to the Italian National Athletics Federation, has participated in national senior championships in Germany. Until 2016, the Athletics Rules provided that participation in the German championships was open to EU citizens who did not have German nationality if they had an entitlement to participate through a German athletics association or athletics community and had had that entitlement for at least one year. This rule was amended and now it refers only to nationals, and it is therefore those with German nationality who have priority when athletes are selected to participate in national championships. Thus, Mr. Biffi was authorised to participate in races, but only in part, that is to say, without being classified either in time trials or in disciplines involving a final, such as the 100 m, in which he was permitted to participate only in the heats without being able to progress to the final.

Regarding this situation, the Court noted (para. 27, 28) that an EU citizen, such as Mr. Biffi, an Italian national who moved to Germany, where he has resided for 15 years, has exercised his right to free movement within the meaning of art. 21 TFEU. According to settled case-law, 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[32] and the situation of an EU citizen who has made use of his right to move freely comes within the scope of art. 18 TFEU, which lays down the principle of non-discrimination on grounds of nationality[33]. The Court held that that article is applicable to an EU citizen who, like Mr. Biffi, resides in a Member State other than the Member State of which he is a national and in which he intends to participate in sporting competitions in an amateur capacity.

Furthermore, the Court has stated (para. 31) that, under EU law, every national of a Member State is assured of freedom both to enter another Member State in order to pursue an employed or self-employed activity and to reside there after having pursued such an activity and that access to leisure activities available in that Member State is a corollary to that freedom of movement[34].

The Court has also found that the rights conferred on an EU citizen by art. 21(1) TFEU are intended, amongst other things, to promote the gradual integration of the EU citizen concerned in the society of the host Member State[35]. Moreover, art. 165 TFEU reflects the considerable social importance of sport in the European Union, in particular amateur sport, as highlighted in Declaration no. 29 on sport annexed to the Final Act of the conference which adopted the text of the Treaty of Amsterdam[36] and the role of sport as a factor for integration in the society of the host Member State.

The Court therefore stated (para. 34) that it is clear from art. 21(1) TFEU, read in conjunction with art. 165 TFEU, that practising an amateur sport, in particular as part of a sports club, allows an EU citizen residing in a Member State other than the Member State of which he is a national to create bonds with the society of the State to which he has moved and in which he is residing or to consolidate them. That is also the case with regard to participation in sporting competitions at all levels.

The Court decided (para. 40) that the rules of a national sports association, such as those at issue in the main proceedings, which govern the access of EU citizens to sports competitions, are subject to the rules of the Treaty, in particular art. 18 and 21 TFEU.

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[31] Judgment of the Court, Third Chamber, 13.06.2019, Case C 22/18, TopFit eV and *Daniele Biffi v. Deutscher Leichtathletikverband eV*.
[32] Judgment of 20.09.2001, *Grzelczyk*, C-184/99, para. 31.
[33] Judgment of 13.11.2018, *Raugevicius*, C-247/17, para. 27.
[34] Judgment of 07.03.1996, *Commission v France*, C-334/94, para. 21.
[35] Judgment of 14.11.2017*, Lounes*, C-165/16, EU:C:2017:862, para. 56.
[36] See, to that effect, judgments of 15.12.1995, *Bosman*, C-415/93, para. 106, and of 13.04.2000, *Lehtonen and Castors Braine*, C-176/96, para. 33.

In the field of sport, the Court has consistently held that the provisions of EU law concerning the free movement of persons and services do not preclude rules or practices justified on grounds that relate to the particular nature and context of certain sports matches, such as matches between national teams from different countries. However, such a restriction on the scope of the provisions in question must remain limited to its proper objective and cannot be relied upon to exclude the whole of a sporting activity from the scope of the Treaty[37].

Consequently, the Court ruled (para. 67) that art. 18, 21 and 165 TFEU must be interpreted as precluding rules of a national sports association, such as those at issue in the main proceedings, under which an EU citizen, who is a national of another Member State and who has resided for a number of years in the territory of the Member State where that association, in which he runs in the senior category and in an amateur capacity, is established, cannot participate in the national championships in those disciplines in the same way as nationals can, or can participate in them only 'outside classification' or 'without classification', without being able to progress to the final and without being eligible to be awarded the title of national champion, unless those rules are justified by objective considerations which are proportionate to the legitimate objective pursued, this being a matter for the referring court to verify.

E. Exclusion from the benefit of social assistance benefits of economically inactive citizens of the Union. Non-discrimination based on nationality (Case C-709/20, *C.G.,* 2021)

The case[38] is about a national with dual Croatian and Netherlands nationality, which is the single mother of two young children. She declared her arrival in Northern Ireland in 2018. She has never carried out any economic activity in the United Kingdom and lived there with her partner until she moved to a women's refuge. CG has no resources at all to support herself and her two children. The Home Office (United Kingdom) granted CG a temporary right of residence. The grant of that status is not subject to any condition as to resources. CG applied to the Department for Communities in Northern Ireland for the social assistance benefit known as Universal Credit. That application was refused, on the ground that CG did not meet the residence requirements in order to receive it. The competent administrative authority considered that only persons having their habitual residence in the United Kingdom are entitled to claim Universal Credit. By contrast, nationals of Member States, such as CG, who have a right of residence under the Settlement Scheme contained in Appendix EU, are excluded from the category of potential beneficiaries of Universal Credit. The Appeal Tribunal (Northern Ireland) decided to refer to the Court of Justice for a preliminary ruling.

For the Court, the problem was that in the present case, on 01.02.2020, the date on which the Agreement on the withdrawal of the United Kingdom[39] entered into force, that State withdrew from the European Union, thus becoming a third State. It follows that the courts and tribunals of the United Kingdom, as from that date, can no longer be regarded as courts of a Member State. However, that agreement provides, in art. 126, for a transition period between the date of its entry into force on 01.02.2020 and 31.12.2020. Art. 127 of that agreement provides that, during that period, unless otherwise provided in that agreement, EU law is to be applicable in the United Kingdom and in its territory, produce the same legal effects as those which it produces within the Union and its Member States, and is to be interpreted and applied in accordance with the same methods and general principles as those applicable within the European Union.

Eventually, the Court stated that it is not precluding the legislation of a host Member State which excludes from social assistance economically inactive Union citizens who do not have sufficient resources and to whom that State has granted a temporary right of residence, where those benefits are guaranteed to nationals of the Member State concerned who are in the same situation. However, provided that a Union citizen resides legally, on the basis of national law, in the territory of a Member State[40] other than that of which he or she is a national, the national authorities empowered to grant social assistance are required to check that a refusal to grant such benefits based on that legislation does not expose that citizen, and the children for which he or she is responsible, to an actual and current risk of violation of their fundamental rights, as enshrined in art. 1, 7 and 24 of the

[37] See, to that effect, judgment of 15.12.1995, *Bosman*, C-415/93, para. 76 and 127.

[38] Judgment of the Court, Grand Chamber, 15.07.2021, C-709/20, *CG v. The Department for Communities in Northern Ireland*.

[39] For an exhaustive presentation of this issue, see A. Fuerea, *EU-UK Brexit Agreement and Its Main Legal Effects*, in CKS 2021 e-book, p. 419 *et seq.*, *https://cks.univnt.ro/cks_2021.html*, last consulted on 20.03.2024.

[40] For further details regarding the foreigners' status in international law, see R.-M. Popescu, *(General Aspects Concerning) The Legal Regime Of Foreigners In International Law, Accessible To Everyone*, in CKS e-book, 2022, p. 339 *et seq.*, *https://cks.univnt.ro/cks_2022.html*, last consulted on 20.03.2024.

Charter. Where that citizen does not have any resources to provide for his or her own needs and those of his or her children and is isolated, those authorities must ensure that, in the event of a refusal to grant social assistance, that citizen may nevertheless live with his or her children in dignified conditions. In the context of that examination, those authorities may take into account all means of assistance provided for by national law, from which the citizen concerned and her children are actually entitled to benefit.

3. Conclusions

These selected CJUE judgements, briefly presented in this paper, are only some of the many rendered in cases related to European citizenship and they highlight the wide range of problematic aspects that could occur in this field. The CJUE task is so very complex and delicate in this field, due to the serious consequences that loss of European citizenship can draw to individuals. It also underlines the general statement that the doctrine has asserted, according to which any normative plan of action can only develop with respect for fundamental rights, as they are enshrined in the Charter of Fundamental Rights of the European Union[41].

The case-law included in this paper also tried to show the so-called transnational character of most Union citizenship rights as enumerated in the Treaties and interpreted by the Court of Justice[42]. As it has been stated by law scholars, „the key to understanding citizenship's role within the EU is to avoid thinking about Union citizenship and citizenship of the Member States as two separate and unrelated phenomena. The two concepts are not linked just because one (national citizenship) gives access to the other (Union citizenship)" and „as has been articulated in the EU Treaties since the Treaty of Amsterdam, Union citizenship and national citizenship are complementary in character and the former, in particular, is not supposed to supplant or replace the latter, but rather to be additional to it [art. 20(1) TFUE]"[43].

The multitude of situations related to the European citizenship is and will for sure be also in the future an inexhaustible source of intricate analysis in the CJEU case-law and they will continuously arouse the interest of law scholars and will also be example of good practice for national authorities responsible in this field.

References

- Anghel, E., The Principle of Equal Rights: Concept and Reflection in The Case Law Of The CCR, in CKS e-book, 2022, https://cks.univnt.ro/cks_2022.html, last consulted on 20.03.2024;
- Cliza, M.-C., What Means Discrimination In A Normal Society With Clear Rules?, in CKS e-book, 2018, https://cks.univnt.ro/cks_2018.html, last consulted on 20.03.2024;
- Enache, M., Deaconu, Șt., Bărbățeanu, V., Sistemul electoral și referendumul în jurisprudența Curții Constituționale, C.H. Beck Publishing House, Bucharest, 2022;
- Fuerea, A., EU-UK Brexit Agreement and Its Main Legal Effects, in CKS e-book, 2021, https://cks.univnt.ro/cks_2021.html, last consulted on 20.03.2024;
- Fuerea, A., Dreptul Uniunii Europene. Principii, acţiuni, libertăţi, Universul Juridic Publishing House, Bucharest, 2016;
- Fábián, G., Drept instituţional al Uniunii Europene, 3rd ed., Hamangiu Publishing House, Bucharest, 2023;
- Ionescu, C., Dumitrescu, C.A. (coord.), Constituția României. Comentarii și explicații, C.H. Beck Publishing House, Bucharest, 2017;
- Muraru, I., Tănăsescu, E.-S., Drept constituțional și instituții politice, 14th ed., vol. I, C.H. Beck Publishing House, Bucharest, 2011;
- Popescu, R.-M., Aspecte generale privind reglementarea cetățeniei în dreptul internațional și în dreptul intern, in Buletinul de informare legislativă al Consiliului Legislativ no. 2/2022, Tipografia „Monitorul Oficial" R.A. Publishing House, Bucharest;
- Popescu, R.-M., (General Aspects Concerning) The Legal Regime of Foreigners In International Law, Accessible To Everyone, in CKS e-book, 2022, https://cks.univnt.ro/cks_2022.html, last consulted on 20.03.2024;
- Shaw ,J., Citizenship: Contrasting Dynamics at the Interface Of Integration And Constitutionalism, in The Evolution Of EU Law, edited by Paul Craig and Gráinne de Búrca, Oxford University Press, 2nd ed., first published in 2011;
- Spătaru-Negură, L.-C., Dreptul Uniunii Europene - o nouă tipologie juridică, Hamangiu Publishing House, Bucharest, 2016;
- Spătaru-Negură, L.-C., Protecția internațională a drepturilor omului. Note de curs, 2nd ed., Hamangiu Publishing House, Bucharest, 2024;

[41] E.E. Ștefan, *News and Perspectives of Public Law*, in Athens Journal of Law, vol. 9, issue 3, July 2023, p. 397.
[42] J. Shaw, *op. cit.*, p. 575.
[43] *Idem*, p. 578-579.

- Ștefan, E.E., News and Perspectives of Public Law, in Athens Journal of Law, vol. 9, issue 3, July 2023;
- https://www.europarl.europa.eu/topics/en/article/20240429STO20939/voting-in-the-european-elections-how-and-why.