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EUROPEAN UNION CITIZENSHIP AND IMMIGRATION

Graduate Study Thesis

HALE GÜLBİN ÜNLÜ

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ABSTRACT

EUROPEAN UNION CITIZENSHIP AND IMMIGRATION

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This work looks at the concepts of European Citizenship and the immigration under the framework of European Union. When the European Community first started none of the founding member states hoped for a social and political union other than strengthening their economies. Fifty years after one of the founding treaties of European Union Treaty of Rome, The Treaty on European Union brought the long waited concept "Citizenship". European Union citizenship is determined by the member states citizenship requirements that cause unjust treatment for the people who live in Europe with different applications of national law. After the creation of the citizenship European Union is trying to create a common immigration policy. Unfair treatment of immigrants all over the European Union borders leaves almost no chance for immigration to have standards within the Union framework. When we analyze the different citizenship and immigration laws in European Union member states we can clearly raise the questions that who are citizens of European Union and what separates citizens from immigrants.

The analyses on immigration and citizenship in European Union shows us an improvement path along the history of the Union but still member states are not close to what the concepts of "immigration" and "citizenship" need to fully contribute to the main ideologies of founding fathers of the Union.

Keywords: Citizenship, Immigration, European Union, member states, national law.

ÖZET

AVRUPA BİRLİĞİ VATANDAŞLIĞI VE AVRUPA BİRLİĞİ GÖÇMENLİĞİ

Ünlü, Hale Gülbin

Avrupa Kamu Hukuku ve Entegrasyonu

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Bu çalışma Avrupa vatandaşlığı ve göçmenliği konseptlerine Avrupa Birliği çerçevesinde bakmaktadır. Avrupa Birliği ilk kurulduğu dönemde kurucu ülkelerden hiçbiri sosyal ve politik bir topluluk düşünmemiş, ekonomilerini güçlendirmeyi düşünmüşlerdi. Avrupa Birliğini yaratan anlaşmalardan biri olan Roma Anlaşmasından elli yıl sonra, Avrupa Birliği Anlaşması uzun zamandır beklenen "vatandaşlık" konseptini getirdi. Avrupa Birliği vatandaşlığı üye ülkelerin vatandaşlık yasaları ile belirlenmekte ve bu ulusal kanunlar Avrupada yaşayan insanlar için eş olmayan muamelelere yol açmakta. Vatandaşlık konseptinin oluşturulmasının ardından Avrupa Birliği ortak bir göçmenlik kuralı yaratmaya çalışmakta. Göçmenlere yapılan adaletsiz muameleler sebebiyle Avrupa Birliği fiziki sınırları içinde Birlik çatısı altındsa tandart bir göçmenlik yasası cıkarılmasına imkan vermiyor. Avrupa Birliği üye ülkerinde vatandaşlık ve göçmenlik kanunlarını incelediğimizd karşımıza net olarak iki soru çıkmakta; kimler Avrupa Birliği vatandaşı ve onları göçmenlerden ayıran farklar neler?

Göçmenlik ve vatandaşlığın Avrupa Birliğinde analizi tarihsel anlamda bir düzelme olduğunu göstermekte ancak halen daha üye ülkeler "vatandaşlık" ve "göçmenlik" konseptlerinin Avrupa Birliğinin kurucularının ana ilkelerine hizmet etme noktasına katkıda bulunmaya yakın bile degiller.

Anahtar Kelimeler: Vatandaşlık, Göçmenlik, Avrupa Birliği, üye ülkeler, ulusal kanunlar.

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ABBREVIATIONS

Associated Overseas Countries and Territories	:	AOCTS
Common Agricultural Policy	:	CAP
European Community	:	EC
European Coal and Steel Community	:	ECSC=CECA
European Economic Community	:	EEC
European Parliament	:	EP
European Community Action Scheme for the Mobility of University Students	:	ERASMUS
European Social Fund	:	ESF
European Union	:	EU
European Atomic Energy Community	:	EURATOM
European Police Office	:	EUROPOL
Free Movement Rights	:	FMR
Free movement of workers	:	FMW
Justice and Home Affairs	:	JHA
Member of the European Parliament	:	MEP
Overseas Countries and Territories associated with the EC	:	OCTS
Quality Majority Voting	:	QMV
Single European Act	:	SEA
Third Country National	:	TCN
Treaty on European Union	:	TEU
Western European Union	:	WEU

1. INTRODUCTION

The European Union is nearly a sixty-year-old establishment that secured the peace in the European borders, which once continuously destroyed by wars almost in every decade. The Second World War destroyed all the cities and towns of one of the most powerful continent. After the war almost all the European states were in need of financial and social assistance that one may call the mid twentieth century Europe as a war wreck. More than six decades later, once again Europe is one of the major economical, political and geographical powers in the world. The countries who were in need of assistance are now accepting new members and they are offering financial and social assistance to newly European states.

Even though in the beginning, the European Union was established as an economic cooperation, currently it is almost active in all perspectives with all of the twenty-seven member countries. When the European Community first established, there were only six member countries France, Germany, Italy, Belgium, The Netherlands and Luxemburg. The three member states already established a functioning trade system with abolishment of internal borders. The European Community constitutes laws and follows up application of all these laws to improve the future of Europe. The six founding member countries of Europe Italy, France, West Germany, Belgium, The Netherlands, and Luxemburg emerged an amalgamation to create economic cooperation to prevent future World Wars during the creation period of European Community. European Union consists of a very complex demographical and geographical area. The older member states are United Kingdom and France and some of the newly member states are Poland and Bulgaria. The older member states established strong democracy's with strong financial systems when the newly member states are just getting used to democracy after the fall of Soviet Union in the last decade or so. One may analyze that creating a community and expanding it under the very complex systems even in Europe is not easy. The European Union is a very complex and one of a kind establishment that it is not a state or an empire but is not just an organization to secure the peace and create stable system for trade any more. During the establishment of the European Union no

one even Churchill would have really believed that European Community would become what it turn out to be today.

When the communities first started none of founding member states listed above hoped for a social and political cooperation, they were only hoping to develop their economies with trade. Some critiques might believe that as president Charles De Gaul says the Union is just for economic cooperation. Fifty years later, one of the founding treaties of European Community, the Treaty of Rome, European Union consists of twenty-seven member nations, speaking more than 23 languages. The external borders of the European Union continuously expanded over the years with continuous growth of the population of the Union, which is just about half a billion. Over the last decade the discussion of the Union citizenship has been fired up due to changes in the amended treaties. The discussions mainly rise due to the model that European Union set to follow. The argument whether the Union rises to be the Federal Europe or it will survive as the Europe of supranational model, which is the only one that is proven to work in the world history, continues to be the debate issue among the political scientists.

This works analyzes one of the greatest debate issues in the European Union as European Union citizenship and immigration. Even though European Union area does not have a significant population like China or India, it is still habitat for half a billion people registered officially and for millions of people who are not legally and illegally immigrants. As it is suggested above in the world history there is no such an entity similar to European Union. It is very clear that the founding fathers did not really expect their amalgamation would create one of a kind complex model when they first started. European Union is one of a kind model that has jurisdiction over the member states laws on the economical and social matters but especially limited access to the social matters. One may raise the question as could there be any healthy economic cooperation without social cooperation that European Union proves that it is impossible, because of the human factor. If the people of Europe do not feel that they are a part of Europe than they do not act for the favor of economic cooperation. It is clear that the first step to feel belonging towards European Union is the notion of citizenship. The major

complications rise on the determining the citizens of Europe due the member states approach on the matter. The member states decide who their citizens on their own and European Union does not have competency on the matter. The member states protective approach on citizenship affects the immigrants of Europe as well. Some states has seen the long term residents as immigrants and others accept them as citizens. Eventually due the member states approach Union has to accept these people as the member states wishes but this badly affects the future of Union. Citizenship and Immigration are two very important matters of the European Union because these are the matters that will determine the future of Europe. Security, power of the union of the member states and economic cooperation are just some of the subjects that are affected by immigration and citizenship.

2. HISTORY OF EUROPEAN UNION

2.1 THE CREATION REASONS OF EUROPEAN COMMUNITY

The Second World War left Europe divided. In 1945 at the end of the war the successor nations of the war, United States and Soviet Union divided the Europe in to "sphere of influence" (George 2001, pg 49). The European states that are closer or the states that have similar structures to Soviet Union influenced by the communist system and the states that are familiar with the democratic regimes influenced by the United States of America. In 1946 British Prime Minister Churchill openly expressed this sphere of influence as follows;

> *From Stettin in the Baltic to Trieste in the Adriatic an iron curtain has descended across the Continent. Behind that line lie all the capitals of the ancient states of Central and Eastern Europe. Warsaw, Berlin, Prague, Vienna, Budapest, Belgrade, Bucharest and Sofia; all these famous cities and the populations around them lie in what I must call the Soviet sphere, and all are subject, in one form or another, not only to Soviet influence but to a very high and in some cases increasing measure of control from Moscow (Internet Modern History Sourcebook 1997).*

Churchill's historical speech was a projection of what would be occurring in the European Continent. The term "iron curtain" stayed with the Political scientists many decades after Churchill made this declaration. Once again just after the war Europe was at the brink of a new war due the division of communism and democracy.

The war left the major cities and industries broken, but the fear of Communism after the war left the European nations in political chaos. The continent was extremely damaged when the United States became politically and economically superior to Europe. In order to develop the continent once again, European Nations needed all the help that they can get from United States. In 1947 Truman Doctrine and the Marshall Plan changed the perspective. The change brought hope for the European nations. The major help would be received from the United States of America. The United States Secretary

of State George C. Marshall declared the Marshall Plan. In order to receive the Marshall aid, United States requested from the European nations to create a cooperation framework that would secure the peace and security in the region.

In 1949 the Western European countries established the Council of Europe which was just an amalgamation for the protection of peace. The countries such as France was aware of the facts that, they need to create a new system of cooperation that will bring them more than just peace security because the historically industrialized rich Europe could not even provide basic needs to its people due the negative impacts of the war took place on European soil. European nations were aware of the facts that Marshall Plan was a political cooperation for the economic needs such as food. The main concern of the United States on the Marshall plan was to create strong allies against the spread of the communism in Western Europe. Due to all the peace and security needs, European Nations planted the seeds for the European Community to create a better Europe for the future. The idea of European Community was to create an economic cooperation to maintain peace and security. Winston Churchill was the one who stepped towards establishment of unification in Europe. Churchill repeatedly mentioned his belief in creation of a stronger international state in his significant speeches to promote the leaders and thinkers of the time to think beyond the limits. Even though Churchill's main plan was to create a unified Europe for the reestablishment of the region in the Community framework was simply based on the economic cooperation of the Western European countries. Later on the other Western Countries stepped up to amalgamated Europe, but the Great Britain refused to join even though Churchill was the first leader to believe in United Europe.

2.2 HISTORY OF EUROPEAN COMMUNITY UNTIL THE TREATY OF EUROPEAN UNION

In 1949 with the suggestion of the French Political Scientist, advisor to the French Foreign Ministry, Jean Monet to Robert Schumann the French Foreign Minister at time took the steps towards the Union. The Schumann Plan focused on the coal and steal

industries of the European Nations. Schumann's plan was strategically important because European nations needed both of these commodities in order to rebuild Europe. Coal and steal were also the significant needs for defense industry at the time. The project planned to pool the French and German coal and steal under an authority that would control these commodities independent from the national governments. After the Second World War the neighboring states such as France was worried that Germany would start another war because eastern part of Germany was influenced by the communist systems. Almost all the nations were scared that East and West Germany will gather once again and attack the neighbors. One may even call the Schumann Plan as the beginning of the European Federation. The French Foreign Ministry with the leadership of France invited all the other democratic European States to join the project for the greater good of Europe. Six European countries France, Germany, Italy, Belgium, Netherlands and Luxembourg accepted the Schumann's invitation and signed the Paris Treaty in 1951 in order to establish the Coal and Steal Community in 1953.

1957 became a very significant time in the Europe's history because it is the creation of two important communities. Once the six founding member states established a strong tie on the key elements of rebuilding and securing the peace in 1957, they signed the Rome Treaties and established the European Economic Community and the European Atomic Energy Community. The fears from the impacts of the Second World War and the end result of the war also encouraged the European nations to gather for the European Atom Communities (EURATOM) to secure the future of peace in Europe. At the end of the World War Two, United States ends the war with using atomic bombs in Japan that caused devastation in Asia. The European Economic Communities was established for the economic needs of the community and it was different than the ECSC and the EURATOM because it did not really intend to create any peace activities for the future of European. The European Economic Community assumed that the two other communities would establish and secure the peace in Europe with arm control. The European Economic Community mainly aimed to provide a free trade area among the six member states for the goods, services and free movement of people. The European Economic Community also paid attention to the agriculture and it supported the farmers especially what happened to industry after the Second World War.

In 1965 all three communities fused under the name of European Community with the Merger Treaty. This synthesis is one of the key features where the European Union is currently situated, because it was a way of demonstrating that European Community will eventually cover more than just economic needs or security and peace needs European Community would bring a better future for all the member states socially, politically and economically. Until the late 1970's European Community dealt with enlargement issues and they create laws that would create one of a kind supranational authority. In 1974 at the Paris Summit of the European Council Leo Tindeman the President of Belgium, was asked to prepare a report for the future of the EC. Two years later President Tindeman presented the report that shaped the future of Europe and the future of citizenship in European Community. Tindeman's report was the first document that unofficially introduced the 'Community Citizenship'. Tindeman's report strongly defended that European Community must act not just for the economic needs; communities must act on the social needs and they must create common passport systems for the Single Market. President Tindeman strongly underline the fact that all the nations must come together and dismiss the historical differences. It was clear that President Tindeman was giving the signs that citizens of all member states must be seen equal and they all must be gathered under a common framework such as 'Community Citizenship'.

Many politicians like Tindeman was aware of the facts that in order to keep this supranational entity, they must incorporate more than just the economic facts, social needs like Community citizenship must have take place in the treaties to unite Europe. In order to gather the people of Europe, they needed a common identity such as 'Community Citizenship'. So as to create an idea such as European Union citizenship the first condition was to give suffrage rights to connect people of Europe with the institutions of Europe. In 1979 with an amendment on the treaty direct elections for the European Parliament was held across Europe (Wallace 2000). This was a groundbreaking change in the European history because this gave the first signs of the future 'European Union Citizenship'. The role of the European Parliament on the policy

making was weak but at least there was European Community institutions those are directly elected by the will of the people of Europe.

Until early 1980's European Community continued with enlargement and they neglected the needs of the deepening on the subjects such as citizenship, and immigration. In 1984 Altiero Spinelli's suggestion to the European Parliament change the direction that the European Community' politics was taking. Spinelli's Plan was arguing on the need of the Federal Europe. Mr. Spinelli strongly believed in the 'Federal Europe' and Spinelli explained that, "A federal structure is a necessary condition for the development of free political life" (Webzine of the Young European Federalists 2006). In 1984 after the European Council, "Committee of Europe of the Citizens was established"(University of Pittsburg Archive of European Integration 2007). In 1985 European Community issued the White Paper Plan, which was a tool to make improvements on the four freedoms especially on the free movement of goods and persons. This was important for the European Union citizenship because free movement rights would be the most often exercised right for the citizens in the future. In 1987 the 12 members of the European Community have established The Single European Act Treaty. The SEA Treaty was significant for the European Community history because, before this treaty the community almost lost its ability to make decisions in Europe. There was a great need for the convergence of the national policies in major areas such as trade and social policies. Although there were many key decisions taken at this treaty, only two of them strongly influenced the European Union citizenship concepts future. The first one the key decision is the lightly enforcement of the European Parliaments powers and the second one is the removal off all obstacles in the Single Market especially on the free movement of workers.

2.3 THE NEW HORIZONS WITH THREE MAJOR TREATIES

In 1992 another major treaty was established. The Maastricht Treaty created the new concept called European Union. Due to creation of European Union with Maastricht Treaty, it is also called Treaty on European Union. All the treaties established before

Treaty on European Union aimed to support and to strengthen the economic cooperation among the member states. The Maastricht Treaty aimed to create a 'Political Union'. One may observe that the Treaty on European Union is truly significant than the other treaties, especially because of the article A, which states as " This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen" (European Union Law Eur-Lex 2006). TEU targeted to create a better communication among the citizens of Europe with the new structure. The Maastricht Treaty brought the three-pillar structure. The subjects such as immigration and home affairs positioned in the third pillar, which aims cooperation among member states. The subjects of the third pillar are under the control of the member states. The European Union citizenship was placed on the first pillar with the European Community and the Monetary Union, the location of the citizenship shows the importance of the citizenship in the European Union's new framework.

The Maastricht Treaty is significant for the European Union citizenship because it is the very first time that is officially pronounced and it was taken into the treaty. In part two, Article 8 of the Maastricht Treaty (renumbered article 17) the European Union citizenship has been established. The article of citizenship from the TEU as follows;

> *1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union.*
> *2. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby (European Union Law Eur-Lex 2006).*

Finally the Churchill's dream of creating a United States of Europe seemed closer than before with the European Union Citizenship. Treaty on European Union changed the direction that European Community was following on creation of citizenship. The member states, realized that institutional reforms with a higher competence for the European Union Institutions was needed to improve the living conditions for all the member states. The changes made with the Maastricht Treaty improved many issues in Europe but there were still areas that were crucial for transformation for the future of Europe. In 1997 the Treaty of Amsterdam followed the Treaty on European Union. The Treaty of Amsterdam tried to fill in the blanks, and deal with the left over from the previous treaty. Amsterdam Treaty aimed to create an area of Freedom and Security and

Justice to give European Union Institutions right to intervene on the subjects of Fundamental Rights that secure the citizens well being.

Another important achievement made with Amsterdam Treaty is the modification on the pillar structure. Subjects such as immigration and asylum policies are moved from the third pillar to the first pillar, which can be called the community pillar. This move was significant because the subjects on the third pillar are under the member states competencies and require unanimity decision-making model. When immigration was under the third pillar the European Institutions absolutely had no right to intervene. The Union institutions can only intervene to the subjects if the member states requested them to take part. It is very clear that the member states usually place the subjects that they do not want the European Institutions to have any sovereignty into the third pillar. The transfer of the immigration subject from the third pillar to the first pillar that European Union has competencies is a remarkable anticipation to create a common immigration policy in the future.

When the new millennium was approaching European Union and the member states were aware of the facts that European Union was no longer under the threat of the Cold War. After the fall of the Berlin Wall and the collapse of the Soviet Union in 1991, the Eastern Europe was turning its eye to the well-established European Union. The states that have similar roots to the Western European nations were free from the communism. Most importantly 'the iron curtain' that once divided Europe was no longer existed. In 2000 European Union decided once again for enlargement and they created the Niece Treaty in 2001. The role of Niece Treaty was to deal with the left over of Amsterdam Treaty and to prepare the European Union for one of its largest enlargements, which is called Euro 10 in 2003. Most of the Euro 10 countries were ex communist states, which were trying to establish better economies and social standards for their countries. The Niece Treaty is mostly called as a temporary treaty that is created before the European Constitution to fill in the blanks that needs temporary solutions. In 2003 the long waited European Constitution Treaty was rejected.

The European Constitution would bring the federation like framework to European Union. Due to the rejection of the Constitution, the Treaty of Niece is still active. The failed Constitution was a hope to give European Union a legal personality because currently European Union does not have a legal personality but the member states and the European Community have legal personalities. There were many reasons that the Constitution was rejected and one of the reasons was the strong protection on the Union citizenship and Human Rights which could enlarge the European Court of Justices' competence on the citizenship and the long-term residences that have been giving a fear to the member states could be given citizenship.

3. THE EUROPEAN CITIZENSHIP

3.1 WHAT IS CITIZENSHIP?

Since the 1990's citizenship is one the key debate issues. During the French Revolution the idea of citizen has risen. One may identify citizenship as "The country in which a person is born (and has not renounced or lost citizenship) or naturalized and to which that person owes allegiance and by which he or she is entitled to be protected" (Immigration online 2007). Another approach to define the subject could be "Citizenship is membership in a political community (originally a city or town but now usually a country) and carries with it rights to political participation; a person having such membership is a citizen" (Wikipedia Encyclopedia 2007). There are many other ways to describe the concept but as a summary citizenship is the tie among the people and the state. The citizenship concept goes back to ancient Greece. The famous philosopher Aristotle defines citizenship as "the politician and lawgiver is wholly occupied with the city-state…"(Stanford Encylopedia of Philosophy 2002). According to Aristotle only man who has "right to participate in judicial functions and in office" (University of Chicago 1996) or man with wealth can be called citizen. The other groups of society such as woman, slaves and children could not be taken as citizen. Aristotle argues that the citizen may defend their country and this is a privilege. Aristotle's citizenship concept was directly linked to the social status of the person. According to him only elite's or the riches could be citizen. According to Aristotle ""resident aliens and slaves [who] share the domicile of citizens"" (University of Chicago 1996) but surely they do not receive the rights and responsibilities of citizenship. In historical citizenship concept the citizens were active meaning that they needed to defend their county as a payoff to receive the honorary degree as citizen.

3.2 THE HISTORY OF CITIZENSHIP

Through out the history, the definition of citizen did not actually change from the Aristotle's definition. Only rich and the elites could be given the rights of citizenship until the French Revolution. Until the French Revolution, historical definition of the citizenship citizens got economic rights and they received political duties and pay taxes in return. Before the Revolution the people who were not called citizen, labeled as the others in the society that group included the slaves, below the standard socio economic class etc. After the French Revolution in 1789 with the "Declaration of Rights of Man and Citizen" the concept of citizenship has changed. The first line of this declaration goes as follows "Men are born and remain free and equal in rights. Social distinctions may be founded only upon the general good" (Yale Law School Avalon Project). Declaration was a remarkable change in the Western Europe at the time, because the society was strictly divided into different social groups. The sixth item of the Declaration of Rights of Man and Citizen states as;

> *Law is the expression of the general will. Every citizen has a right to participate personally, or through his representative, in its foundation. It must be the same for all, whether it protects or punishes. All citizens, being equal in the eyes of the law, are equally eligible to all dignities and to all public positions and occupations, according to their abilities, and without distinction except that of their virtues and talents.(Yale Law School Avalon Project 2007).*

The declaration was unacceptable at the time because only people who hold political position, royals and the wealthy man could exercise the states laws. Basically the laws were made and exercised by the upper class until the Declaration of Rights of Man and Citizen. After the French Revolution, citizens gained the right to be protected by the state, protection of persons, property and protection of liberty. This citizenship was a passive citizenship meaning that they did not have to act for the state they may only receive rights and protection from the state. French revolution caused the modern citizenship concept to evolve with the nation states.

3.3 DETERMINATION OF CITIZENSHIP

The citizenship determination changed from economic class to ethnic classification according to skin color or in heritage or religion. Modern citizenship can be received via many different ways such as by birthplace (jus soli), blood relations (jus sanguinis), marital condition or the time frame of legal residence. In the historical context after the economic classification was removed, "jus soli" has been one of the main criteria's to determine the state citizenship. Until the twentieth century jus sanguni has been a debate issue to bequest citizenship for some states. Due to all these different criteria's many states have different rules and applications to grant citizenship. Jus soli and jus sanguinis no longer simple concepts to determine citizenship they tend to include diversities with the globalization. In our modern day citizenship gives certain rights and duties to the receivers. The citizens receive protection from the state through basic rights. Citizens have right to freely reside in any part of the state. The citizens receive the right of suffrage and right to run for government institutions. The citizens of modern states also receive welfare protection right to receive welfare protection. The citizens also have duties to fulfill such as to obey the laws of the state or for some states to 'hold gun'.

3.4 DIFFERENCES BETWEEN NATIONALITY AND CITIZENSHIP

In our modern age there is an important difference between the nationality and citizenship that one must clearly determine. Citizenship is the legal relationship between state and its habitants that provides basic rights and protection. The state laws determine the framework of citizenship. Citizenship has political aspects such as suffrage right and to run as a candidate for any political office. Nationality is the relationship between the state heritage and the inhabitant. The international laws include the nationality. Nationality has cultural elements such as language, religion and other ethnic elements. The main difference between nationality and citizenship is the historical, cultural attachment to the state. Citizens of state may come from different nationalities and the state framework will hold the differences under the states legal framework equally.

Especially in Europe, there are many different nationalities live in different lands than their national heritage belongs to, and these groups are citizens of different countries. For example there are Turkish nationality groups who are German citizens living in Germany or the Algerian nationals who received French citizenship living in France. Another significant group is the German nationals living in former Soviet Union. After the collapse of communism, the German nationals living in Russia returned to their motherland Germany and they received German citizenship.

3.5 HISTORY OF EUROPEAN UNION CITIZENSHIP

Since the creation of European Community and European Union, the idea of creating a 'Federalist model' has been the question lingering among the political scientists. European Union is one of a kind body that is not a state and that is not a federation. One of the creator fathers of European Community, 'Churchill', used the phrase "United States of Europe", but until 1990's the EU did not even become anything similar to federation. One may even call the European Economic Communities as the first unofficial creation of the European Union citizenship because the treaty gives certain rights to the Member State citizens and their families such as free movement rights. The Belgian Prime Minister Leo Tindeman made officially the first initiatives of the 'European Identity' and the 'European Community Citizenship' but unfortunately it was neglected. President Tindeman's report underlined the need for European citizenship that would give special rights to the community citizens that would create a bond between the community and the citizens. The key principles of the European identity were the key beliefs of the European Community such as respect to democracy, protection of peace. European identity idea also aimed to embrace the member states' cultures and combine it with the key beliefs of the community.

In 1979 the first direct elections for the European Parliament took place. This direct election was an astonishing step towards the citizenship of Europe because the Member State nationals finally received the suffrage right from the supranational authority. One must note that suffrage right is one of the essential elements of the twentieth century

citizenship framework. In 1981 the common passport system was created. The common passport system is very important in the process of European Union citizenship because, it unifies all the Member State citizens to one identity regardless of their state ties within the community. When the citizens of all member states connected with a common identification it creates a special bound among them. In addition the abolition of borders among the common passport holders let the outsiders to recognize the European Community as a (state) unified group rather than different individual states. It is important to note that European Institutions do not aim to use the European Union citizenship as a replacement of the national citizenship. European Union citizenship is just a complimentary of the Member State citizenship. The symbols of European Community such as flag, anthem, and the founding ideas such as democracy and protection of peace and security are also used to create this complimentary identity, which can be labeled as 'European Union citizenship'.

3.6 THE ROLE OF EUROPEAN INSTITUTIONS ON CITIZENSHIP

The Free movement of workers shaped somewhat the physical perspective of the European Union citizenship. European Court of Justice and the Council of Ministers played key roles on the removing the obstacles that citizen of member states face on the Free Movement of the Workers in the Single Market. The European Institutions faced challenges on the free movement of workers because they believed that the long-term residences in the community should be granted the same rights as the European Citizens and they should receive a position similar to community citizenship. The member states' domestic politics shaped the future citizenship and Politicians feared to give any citizenship rights other than the current citizens of the member states. Even European Union Institutions cannot create a common position on European Union citizenship. European Court of Justice and the Commission follows a supranationalistic view when the Council of Ministers follows more of member states views.

One may examine this behavioral difference when the Commission wanted to grant right to vote to the European Citizens in local election in their residing state regardless

of their nationalities. For example A Frenchman who resides in England should be able to vote in British local elections because he or she is a European Union citizen and the politics also affects him or her due to free movement right that is given by the European Community. The Council strongly reacted against this right because this will almost mean that the European Union citizenship will override the national citizenship. Another example that shows the separation among the institutions took place in 1982. European parliament wanted the Member State citizens to be able to stand as a candidate in local elections regardless of their nationality but in respect to their residency. The Commission strongly refused this idea because they did not want to face rejection from the Council on the subject once again. During the mid 80's the fight between the council and the commission had increased, its tendency on the issue of European Union citizenship and immigration. Commission once again prepared proposals for the Member State nationals to participate on the local elections where they reside regardless of their nationality. The member states managed to limit the suffrage right but still the EU citizens get right to take part in the local politics.

The Commission proposals even intended to give the member states to decide on the time frame of residency to receive the electoral rights. The Council strongly disagreed on this. The major conflict aroused among the Council of Ministers and the Commission on the migrant worker rights (long term third country residences). The Commission proposed improvements on the social circumstances of the migrant workers and the wanted to grant foreigners the free movement of workers right. The commission strongly expressed their opinion as follows "minority communities are today a permanent part of western life"(Kostakopoulou 2001). The Council strongly disagreed with the Commission and they took the issue to European Court of Justice. The reason that the Council brought the subject and the Commission to the ECJ to complain that the Commission is preparing proposals on matter that is not under European Community competence. The joint cases 281/85, 284 and 285/85 took place and the court decision as follows; "Declares void commission decision 85/381/EEC of 8 July 1985 setting up a prior communication and consultation procedure on migration policies in relation to non-member countries in so far as the commission lacked competence" (Curia 1997). The European Court of Justice concluded that on the

grounds of the article 137 of European Community Treaty the Commission has no right to act on the matter of immigration even on grounds of citizenship regulations. According to the European Court of Justice with this proposal mentioned above the Commission exceeded its powers and the proposal was rejected. When the Commission and Parliament were trying to improve the conditions and to grant free movement of workers rights, they were not just trying to improve the immigration conditions they were trying to create basis for the future European Union citizenship in general.

Single European Act improved the conditions for the European Parliament with the co-operation procedure for decision-making procedures. Before the Single European Act Treaty the Parliament only had an advisory role. After the Single European Act the European Parliament once again tried to give rights for work and for suffrage to the immigrants. The Council of Ministers absolutely rejected to grant any rights to the TCN's. The member states rejection on the idea was due to reluctance to give any competence to European Union Institutions on the immigration matters. The member states cooperation activities focused on strengthening the frontier checks and international crimes (such as drug trafficking, exchange information on illegal aliens etc) with the new reform era of the Single European Act Treaty. When the European Union Institutions other than the Council of Ministers was trying to strengthen the rights of the immigrants in 1988 the number of countries who require visa to enter European Union zone was extended from fifty to fifty-five countries under the list of undesirable aliens created by TREVI. TREVI, which is the foundation of Europol, is a development for domestic security cooperation between the member states from 1975 to 1993. Once again completing the European Union citizenship was just a vision and with the intense discussions on immigration it was almost a dream to have citizenship on the treaties even though the base was ready for it with the free movement rights, the suffrage rights and the common passport systems.

3.7 CITIZENSHIP OF THE UNION FROM THE TREATY AND THE RIGHTS GIVEN

In 1992 the long expected improvements on the European Union citizenship has arrived. In the history of the European Community and the European Union citizenship was finally officially took place at treaty with Maastricht Treaty, which is also called Treaty on European Union. This Treaty gathered the competency areas and the subjects that interest Europe under three-pillar structure. The European Union citizenship was placed on the first pillar, which is called the community pillar, alongside the treaties that established the European Community. The first pillar competencies are in the hands of the European Union Institutions. The immigration and asylum matters were placed on the third pillar, which is the intergovernmental structure. European Union citizenship took place in the part two of the Treaty of European Union. The European Union citizenship is just a perspective of "People's Europe" other than creating a new system because it is only 'complimentary' to the member states citizenships. Article 8 (EC Treaty article 17) clearly states that European Union citizenship is just complimentary to Member State citizenship. The Treaty on European Union explains the new concept as follows;

> *CITIZENSHIP OF THE UNION*
> *Article 8*
> *1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union is the significant force in the Union Citizenship.*
>
> *2. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby(European Union Law Eur-Lex 2006).*

These lines above were chosen very watchfully that makes sure the member states, member state citizenship is the significant force in order to gain European Union Citizenship. The second part of the Article 8 ensures the citizens of European Union that the European Union institutions will be guaranteeing and protecting their citizenship rights as follows;

> *Article 8a*
> *1. 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 and by the measures adopted to give it effect.*
>
> *2. The Council may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1; save as otherwise provided in this Treaty, the Council shall act unanimously on a proposal from the Commission and after*

obtaining the assent of the European Parliament (European Union Law Eur-Lex 2006).

These lines above confirm that the most important right given to European Union Citizens, The free movement right which is as important as the citizenship itself. These lines also are a way to gather people expressing that in the internal borders of the European Union they are all equal and they have right to choose where they desire to reside and work regardless of their nationality which the below lines explaines as;

> *"Article 8b*
> *1. Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State, in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements to be adopted before 31 December 1994 by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.*
>
> *2. Without prejudice to Article 138(3) and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements to be adopted before 31 December 1993 by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State" (European Union Law Eur-Lex 2006).*

Article 8 b is significant in a fashion that the crucial rights to create citizenship historically is the suffrage right. These lines from the treaty demonstrates that the European Union wants its citizens to take part in the decision making of the EU and the member states with right to vote and right to stand as a candidate for the elections. An additional key element that demonstrates the European Union citizenship is article 8 c (renumbered article 20) EC which follows as;

> *Article 8c*
> *Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State. Before 31 December 1993, member states shall establish the necessary rules among themselves and start the international negotiations required to secure this protection (European Union Law Eur-Lex 2006).*

An additional key element that demonstrates the European Union citizenship is article 8 c (renumbered article 20) EC. Article 8 c is one of the important symbols that all European citizens are equal and European Union will protect them where origin member states cannot reach. This is an important acknowledgement of European Union because they want the citizens to trust the European Unions' protection. This article

defines the protection of European Union citizens in the third countries. If there is no representation of one of the member states that the person hold the citizenship from in the third country then the EU citizen may go to any other EU Member State's embassy or any other representation for protection. This is a significant way to show European citizens unification under the European Union framework. Still the issue on emergency travel documentation for European Union citizens continues to be problematic and the issue still stays unresolved due to communication deficit among the member states.

Another important right that the Treaty on European Union brought is the right to petition for the citizens of European Union. The long-term legal European Union residences that hold third country citizenship and the European Union citizens have right to petition to European Parliament and especially to the Ombudsman. The article 8 (d), article 194 and 195 describes this right as follows;

> *Article 8d*
> *Every citizen of the Union shall have the right to petition the European Parliament in accordance with Article 138d.*
> *Every citizen of the Union may apply to the Ombudsman established in accordance with Article 138e(European Union Law Eur-Lex 2006).*

The rights given in article 194 shows that European Union wants its citizens and the TCNs to audit the system and be more involved in the process explains as;

> *Article 194*
> *Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have the right to address, individually or in association with other citizens or persons, a petition to the European Parliament on a matter, which comes within the Community's fields of activity and which affects him, her or it directly.*
>
> *Article 195*
> *1. The European Parliament shall appoint an Ombudsman empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role. In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds, either on his own initiative or on the basis of complaints submitted to him direct or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings. Where the Ombudsman establishes an instance of maladministration, he shall refer the matter to the institution concerned, which shall have a period of three months in which to inform him of its views. The Ombudsman shall then for ward a report t to the European Parliament and the institution concerned. The person lodging the complaint shall be informed of the outcome of such inquiries. The Ombudsman shall submit an annual report t to the European Parliament on the outcome of his inquiries.*

2. The Ombudsman shall be appointed after each election of the European Parliament for the duration of its term of office. The Ombudsman shall be eligible for reappointment. The Ombudsman may be dismissed by the Court t of Justice at the request of the European Parliament if he no longer fulfils the conditions required for the performance of his duties or if he is guilty of serious misconduct.
3. The Ombudsman shall be completely independent in the performance of his duties. In the performance of those duties he shall neither seek nor take instructions from any body. The Ombudsman may not, during his term of office, engage in any other occupation, whether gainful or not.
4. The European Parliament shall, after seeking an opinion from the Commission and with the approval of the Council acting by a qualified majority, lay down the regulations and general conditions governing the performance of the Ombudsman's duties (European Union Law Eur-Lex 2006).

The Treaty on European Union clearly defines the ways and how to petition because they are trying to create a transparency among the Union and the citizens. Even though the three major articles in the European Community Treaty defines this rights and treaty put the rights under the legal frame work only subjects that are under the European Union's framework can be taken for petition. The Commission and the European Parliament are the attained powers to decide whether the petition subjects fall under European Union competence. This raises the question whether sometimes the two major institutions violate the European Community Law and act beyond their jurisdiction on the matters of petition.

The subjects such as immigration, asylum policy and visa systems, tried to be transferred to the first pillar by the European Institutions. After the SEA, Amsterdam Treaty transferred only some of the third pillar subjects to the first pillar. The Commission strongly expressed that due to unanimity decision making model once again the role of the Commission and the European Parliament will be ignored on these subjects, which openly influences the 'Citizens of Europe'. The Parliament and the Commission deeply show content to their disagreement on the subjects. European Parliament once again called the member states to change the free movement workers rights and add the long term third country residences to the group that may exercise the free movement right. At the end of the arguments, free movement right was only given to the member state nationals.

3.7.1 Kaur Case

In 1999 an important case relating the Great Britain vs. Kaur, on the subject of citizenship was taken to European Court of Justice. Ms Kaur was born in Kenya, in an Asian origin family. She became a citizen of the United Kingdom colonies in 1981 under the terms of "British Nationality Act" made in 1948. There was an amendment to the British nationality act in 1981. Due to the amended law she was not entitle to enter or reside within the territory of United Kingdom. Ms. Kaur claimed the as a United Kingdom over the seas territory citizen she has right to receive European Union citizenship and she has right to exercise the free movement rights that are given to all member state citizens. The court decision is as follows on the matter; "The Treaty concerning the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the European Community ('the Treaty on the Accession of the United Kingdom) was signed on 22 January 1972 and came into force on 1 January 1973. The 1972 Declaration, which was annexed to the Final Act of that Treaty, is worded as follows;

> *'As to the United Kingdom of Great Britain and Northern Ireland, the terms nationals, nationals of member states or nationals of member states and overseas countries and territories, wherever used in the Treaty establishing the European Economic Community, the Treaty establishing the European Atomic Energy Community or the Treaty establishing the European Coal and Steel Community or in any of the Community acts deriving from those Treaties, are to be understood to refer to:*
> *(a) Persons who are citizens of the United Kingdom and Colonies or British subjects not possessing that citizenship or the citizenship of any other Commonwealth country or territory, who, in either case, have the right of abode in the United Kingdom, and are therefore exempt from United Kingdom immigration control;*
> *(b) Persons who are citizens of the United Kingdom and Colonies by birth or by registration or naturalization in Gibraltar, or whose father was so born, registered or naturalized.*
>
> *In 1982, in view of the entry into force of the British Nationality Act 1981, the United Kingdom Government lodged with the Italian Government, as depositary of the Treaties, the 1982 Declaration, which replaced the 1972 Declaration with effect from 1 January 1983. The 1982 Declaration provides:*
> *'As to the United Kingdom of Great Britain and Northern Ireland, the terms nationals, nationals of member states or nationals of member states and overseas countries and territories, wherever used in the Treaty establishing the European Economic Community, the Treaty establishing the European Atomic Energy Community or the Treaty establishing the European Coal and Steel Community or in any of the Community acts deriving from those Treaties, are to be understood to refer to:*
> *(a) British citizens;*

(b) Persons who are British subjects by virtue of Part IV of the British Nationality Act 1981 and who have the right of abode in the United Kingdom and are therefore exempt from United Kingdom immigration control;
(c) British Dependent Territories citizens who acquire their citizenship from a connection with Gibraltar (Curia 1997).

These lines above from the British Nationality Act 1981 are the key solutions to this case. United Kingdom does not grant citizenship to the citizens of old colonies like Mrs. Kaur. If one does not have member state citizenship then he or she cannot receive European Union citizenship. As the ECJ founding state the European Union does not have any competence on determining the member state citizenship. The national law of the member states determines who may or may not receive the member state citizenship as;

The Conference of the Representatives of the Governments of the member states adopting the Treaty on European Union adopted Declaration No 2, which is annexed to the Final Act of the Treaty on European Union and is worded as follows: 'The Conference declares that, wherever in the Treaty establishing the European Community reference is made to nationals of the member states, the question whether an individual possesses the nationality of a Member State shall be settled solely by reference to the national law of the Member State concerned. Member states may declare, for information, which are to be considered their nationals for Community purposes by way of a declaration lodged with the Presidency and may amend any such declaration when necessary.
National law
Under the British Nationality Act 1948, the concept of a British subject covered, in addition to citizens of the independent Commonwealth countries, 'Citizens of the United Kingdom and Colonies and 'British subjects without citizenship, the latter being persons liable to become citizens of an emerging independent Commonwealth country on the coming into force of that country's citizenship law. If that did not occur, such persons would then acquire citizenship of the United Kingdom and Colonies.

The Immigration Act 1971 introduced into British law, with effect from 1 January 1973, the concepts of 'partiality and 'right of abode. Only persons with partiality and a right of abode were exempted from immigration control when entering the United Kingdom.
The British Nationality Act 1981 abolished the status of citizenship of the United Kingdom and Colonies and divided those who held that status into three categories:
(a) British Citizens, including citizens of the United Kingdom and Colonies with the right of abode in the United Kingdom;
(b) 'British Dependent Territories Citizens, comprising citizens of the United Kingdom and Colonies who did not have the right of abode but satisfied certain conditions concerning connection with a British Dependent Territory deemed to confer on them immigration rights to that territory;
(c) 'British Overseas Citizens, comprising all citizens of the United Kingdom and Colonies who did not become British Citizens or British Dependent Territories Citizens. Having no connection with any British Dependent Territory, they may be refused any immigration rights (Curia 1997).

As the 'British Citizen Act' explains Mrs. Kaur does not have right to hold British Citizenship, that she cannot receive free movement rights. The Treaty clearly states that only Member State national may use the rights given such as suffrage and free

movement rights. The European Court of Justice concluded that the member states' national laws determine the citizenship of the Member State and European Union citizenship. All the rights that comes with the Union citizenship can not replace the Member State citizenship it compliments therefore Ms Kaur can not be given Union citizenship due to the fact that she is not a candidate to United Kingdom citizenship due to amended British nationality Act. The European Court of Justices decision is clearly based on the following lines of the EC treaty article 17 as "Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship" (European Union Law Eur-Lex 2006)

The main question on the complimentary citizenship rises due to different rules in their citizenship procedures. One may show that the Netherlands and the United Kingdom example. According to the nationality law in Netherlands the citizens of Aruba, which is an island that historically belongs to Netherlands, may exercise their European Union citizenship. In the United Kingdom for example the citizens of old colonies are not counted as the citizens of United Kingdom therefore they cannot use European Union citizenship rights. Even these two examples about countries shows that as long as the member states determine the citizenship there is always an unjust treatment to determine the European Union citizenship.

3.7.2 Case on Eman and Sevinger and Treaty Articles Regarding the Overseas Territories

The Eman and Sevinger case analyzes the different citizenship application and rights for the Overseas Territories. European Union's member states have historical attachments to other parts of the world, which can be called, as their historical colonies. Aruba and Netherlands Antilles are called overseas territories of the Netherlands. It is important to note that the citizens of the two regions mentioned above are qualified as Dutch citizens and they automatically receive European Union citizenship. The major difference on the Dutch citizenship in the different regions is that only the citizens of Netherlands living

in the mainland of Netherlands may vote for Netherlands Parliament. The Dutch citizens who are living in the overseas territories may vote for their regional parliaments. The most important of all only the Dutch citizens who may vote for the Netherlands' Parliament may vote for European Parliament only. The overseas territory citizens may vote for European Parliament in any other member state as long as they reside because these citizens are fully qualified as European Union citizens. Unfortunately they were not allowed to vote in Netherlands or in their homeland for EP. In order to analyze the details of the case, one must carefully identify the case details listed below;

International law
Article 3 of Protocol No 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter 'Protocol No 1 to the Convention'), provides:
'The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature (Curia 1997).

The lines above clearly states the requirements of the fair elections in the international law that European Union clearly respects. Article 17 EC strongly states that every citizen of a member state have a right to exercise citizenship rights. On the other hand, article 19 EC marks that citizens of European Union have right to vote in their residing country regardless of any restrictions may be imposed on them. Community law explains the matter as follows;

Under Article 17 EC:
'1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship.
2. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.'
Article 19(2) EC provides:
'Without prejudice to Article 190(4) and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. …'
Pursuant to that provision, the Council of the European Union adopted Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals (OJ 1993 L 329, p. 34). The first paragraph of Article 3 of that directive provides:
'Any person who, on the reference date:
(a) Is a citizen of the Union within the meaning of the second subparagraph of Article (1) of the Treaty?
(b) is not a national of the Member State of residence, but satisfies the same conditions in respect of the right to vote and to stand as a candidate as that State imposes by law on its own nationals shall have the right to vote and to stand as a

candidate in elections to the European Parliament in the Member State of residence unless deprived of those rights pursuant to Articles 6 and 7.'
Article 5 of Directive 93/109 provides:
'If, in order to vote or to stand as candidates, nationals of the Member State of residence must have spent a certain minimum period as a resident in the electoral territory of that State, Community voters and Community nationals entitled to stand as candidates shall be deemed to have fulfilled that condition where they have resided for an equivalent period in other member states. This provision shall apply without prejudice to any specific conditions as to length of residence in a given constituency or locality.'
The first paragraph of Article 189 EC provides:
'The European Parliament, which shall consist of representatives of the peoples of the States brought together in the Community, shall exercise the powers conferred upon it by this Treaty.'
Article 190 EC reads as follows:
'1.The representatives in the European Parliament of the peoples of the States brought together in the Community shall be elected by direct universal suffrage.
4. The European Parliament shall draw up a proposal for elections by direct universal suffrage in accordance with a uniform procedure in all member states or in accordance with principles common to all member states.
The Council shall, acting unanimously after obtaining the assent of the European Parliament, which shall act by a majority of its component members, lay down the appropriate provisions, which it shall recommend to member states for adoption in accordance with their respective constitutional requirements (Curia 1997)

The article 189 and 190 EC must be analyzed carefully that in order to help the citizens of Union to exercise their granted rights the EP must act strong to protect the promises. One may examine this as follows;

Article 8 of the Act concerning the election of the representatives of the European Parliament by direct universal suffrage annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976 (OJ 1976 L 278, p. 1), as amended by Council Decision 2002/772/EC, Euratom of 25 June 2002 and 23 September 2002 (OJ 2002 L 283, p. 1, 'the 1976 Act'), provides:
'Subject to the provisions of this Act, the electoral procedure shall be governed in each Member State by its national provisions.
These national provisions, which may if appropriate take account of the specific situation in the member states, shall not affect the essentially proportional nature of the voting system (Curia 1997).

Once again the decision strictly notes that the member states should not ignore the rights that the European Union gives and they must make the necessary changes. It is also important to note that article 299 EC clearly notes that the treaty binds Aruba and Netherlands. The article below states as;

The European Parliament shall verify the credentials of members of the European Parliament. For this purpose it shall take note of the results declared officially by the member states and shall rule on any disputes which may arise out of the provisions of this Act other than those arising out of the national provisions to which the Act refers.'
Article 299 EC provides:
'2.The provisions of this Treaty shall apply to the French overseas departments, the Azores, Madeira and the Canary Islands.
3. The special arrangements for association set out in Part Four of this Treaty shall apply to the overseas countries and territories listed in Annex II to this Treaty.

Aruba and the Netherlands Antilles are listed in Annex II to the EC Treaty headed 'Overseas Counties and Territories to which the provisions of Part Four of the Treaty apply'.
National law
Article B1 of the Netherlands Electoral Law (Nederlandse Kieswet) provides in relation to the election of members of the Lower House of the Netherlands Parliament (Tweede Kamer der Staten-Generaal):
'The members of the Tweede Kamer der Staten-Generaal shall be elected by persons who are Netherlands nationals on the date on which candidates are nominated and have attained the age of 18 on the date of the election, with the exception of those who, on the date on which candidates are nominated, are actually resident in the Netherlands Antilles or Aruba.
That exception shall not apply to:
(a)Netherlands nationals who have been resident for at least 10 years in the Netherlands;
(b)Netherlands nationals who work in the Netherlands public service in the Netherlands Antilles or Aruba, and their spouses, registered partners or cohabitants and children, provided that they live together with them.'
With regard to elections to the European Parliament, Article Y3 of that law provides: 'The following shall be entitled to vote:
(a)those who are not Netherlands nationals and are who are entitled to vote in elections of members of the Tweede Kamer der Staten-Generaal;
(b)those who are not Netherlands nationals and are nationals of other member states of the European Union, provided that they:
1 are actually resident in the Netherlands on the date on which candidates are nominated,
2 have attained the age of 18 on the date of the election, and
3 have not been deprived of their right to vote in the Netherlands or in the Member State of which they are nationals (Curia 1997).

The national law of the Netherlands forbids the citizens of Aruba who are also Dutch citizen to vote for EP. National law may forbid the over sea territory citizens to vote for mainland Dutch Parliament but it cannot stop them to exercise their right given by the EC. The court states on the matter as;

The questions referred for a preliminary ruling
In the proceedings before the referring court, the appellants in the main proceedings challenge the refusal, on the ground that they are resident in Aruba, to enroll them on the register of electors for the election of members of the European Parliament. They submit that under Article 17(1) EC they are citizens of the European Union. They maintain that Article 19(2) EC, interpreted in the light of Article 3 of Protocol No 1 to the Convention, recognizes their right to vote at elections to the European Parliament even if they are resident in a territory whose name appears in the list of overseas countries and territories ('OCTs') in Annex II to the Treaty.
The referring court recognizes that, since the election of the members of the European Parliament has already taken place, it is too late for a decision annulling the refusal to enroll the appellants in the main proceedings on the register of electors to enable them to take part in that election. It does not rule out the possibility, however, that compensation ('rechtsherstel') should be awarded them under Community law.
It was in those circumstances that the Raad van State (Council of State) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
'1.Does Part Two of the Treaty apply to persons who possess the nationality of a Member State and who are resident or living in a territory belonging to the OCTs referred to in Article 299(3) EC and having special relations with that Member State?

2.If the answer is no: are the member states free, in the light of the second sentence of Article 17(1) EC, to confer their nationality on persons who are resident or living in the OCTs referred to in Article 299(3) EC?
3.Must Article 19(2) EC, read in conjunction with Articles 189 EC and 190(1) EC, be construed as meaning that – apart from the not unusual exceptions in national legal systems relating to, inter alia, deprivation of voting rights in connection with criminal convictions and legal incapacity – even in the case where the persons concerned are resident or living in the OCTs, the status of citizen of the Union automatically confers the right to vote and to stand as a candidate in elections to the European Parliament?
4.Do Articles 17 EC and 19(2) EC, read together and considered in the light of Article 3 of [Protocol No 1 to the Convention], as interpreted by the European Court of Human Rights, preclude persons who are not citizens of the Union from having the right to vote and to stand as candidates in elections to the European Parliament?
5.Does Community law impose requirements as to the nature of the legal redress (rechtsherstel) to be provided in the case where the national courts – on the basis of, inter alia, the answers given by the Court of Justice of the European Community to the above questions – conclude that persons resident or living in the Netherlands Antilles and Aruba and having Netherlands nationality were improperly refused registration for the elections of 10 June 2004?'
Procedure before the Court
By separate letter of 13 July 2004 and by letter of 22 February 2005 the Raad van State requested the Court to apply an accelerated procedure to the reference for a preliminary ruling, under the first paragraph of Article 104a of the Rules of Procedure. By orders of the President of the Court of 23 August 2004 and 18 March 2005, those requests were rejected.
The questions referred for a preliminary ruling
The first question
By its first question, the Raad van State asks whether Part Two of the Treaty, relating to citizenship of the Union, applies to persons who possess the nationality of a Member State and who are resident or living in a territory which is one of the OCTs referred to in Article 299(3) EC.
Observations submitted to the Court
The parties to the main proceedings, like the Government of the United Kingdom and the Commission of the European Community, submit that Part Two of the Treaty applies to persons who possess the nationality of a Member State and who are resident or living in a territory which is one of the OCTs. They point out that Article 17(2) EC imposes no condition, for being a citizen of the Union and entitled to the rights conferred by the Treaty, other than the possession of the nationality of a Member State. Therefore, it is of no importance that a national of a Member State resides in a non-member country or an OCT.

The Netherlands Government submits as a preliminary matter that, under the Statuut van het Koninkrijk der Nederlanden (Statute of the Kingdom of the Netherlands) of 1954 ('the Statuut'), the Kingdom of the Netherlands is composed of three countries, namely the Netherlands, the Netherlands Antilles and Aruba. Article 41 of the Statuut provides that those three countries 'shall manage their own matters independently'. Thus it is that the Netherlands has its own Constitution and the Netherlands Antilles and Aruba have their own Staatsregeling. Within the Kingdom, except so far as concerns 'Kingdom matters' as specified in the Statuut, each country has its own parliament and administration and enjoys its own legislative powers.

Nationality is a 'Kingdom matter' and its grant is governed by the Royal Law on Netherlands Nationality (Rijkswet op het Nederlanderschap). It is an 'indivisible nationality', that is, with no distinction between inhabitants of Aruba and inhabitants of the Netherlands who are outside the Kingdom.

External relations are also a 'Kingdom matter'. The sole subject of international law is the Kingdom of the Netherlands. In international agreements, the Kingdom can nevertheless conclude treaties for each country separately. That is shown in practice by the mentions of 'the Kingdom of the Netherlands (for the Netherlands)', 'the Kingdom of the Netherlands (for the Netherlands Antilles)' or 'the Kingdom of the Netherlands (for Aruba)'. The result is, in law, that a treaty binds only the country in question. The Netherlands Government states in that regard that the original version of the EEC Treaty was ratified exclusively for the European territory of the Kingdom and for New Guinea, that is, with the statement 'for the Kingdom of the Netherlands (for the Netherlands and New Guinea)'. In addition it produces the Act of Ratification of the Treaty on European Union, approved by the Queen 'for the Kingdom of the Netherlands (for the Netherlands)'.

In the Netherlands Government's submission, the territorial scope of the EC Treaty, in particular Part Two, must be determined in accordance with Article 299 EC but also in the light of the instruments of ratification of the Treaty. Examination of those instruments shows that neither the original Treaty nor the Treaty on European Union was ratified for Aruba. The EC Treaty does not, therefore, apply to the territory of that country, with the exception of the special association arrangements defined in Part Four of the Treaty.

The fact that the Kingdom of the Netherlands has created an indivisible nationality is irrelevant in that regard. A Netherlands national from Aruba or the Netherlands Antilles admittedly possesses Netherlands nationality and is, as a result, a citizen of the Union, but that does not mean that he is also entitled at all times to all the rights linked to citizenship of the Union. So long as the person concerned is in the territory of Aruba or the Netherlands Antilles, the Treaty has no effect on his situation. However, if he were to leave the territory of Aruba or the Netherlands Antilles, he could claim the rights linked to citizenship of the Union.
The Court's reply:
The second sentence of Article 17(1) EC provides that '[e]very person holding the nationality of a Member State shall be a citizen of the Union'. It is irrelevant, in that regard, that the national of a Member State resides or lives in a territory which is one of the OCTs referred to in Article 299(3) EC.
In addition, Article 17(2) EC provides that citizens of the Union are to enjoy the rights conferred by the Treaty and be subject to the duties imposed thereby.
It follows that the reply to the first question must be that persons who possess the nationality of a Member State and who reside or live in a territory which is one of the OCTs referred to in Article 299(3) EC may rely on the rights conferred on citizens of the Union in Part Two of the Treaty.
The second question
This question, which concerns the right of the Members States, from the point of view of the second sentence of Article 17(1) EC, to confer their nationality on persons who are resident or living in the OCTs referred to in Article 299(3) EC, was asked in case the Court concluded that Part Two of the Treaty does not apply to persons who possess the nationality of a Member State and reside or live in a territory which is one of the OCTs.
Given the reply to the first question, it is unnecessary to reply to the second question.
The third question
By its third question, the Raad van State asks whether Article 19(2) EC, read in the light of Articles 189 EC and 190(1) EC, must be interpreted as meaning that a citizen of the Union resident or living in an OCT has the right to vote and to stand as a candidate in elections to the European Parliament (Curia 1997).

It is important to note that the European Court of Justice tries to analyze the national laws on the parliamentary suffrage right for the local elections. In this point one may analyze that the European Union does not have competence on the States National law on the suffrage right but especially on this subject the rights of the European Unions' citizens right which is under the European Union competency is in jeopardy. Another significant problem that rises at this point is that European Union does not have competence on the external relations of the member states as it is stated above in the case. Additional observation from the Court states as follows;

> *The appellants in the main proceedings claim that, even if Aruba is an OCT within the meaning of the Treaty, it is subject to the legislation concerning Kingdom matters, such as defence and external relations, which is influenced by Community law. Internal legislation is also influenced by Community legislation, which justifies the Netherlands nationals from Aruba being able to vote for the election of members of the European Parliament, in accordance with Article 3 of Protocol No 1 to the Convention. They also point out the discrimination of which the Netherlands nationals from Aruba and the Netherlands Antilles are victims. They submit, by way of example, that whether or not an Antillean Netherlands national is entitled to the right to vote depends on whether that national resides in the French or the Netherlands part of the island of Saint-Martin/Sint-Maarten.*
> *The Netherlands Government states that the franchise is not a Kingdom matter but comes within the powers of the country within the meaning of the Statuut. Article 46 of the Statuut provides in that regard that the representative bodies of the countries are elected by the Netherlands nationals residing in the country in question. Paragraph 2 of that article leaves to the countries the power to confer the franchise on Netherlands nationals who are not residents of the country concerned. The Netherlands Electoral Law has exercised that power in a limited way by conferring the right to vote on residents of Aruba and the Netherlands Antilles who have lived for more than 10 years in the Netherlands.*
> *The Netherlands, French and United Kingdom Governments and the Commission submit that Community law does not require the right to vote to be conferred on nationals of the member states who do not reside within the territory to which the Community legislation applies. A national residing in an OCT cannot derive such a right from Article 19(2) EC, which is intended only to guarantee that citizens of the Union resident in another Member State have the right to vote under the same conditions as that Member State's nationals.*
> *The Netherlands and United Kingdom Governments and the Commission point out, in addition, that Articles 189 EC and 190(1) EC, like the general provisions of the Treaty, failing express reference, do not apply to the OCTs (Case C-260/90 Leplat [1992] ECR I643, paragraph 10, and Case C110/97 Netherlands v Council [2001] ECR I8763, paragraph 49). They submit that, in view of the fact that the Treaty does not apply to Aruba and that the association with the OCTs attributes no role to the European Parliament, it cannot be described as a 'legislature', within the meaning of Article 3 of Protocol No 1 to the Convention, in the elections of which residents of the OCTs have the right to participate (see the judgment of the European Court of Human Rights in Matthews v. the United Kingdom [GC], no. 24833/94, ECHR 1999I).*
> *In any event, the Community has exercised only partially the power conferred on it by Article 190(4) EC to adopt a uniform electoral procedure. The 1976 Act contains no provision specifying who are to be entitled to the right to vote, so that the national provisions alone apply. They can impose, in particular, requirements of residence.*

The Netherlands, French and United Kingdom Governments and the Commission submit that Community law does not, however, preclude the member states from granting the right to vote to citizens of the Union who reside in a non-member country or an OCT. The French Government states in that regard that the French legislation relating to the election of members of the European Parliament refers to the French Electoral Code, which makes no distinction between French citizens who reside in metropolitan France and those who do not. Thus, French Citizens who reside in an overseas department or in an OCT participate in elections to the European Parliament under the same conditions as French citizens who reside in metropolitan France.

The Commission observes, however, that the member states must take account of the general principles of Community Law. Under the general principle of equal treatment, a national legislature which decides to extend the franchise for elections to the European Parliament to its nationals who reside in a non-member country must, likewise, confer that right to vote on its nationals who reside in an OCT. That must be the case, a fortiori, because of the particular connection between the OCTs and the Community. In this case, since the Netherlands legislature gives to all Netherlands nationals who are not resident in Aruba or the Netherlands Antilles, wherever they live, the right to participate in those elections, that right must also be granted to Netherlands nationals from Aruba and the Netherlands Antilles. If not, the legislation would include an unjustified discrimination between a Netherlands national who, for example, resides in New York and one who resides in Aruba.

The Court's reply:

It must be stated that the provisions of the Treaty contain no rule defining expressly and precisely who are to be entitled to the right to vote and to stand as a candidate for the European Parliament.

Article 190(4) EC refers to the procedure for those elections. According to that provision, the election of the members of the European Parliament is to take place by direct universal suffrage in accordance with a uniform procedure in all member states or in accordance with principles common to all member states.

Article 1 of the 1976 Act provides that members of the European Parliament are to be elected on the basis of proportional representation and that elections are to be by direct universal suffrage and free and secret. Under Article 8 of the 1976 Act, subject to the provisions of that Act, the electoral procedure is to be governed in each Member State by its national provisions but those provisions, which may if appropriate take account of the specific situation in the member states, must not affect the essentially proportional nature of the voting system.

However, neither Article 190 EC nor the 1976 Act defines expressly and precisely who are to be entitled to the right to vote and to stand as a candidate in elections to the European Parliament.

No clear conclusion can be drawn in that regard from Articles 189 EC and 190 EC, relating to the European Parliament, which state that it is to consist of representatives of the peoples of the member states, since the term 'peoples', which is not defined, may have different meanings in the member states and languages of the Union.

It follows from those considerations that, in the current state of Community law, the definition of the persons entitled to vote and to stand for election falls within the competence of each Member State in compliance with Community law. It must, however, be ascertained whether that law precludes a situation such as that in the main proceedings, in which Netherlands nationals residing in Aruba do not have the right to vote and to stand as a candidate in elections to the European Parliament.

First, it should be noted that the OCTs are subject to the special association arrangements set out in Part Four of the Treaty (Articles 182 EC to 188 EC) with

the result that, failing express reference, the general provisions of the Treaty do not apply to them (see Leplat, paragraph 10, and Netherlands v Council, paragraph 49).
It follows that Articles 189 EC and 190 EC do not apply to those countries and territories and that the member states are not required to hold elections to the European Parliament there.

Article 3 of Protocol No 1 to the Convention does not preclude that interpretation. Since the provisions of the Treaty do not apply to the OCTs, the European Parliament cannot be regarded as their 'legislature' within the meaning of that provision. On the other hand, it is within the bodies created within the framework of the association between the Community and the OCTs that the population of those countries and territories can express itself, through the authorities which represent it.

It cannot be validly objected in that regard that Community law has an influence on the law applicable in Aruba. That influence may flow from the provisions of Community law which are rendered applicable to the OCTs within the framework of the association. As regards the other provisions of that law, as the Advocate General pointed out in paragraph 161 of his Opinion by reference to paragraph 34 of the judgment in Matthews v. the United Kingdom, the indirect impact of measures is not sufficient for them to be regarded as affecting the population in the same way as the measures emanating from a local legislative assembly.

Likewise, no argument can be based on the fact that other member states hold elections to the European Parliament in the OCTs with which they maintain particular relations. In the absence of specific provisions in that regard in the Treaty, it is for the member states to adopt the rules which are best adapted to their constitutional structure.

As regards, second, the right to vote and to stand as a candidate in elections to the European Parliament held in the Netherlands, that is determined by the Netherlands Electoral Law and contains the same requirements as for the election of Members of the Lower House of the Netherlands Parliament, namely that the right to vote and to stand for election is not conferred, in particular, on Netherlands nationals who are actually resident in the Netherlands Antilles or Aruba.
As has been pointed out in paragraphs 41 to 44 above, neither Articles 189 EC and 190 EC nor the 1976 Act state expressly and precisely who are to be entitled to vote and to stand as a candidate in elections to the European Parliament. In addition, the provisions of Part Two of the Treaty relating to citizenship of the Union do not confer on citizens of the Union an unconditional right to vote and to stand as a candidate in elections to the European Parliament.

Article 19(2) EC, to which reference is made in the question referred, is confined to applying the principle of non-discrimination on grounds of nationality to that right to vote and stand for election, by stipulating 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 and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. The first paragraph of Article 3 of Directive 93/109 provides under (b) that any citizen of the Union who is not a national of the Member State of residence, but satisfies the same conditions in respect of the right to vote and stand as a candidate as that State imposes by law on its own nationals, is to have the right to vote and stand as a candidate in the Member State of residence. Likewise, Article 5 of that directive is clearly based on the premise that a Member State may require a period of residence 'in the electoral territory' as a condition of the right to vote. It follows from that examination of Article 19(2) EC and of the provisions adopted for its implementation that that provision of the Treaty does not apply to a citizen of the

Union residing in an OCT who wishes to exercise his right to vote in the Member State of which he is a national.

As the Advocate General pointed out in paragraphs 157 and 158 of his Opinion, Article 3 of Protocol No 1 to the Convention does not preclude the Contracting States from adopting the criterion of residence in order to identify who are to have the right to vote and stand for election. With reference to the right to vote, the European Court of Human Rights held in that regard that the obligation to reside within national territory to be able to vote is a requirement which is not, in itself, unreasonable or arbitrary and which is justified for several reasons (Melnychenkov.Ukraine, no. 17707/02, § 56, ECHR 2004X). It also recognized that stricter requirements can be imposed for eligibility for election than for the right to vote (Melnychenko v.Ukraine, § 57).

Having regard to those matters, the criterion linked to residence does not appear, in principle, to be inappropriate to determine who has the right to vote and to stand as a candidate in elections to the European Parliament.

The appellants in the main proceedings and the Commission claim, however, that the Netherlands Electoral Law infringes the principle of equal treatment in that it confers the right to vote and to stand as a candidate in elections to the European Parliament on all Netherlands nationals resident in a non-member country, whereas such a right is not conferred on Netherlands nationals resident in the Netherlands Antilles or Aruba.

In that regard, it must be observed that the principle of equal treatment or nondiscrimination, which is one of the general principles of Community law, requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (Joined Cases C453/03, C11/04, C12/04 and C194/04 ABNA and Others [2005] ECR I10423, paragraph 63, and Case C344/04 IATA and ELFAA [2006] ECR 1403, paragraph 95).

Here, the relevant comparison is between a Netherlands national resident in the Netherlands Antilles or Aruba and one residing in a non-member country. They have in common that they are Netherlands nationals who do not reside in the Netherlands. Yet there is a difference in treatment between the two, the latter having the right to vote and to stand as a candidate in elections to the European Parliament held in the Netherlands whereas the former has no such right. Such a difference in treatment must be objectively justified.

At the hearing, the Netherlands Government stated that the Netherlands Electoral Law's objective was to enable Netherlands nationals from the Netherlands residing abroad to vote, since those nationals are assumed still to have links with Netherlands society. However, it is also apparent from that Government's explanations at the hearing that a Netherlands national who transfers his residence from Aruba to a non-member country has the right to vote in the same way as a Netherlands national transferring his residence from the Netherlands to a non-member country, while a Netherlands national resident in Aruba does not have that right.

In that regard, the objective pursued by the Netherlands legislature consisting in the conferment of the right to vote and stand for election on Netherlands nationals who have or have had links with the Netherlands falls within that legislature's discretion as regards the holding of the elections. However, the Netherlands Government has not sufficiently demonstrated that the difference in treatment observed between Netherlands nationals resident in a non-member country and those resident in the

Netherlands Antilles or Aruba is objectively justified and does not therefore constitute an infringement of the principle of equal treatment.

Having regard to those matters, the answer to the third question must be that while, in the current state of Community law, there is nothing which precludes the member states from defining, in compliance with Community law, the conditions of the right to vote and to stand as a candidate in elections to the European Parliament by reference to the criterion of residence in the territory in which the elections are held, the principle of equal treatment prevents, however, the criteria chosen from resulting in different treatment of nationals who are in comparable situations, unless that difference in treatment is objectively justified.

The fourth question:
By its fourth question, the Raad van State asks whether Articles 17 EC and 19(2) EC, considered in the light of Article 3 of Protocol No 1 to the Convention, preclude persons who are not citizens of the Union from having the right to vote and to stand as candidates in elections to the European Parliament.

As the Netherlands Government and the Commission point out, it must be held that this question has no connection with the dispute in the main proceedings, since the appellants in the main proceedings are citizens of the Union, and that there is therefore no need to reply to the question.
In any event, the Court has today delivered a judgment in Case C145/04 Spain v United Kingdom [2006] ECR I0000, which gives some details in that regard, if need be.

The fifth question:
By its fifth question, the Raad van State asks whether Community law imposes requirements as to the nature of the legal redress (rechtsherstel) to be provided if the national court – on the basis of, inter alia, the answers given by the Court to the above questions – were to conclude that persons resident or living in the Netherlands Antilles and Aruba and having Netherlands nationality were wrongly refused registration for the election of the members of the European Parliament of 10 June 2004.

In that regard, it is clear from Article 12 of the 1976 Act that the European Parliament rules only on disputes relating to elections which may arise out of the provisions of the 1976 Act other than those arising out of the national provisions to which it refers. Since the determination of who are entitled to the right to vote and to stand as a candidate in elections to the European Parliament comes within the powers of each Member State, it follows that disputes relating to the national provisions defining those entitled to that right are also a matter of national law.

Thus, in the absence of Community legislation in respect of disputes relating to the right to vote and stand for election to the European Parliament, it is for the domestic legal system of each Member State to designate the courts having jurisdiction and to determine the detailed procedural rules governing actions at law intended to safeguard the rights which individuals derive from Community law, provided, first, that those rules are not less favourable than those governing rights which originate in domestic law (principle of equivalence) and, second, that they do not render impossible or excessively difficult in practice the exercise of rights conferred by the Community legal order (principle of effectiveness) (see, in particular, Case C443/03 Leffler [2005] ECR I9611, paragraphs 49 and 50).

As regards possible legal redress (rechtsherstel) for a person who, because of a national provision which is contrary to Community law, is refused registration on the register of electors for the election of Members of the European Parliament, it is likewise in accordance with the requirements and detailed rules of national law that

such redress can take place, it being understood that those conditions and rules must comply with the principles of equivalence and effectiveness (see, to that effect, Case 199/82 San Giorgio [1983] ECR 3595). In order to determine the appropriate redress, the national court may usefully refer to the detailed rules for legal redress laid down in cases of infringement of the national rules in the context of elections to the institutions of the Member State.

In that context, it must also be recalled that the principle of liability on the part of a Member State for damage caused to individuals as a result of breaches of Community law for which it can be held responsible is inherent in the system of the Treaty, and that a Member State is thus required to make reparation for the damage caused where the rule of law infringed is intended to confer rights on individuals, the breach is sufficiently serious and there is a direct causal link between the breach of the obligation resting on the State and the damage sustained by the injured parties (Joined Cases C46/93 and C48/93 Brasserie du Pêcheur and Factortame [1996] ECR I1029, paragraphs 31 and 51, and Case C224/01 Köbler [2003] ECR 110239, paragraphs 30 and 51), although this does not mean that the State cannot incur liability under less strict conditions on the basis of national law (Brasserie du Pêcheur and Factortame, paragraph 66).

Subject to the right of reparation which flows directly from Community law where the conditions referred to in the previous paragraph are satisfied, it is on the basis of rules of national law on liability that the State must make reparation for the consequences of the loss and damage caused, provided that the conditions for reparation of loss and damage laid down by national law are not less favourable than those relating to similar domestic claims and are not so framed as to make it, in practice, impossible or excessively difficult to obtain reparation (Brasserie du Pêcheur and Factortame, paragraph 67).

The reply to the fifth question must therefore be that it is for the national law of each Member State to determine the rules allowing legal redress for a person who, because of a national provision that is contrary to Community law, has not been entered on the electoral register for the election of the members of the European Parliament of 10 June 2004 and has therefore been excluded from participation in those elections. Those remedies, which may include compensation for the loss caused by the infringement of Community law for which the State may be held responsible, must comply with the principles of equivalence and effectiveness.

On those grounds, the Court (Grand Chamber) hereby rules:
1. Persons who possess the nationality of a Member State and who reside or live in a territory which is one of the overseas countries and territories referred to in Article 299(3) EC may rely on the rights conferred on citizens of the Union in Part Two of the EC Treaty.
2. While, in the current state of Community law, there is nothing which precludes the member states from defining, in compliance with Community law, the conditions of the right to vote and to stand as a candidate in elections to the European Parliament by reference to the criterion of residence in the territory in which the elections are held, the principle of equal treatment prevents, however, the criteria chosen from resulting in the different treatment of nationals who are in comparable situations, unless that difference in treatment is objectively justified.
3. It is for the national law of each Member State to determine the rules allowing legal redress (rechtsherstel) for a person who, because of a national provision that is contrary to Community law, has not been entered on the electoral register for the election of the members of the European Parliament of 10 June 2004 and has therefore been excluded from participation in those elections. Those remedies, which may include compensation for the loss caused by the infringement of Community law for which the State may be held responsible, must comply with the principles of equivalence and effectiveness (Curia 1997)

The decision of the court in this case underlines the importance of the equal treatment for all the citizens of European Union. The European Court of Justice supports that all Dutch nationals must qualify to vote for European Parliament elections that the member state should not create any obstacles for its citizens to exercise his or her rights protected by the European Community. Even though the member state argued on the fact that the overseas are external and the matters. The defendants argue that the decision taken in the European Parliament also effects their life.

3.8 FREE MOVEMENT RIGHTS AND CITIZENSHIP

Historically member states decide who their citizens are, who are the immigrants, who they would like to allow in their country and so. The creation of Single Market and Fundamental Rights such as Free Movement the member states competencies on these matters have been lost. In European Union most of the member states fear that The Union Citizenship will cause erosion among the Member State nationals and it will destroy their historical bound. Through out the years European Union strongly worked on removing any obstacles in the Single Market especially on the Free movement of workers rights. Due to fears of member states they tried to set barriers that will limit the number of “alien” European citizens from other member states to come. European Union and especially the European Court of Justice set out very and distinct guidelines for the exceptions for the free movement rights. The exceptions in the European Community Treaty article 39 as follows;

> *1. Freedom of movement for workers shall be secured within the Community.*
> *2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the member states as regards employment, remuneration and other conditions of work and employment.*
> *3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:*
> *(a) To accept offers of employment actually made;*
> *(b) To move freely within the territory of member states for this purpose;*
> *(c) To stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;*
> *(d) To remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in implementing regulations to be drawn up by the Commission.*

4. The provisions of this Article shall not apply to employment in the public service (European Union Law Eur-Lex 2006).

The member states of European Union may only prohibit the Free Movement right on the terms listed above. The application of the treaty is very important otherwise different reasoning's that might be tied to the matters listed above would be an unjust treatment for the citizens of Europe.

3.8.1 Carpenter Case On Free Movement Rights

Only in the cases mentioned above the member states can refuse the other member states' citizens. The member states still constantly refuse the other member states' citizens on the grounds that may be connected to the reasons mentioned in the treaty. One of the most common used rights in European Union citizenship is the Free movement of workers right. The European Court of Justice and the other institutions describe labor as the person who receives payment for the services or goods that he or she provides. In the early years of the European Union the labor market was very weak and the European nations accepted labors from all around the world and from their own internal market. Sixty years after the creation of the European Community the host member states try to find reasons to reject the citizens of Europe who exercised their free movement of workers rights and they even reject the second or the third generation of the workers who migrated there to build up Europe after the war.

One may analyze the European Union membership states rejection with the Carpenter case; Mrs. Carpenter who is coming from an Asian origin and entered the Member State legally married to Mr. Carpenter who is a legal Member State citizen and received the European Union's complimentary citizenship. Mr. Carpenter has two children from his previous marriage. Mr. Carpenter chooses to a job that requires him to exercise his free movement right that is guaranteed by the European Community Treaties. When Mr. Carpenter is away Mrs. Carpenter accepted to stay in Mr. Carpenters' origin country and take care of his two kids. The origin state argues that Mrs. Carpenter may not stay in the origin state of Mr. Carpenter and if he would like to exercise his rights, he must take Mrs. Carpenter with him otherwise she will be deported from the origin country.

The argument rises due to the fact that deportation of Mrs. Carpenter causes Mr. Carpenter to have restrictions which are forbidden by the same treaties that allowed him to exercise free movement rights. In order to analyze this case one must carefully follow the legal findings of the Member State and the European Court of Justice stated below;

Mrs. Carpenter admits that she has no right of her own to reside in any Member State but claims that her rights derive from those enjoyed by Mr. Carpenter to provide services and to travel within the European Union. Her husband is entitled to carry on his business throughout the internal market without being subjected to unlawful restrictions. Her deportation would require Mr. Carpenter to go to live with her in the Philippines or separate the members of the family unit if he remained in the United Kingdom. In both cases Mr. Carpenter's business would be affected. Moreover it cannot be maintained that the restriction on the freedom to provide services, to which Mr. Carpenter would be subjected if his spouse was deported, would be a purely internal matter, since he provides services throughout the internal market.

According to the United Kingdom Government the provisions of the Directive mean, for example, that a UK national wishing to provide services in another Member State is entitled to reside in that State for the period during which the services are provided, and that his or her spouse would be entitled to reside there for the same period. Those provisions do not, however, give any right of residence in the United Kingdom to UK nationals, who have such a right in any event under United Kingdom law, or to their spouses. The Court has confirmed that interpretation in its judgment in Case C-370/90 Singh [1992] ECR I-4265, paragraphs 17 and 18.

The United Kingdom Government points out that, in its judgment in Case C-107/94 Asscher [1996] ECR I-3089, the Court considered the question whether a national of a Member State pursuing an activity as a self-employed person in another Member State, in which he resides, may rely on Article 52 of the EC Treaty (now, after amendment, Article 43 EC) against his Member State of origin, on whose territory he pursues another activity as a self-employed person. The Court held, at paragraph 32 of that judgment, that, although the provisions of the Treaty relating to freedom of establishment cannot be applied to situations which are purely internal to a Member State, the scope of Article 52 of the Treaty nevertheless cannot be interpreted in such a way as to exclude a given Member State's own nationals from the benefit of Community law where by reason of their conduct they are, with regard to their Member State of origin, in a situation which may be regarded as equivalent to that of any other person enjoying the rights and liberties guaranteed by the Treaty.

However, since Mr. Carpenter has not exercised his right to freedom of movement, his spouse cannot rely on Singh or Asscher, cited above. Therefore, a person in Mrs. Carpenter's position is not entitled to derive from Community law any right to enter or remain in the United Kingdom.

According to the Commission, the situation of Mrs. Carpenter must be clearly distinguished from that of a spouse of a national of a Member State who has exercised his right to freedom of movement and has left his Member State of origin and moved to another Member State in order to become established or to work there.

In that case the spouse, whatever his or her nationality, would undoubtedly be covered by Community law, and would be entitled to establish himself or herself, with the Community national in the host Member State, since otherwise that national might be deterred from exercising his or her right to freedom of movement. Also, as

the Court held at paragraph 23 of its judgment in Singh, cited above, when that Community national returns to his or her country of origin, his or her spouse must enjoy at least the same rights of entry and residence as would be granted to him or her under Community law, if his or her spouse chose to enter and reside in another Member State.

On the other hand, the principle expressed in paragraph 23 of the judgment in Singh, cited above, cannot be applied to a situation such as that in issue in the main proceedings, in which a national of a Member State has never sought to establish himself with his spouse in another Member State but merely provides services from his State of origin. The Commission submits that such a situation is rather to be classified as an internal situation within the meaning of the judgment in Joined Cases 35/82 and 36/82 Morson and Jhanjan [1982] ECR 3723, so that Mrs. Carpenter's right to remain in the United Kingdom, if it exists, depends exclusively on United Kingdom law.

Findings of the Court
It is to be noted, at the outset, that the provisions of the Treaty relating to the freedom to provide services, and the rules adopted for their implementation, are not applicable to situations which do not present any link to any of the situations envisaged by Community law (see, to that effect, among others, Case C-97/98 Jägerskiöld [1999] ECR I-7319, paragraphs 42 to 45).

As is apparent from paragraph 14 of this judgment, a significant proportion of Mr. Carpenter's business consists of providing services, for remuneration, to advertisers established in other member states. Such services come within the meaning of services in Article 49 EC both in so far as the provider travels for that purpose to the Member State of the recipient and in so far as he provides cross-border services without leaving the Member State in which he is established (see, in respect of cold-calling, Case C-384/93 Alpine Investments [1995] ECR I-1141, paragraphs 15 and 20 to 22).

Mr. Carpenter is therefore availing himself of the right freely to provide services guaranteed by Article 49 EC. Moreover, as the Court has frequently held, that right may be relied on by a provider as against the State in which he is established if the services are provided for persons established in another Member State (see, among others, Alpine Investments, cited above, paragraph 30).

With regard to the right of establishment and the freedom to provide services, the Directive aims to abolish restrictions on the movement and residence of nationals of member states within the Community.

It follows both from the objective of the Directive and the wording of Article 1(1)(a) and (b) thereof, that it applies to cases where nationals of member states leave their Member State of origin and move to another Member State in order to establish themselves there, or to provide services in that State, or to receive services there.

That interpretation is borne out, in particular, by Article 2(1) of the Directive, whereby member states shall grant the persons referred to in Article 1 the right to leave their territory; Article 3(1), whereby member states shall grant to the persons referred to in Article 1 the right to enter their territory merely on production of a valid identity card or passport; Article 4(1), whereby [e]ach Member State shall grant the right of permanent residence to nationals of other member states who establish themselves within its territory; and Article 4(2) of the Directive, whereby, [t]he right of residence for persons providing and receiving services shall be of equal duration with the period during which the services are provided.

It is true that Article 1(1)(c) of the Directive extends to the spouses of the member states' nationals referred to in subparagraphs (a) and (b) of that article the right to enter and reside in another Member State, irrespective of their nationality. But, in so far as the Directive aims to facilitate the exercise by member states' nationals of freedom of establishment and freedom to provide services, the rights were accorded to their spouses so that they can accompany them when they exercise, in the circumstances provided for by the Directive, the rights which they derive from the Treaty by moving to or residing in a Member State other than their Member State of origin.

Therefore, it follows from both its objectives and its content that the Directive governs the conditions under which a national of a Member State, and the other persons covered by Article 1(1)(c) and (d), may leave that national's Member State of origin and enter and reside in another Member State, for one of the purposes set out in Article 1(1)(a) and (b), for a period specified in Article 4(1) or (2).

Since the Directive does not govern the right of residence of members of the family of a provider of services in his Member State of origin, the answer to the question referred to the Court therefore depends on whether, in circumstances such as those in the main proceedings, a right of residence in favor of the spouse may be inferred from the principles or other rules of Community law.

As has been held in paragraphs 29 and 30 of this judgment, Mr. Carpenter is exercising the right freely to provide services guaranteed by Article 49 EC. The services provided by Mr. Carpenter make up a significant proportion of his business, which is carried on both within his Member State of origin for the benefit of persons established in other member states, and within those States.

In that context it should be remembered that the Community legislature has recognized the importance of ensuring the protection of the family life of nationals of the member states in order to eliminate obstacles to the exercise of the fundamental freedoms guaranteed by the Treaty, as is particularly apparent from the provisions of the Council regulations and directives on the freedom of movement of employed and self-employed workers within the Community (see, for example, Article 10 of Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475); Articles 1 and 4 of Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of member states and their families (OJ, English Special Edition 1968 (II), p. 485), and Articles 1(1)(c) and 4 of the Directive).

It is clear that the separation of Mr. and Mrs. Carpenter would be detrimental to their family life and, therefore, to the conditions under which Mr. Carpenter exercises a fundamental freedom. That freedom could not be fully effective if Mr. Carpenter were to be deterred from exercising it by obstacles raised in his country of origin to the entry and residence of his spouse (see, to that effect, Singh, cited above, paragraph 23).
A Member State may invoke reasons of public interest to justify a national measure which is likely to obstruct the exercise of the freedom to provide services only if that measure is compatible with the fundamental rights whose observance the Court ensures (see, to that effect, Case C-260/89 ERT [1991] ECR I-2925, paragraph 43, and Case C-368/95 Familiapress [1997] ECR I-3689, paragraph 24).

The decision to deport Mrs. Carpenter constitutes an interference with the exercise by Mr. Carpenter of his right to respect for his family life within the meaning of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter the Convention), which is among the fundamental rights which, according to the Court's settled case-law,

restated by the Preamble to the Single European Act and by Article 6(2) EU, are protected in Community law.

Even though no right of an alien to enter or to reside in a particular country is as such guaranteed by the Convention, the removal of a person from a country where close members of his family are living may amount to an infringement of the right to respect for family life as guaranteed by Article 8(1) of the Convention. Such an interference will infringe the Convention if it does not meet the requirements of paragraph 2 of that article, that is unless it is in accordance with the law, motivated by one or more of the legitimate aims under that paragraph and necessary in a democratic society, that is to say justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued (see, in particular, Boultif v Switzerland, no. 54273/00, §§ 39, 41 and 46, ECHR 2001-IX).

A decision to deport Mrs. Carpenter, taken in circumstances such as those in the main proceedings, does not strike a fair balance between the competing interests, that is, on the one hand, the right of Mr. Carpenter to respect for his family life, and, on the other hand, the maintenance of public order and public safety.

Although, in the main proceedings, Mr. Carpenter's spouse has infringed the immigration laws of the United Kingdom by not leaving the country prior to the expiry of her leave to remain as a visitor, her conduct, since her arrival in the United Kingdom in September 1994, has not been the subject of any other complaint that could give cause to fear that she might in the future constitute a danger to public order or public safety. Moreover, it is clear that Mr. and Mrs. Carpenter's marriage, which was celebrated in the United Kingdom in 1996, is genuine and that Mrs. Carpenter continues to lead a true family life there, in particular by looking after her husband's children from a previous marriage.

In those circumstances, the decision to deport Mrs. Carpenter constitutes an infringement, which is not proportionate to the objective pursued.

In view of all the foregoing, the answer to the question referred to the Court is that Article 49 EC, read in the light of the fundamental right to respect for family life, is to be interpreted as precluding, in circumstances such as those in the main proceedings, a refusal, by the Member State of origin of a provider of services established in that Member State who provides services to recipients established in other member states, of the right to reside in its territory to that provider's spouse, who is a national of a third country (Curia 1997).

The major argument that rises from Mrs. Carpenter case is the abolition of all restrictions that may interfere with the free movement rights. Even though the British government strongly suggests that Mrs. Carpenter did not full fill the requirements before she got married and she is currently staying in the member state illegally. According to the European Union laws the member states determine their own immigration and citizenship rights with respecting the European Union laws and principles especially on equal treatment. Mrs. Carpenter argues here that in this case Mr. Carpenter's free movement right was restricted with limitations on her, and the British government argues that this case is an internal case that does not have injunction with Mr. Carpenter's rights.

3.8.2 Van Lent Case on Free Movement Rights

Another significant case on the free movement rights for the European Union Citizens is the case about Mr. Van Lent. Mr. Van Lent who is a member state citizen that receives the free movement rights legally under the European Union legal framework complained that the state of Belgium is violating his act of Free movement of workers. Mr. Van Lent was living in Belgium but he was working in Luxembourg. The company that he was working provided him a car registered and leased in Luxembourg. Mr. Van Lent was allowed to use this car for company purposes travel between the offices located in Belgium, to provide commute to work from his home and the for the weekends. Mr. Van Lent was stopped by traffic check in Belgium and the officials accused him neglecting to register his company's leased car in Belgium. The police officials clearly suggested that he is violating the Belgium's national law with neglecting to register the vehicle. It is important to note that according to the Belgium laws he is not allow to register this company car in Belgium as the Belgian law stated below. Mr. Van Lent disagreed with the findings of the Belgian officials and suggested that the officials are creating obstacles to exercise his citizenship right of free movement of workers stated in article 39 with their act. The legal findings of the case as follows;

> *The referring court asks whether Article 39 EC precludes national legislation which requires registration of a vehicle in its territory where the user of the vehicle in question resides there, even if the vehicle belongs to a leasing company established in a second Member State and has been hired out to a company also established in that second Member State in order to be made available to the user in question under his contract of employment.*
>
> *It must be stated from the outset that the question of which Member State has competence to require the registration of a vehicle has not been the subject of harmonization within the Community. To date, the only harmonization measures in the sphere of vehicle taxation relate to tax exemptions for certain means of transport temporarily imported by non-residents, (5) on the application by member states of taxes on certain vehicles used for the carriage of goods by road (6) and on the registration documents for vehicles. (7) None of these directives lays down rules governing the question of the competence of member states to require the registration of vehicles. As a result, member states are entitled to decide on the registration and the conditions for registration of vehicles used in their territory, provided the rules that they adopt in this respect meet the requirements of Community law. (8)*
>
> *Freedom of movement for workers entails, amongst other things, obligations for the host Member State. Furthermore, according to the Court's case law, national legislation of the worker's Member State of origin may not impose measures which are capable of inhibiting that freedom or making the exercise thereof less attractive to Community nationals. (9) Thus, in the Bosman judgment, (10) the Court stated:*

Nationals of member states have in particular the right, which they derive directly from the Treaty, to leave their country of origin to enter the territory of another Member State and reside there in order to pursue an economic activity.

Provisions which preclude or deter a national of a Member State from leaving his country of origin in order to exercise his right to freedom of movement therefore constitute an obstacle to that freedom even if they apply without regard to the nationality of the workers concerned. (11)

The Court moreover ruled, in the Bosman (12) and Graf (13) judgments, that legislative provisions of the Member State of origin constitute an obstacle to freedom of movement of workers if they affect their access to the labor market in the other member states. (14)
This is precisely the case in relation to the contested legislation.

In the Ledoux judgment, in a case similar to the present one, the Court held that there might be an obstacle to the free movement of workers. Mr. Ledoux, a worker residing in Belgium, was provided with a motor vehicle by his employer established in France. The motor vehicle, which belonged to the employer, was registered in its name in its State of residence (France) and Mr. Ledoux used this motor vehicle for both professional and private purposes.

Following a traffic check in Belgium, Mr. Ledoux was charged with having unlawfully imported the motor vehicle. He was accused of having imported the motor vehicle without paying the value added tax (15) relating to the transaction. The Community legislation applicable at the time was the Sixth Directive 77/388/EEC. (16) Under that directive, the importation of goods is liable for VAT unless they are placed under an arrangement for temporary importation. Whilst awaiting adoption of Community tax rules defining the scope of this exemption, member states were allowed to specify the conditions to be complied with in order to qualify for it.

The Court began its examination by recalling that one of the objectives of that exemption was the effective removal of restrictions on the movement of persons (17) and held that a Member State could not specify a procedure for qualification for the right to exemption from VAT which would introduce an obstacle to the free movement of workers who, although residing on its territory, pursue their occupations in another Member State. (18)

The Court next examined the question whether the fact of considering the import to be permanent and therefore liable for VAT on the ground that the importer (the employee) had his place of residence in the Member State into which the motor vehicle had been brought was capable of introducing an obstacle to the free movement of workers. (19) The Court expressed the view, following its analysis, that there could be an obstacle to the free movement of workers, but referred actual examination of this question back to the national court.

The relevant point for the purposes of this case lies in the Court's reasoning which led it to conclude that there was an obstacle to the free movement of workers. The Court held that importation must be regarded as temporary, and consequently, the exemption granted, even though the motor vehicle could be used for private purposes, since such use was ancillary to business use and was provided for in the contract of employment. (20) The Court stated:
If it were not, frontier workers would be effectively prevented from benefiting from certain advantages granted to them by their employers merely because they resided in the Member State into which the vehicle was temporarily imported. Such workers would thereby be placed at a disadvantage in regard to working conditions compared to their colleagues residing in the country of their employer, which would

have a direct effect on the exercise of their right to free movement within the Community (Curia 1997).

It is important to note at this point that when a member state creates special tax etc it clearly means that they are creating an unjust environment in the common market. All European Union citizens have right to demand and receive the same rights equally without any unjust treatment. When a member state creates obstacles it means that it is an unjust treatment to a group of citizens. Additional findings of the court states as;

> *(21) In my opinion the Ledoux judgment provides authority for the view that a national measure having the effect of preventing (or virtually preventing) a worker residing in a Member State other than that in which his employer is established from benefiting from certain advantages, and in particular from the provision of a motor vehicle, affects the exercise of his right to free movement.*
>
> *All the member states participating in the proceedings take the view that the Ledoux judgment is not applicable in the present case, since it concerned the interpretation of the Sixth Directive 77/388 and not the registration of motor vehicles. I do not share this view. In that judgment, the Court held that the fact that it was impossible, on account of the Belgian legislation, for the worker to benefit from a specific advantage constituted an obstacle to the free movement of workers. The Court's reasoning which led it to conclude that there was such an obstacle can thus readily be transposed to the present case.*
>
> *The legislation at issue effectively makes it impossible for the worker resident in Belgium to benefit from the provision of a motor vehicle belonging to a person established in another Member State.*
>
> *That impossibility stems from an internal contradiction within the Belgian legislation which makes registration impossible in the present case. First, the Royal Decree provides that a motor vehicle must be registered on application by and in the name of the owner of the motor vehicle in question. It follows that the worker who only has use of the vehicle cannot register it. Second, the national legislation provides that where the applicant for registration (namely the owner of the motor vehicle) is a legal entity, it must quote its Belgian VAT registration number. Given that, in order to have such a number, the applicant for registration must have a stable establishment in the territory of Belgium, it follows that that entity as owner of the motor vehicle can apply for registration of the motor vehicle in question only if it is established in Belgium. (22) Thus, the worker cannot register the vehicle, on the ground that he is not its owner, and the owner (the leasing company) also cannot register it, on the ground that it is not resident in Belgium.*
>
> *As a result, the worker who resides in Belgium and to whom the provision of a motor vehicle is offered has no choice but to waive the offer if he does not wish to become exposed to the risk of criminal proceedings. As the Court has made clear in the Ledoux judgment, that provision of a motor vehicle constitutes part of the worker's remuneration. It follows that the legislation at issue causes the worker to be deprived of a proportion of the remuneration offered to him, by the mere fact of his place of residence. A contract of employment including such a clause relating to the provision of a motor vehicle to the worker would therefore be less attractive where an employer is established in a Member State other than the Kingdom of Belgium, at least where the motor vehicle is registered in that same State.*

I therefore consider that the legislation at issue is capable of dissuading a worker residing in Belgium from accepting a contract which includes a clause relating to the provision of a motor vehicle, where the contract in question is offered to him by an employer established in another Member State, whereas such dissuasion would probably not operate if the contract were offered to him by a national employer. (23)
It seems to me, therefore, that, in the sense contemplated in the Bosman and Graf judgments, the legislation at issue sets preconditions on access by workers resident in Belgium to the labor market of other member states.

We must now consider whether the legislation at issue can be justified by reasons relating to the general interest that are compatible with the Treaty.

According to case law, national measures must fulfill four requirements where they are liable to hinder or make less attractive the exercise of the fundamental freedoms guaranteed by the Treaty by Community nationals, including those of the Member State which enacted the measure. They must (1) be applied in a non-discriminatory manner, (2) be justified by imperative requirements relating in the general interest, (3) be suitable for securing the attainment of the objective which they pursue and (4) must not go beyond what is necessary in order to attain it. (24)

The member states which have submitted written observations and the Commission argue that the legislation at issue is necessary in order, first, to guarantee road safety and, second, to counteract erosion of the basis of tax assessment.

It seems to me, however, that neither of these arguments is capable of justifying the requirement to register the vehicle, and still less the criminal penalty attached to the breach of that requirement in the present case. It appears obvious to me that it must first and foremost be possible for registration to take place in order for the objectives pursued by the registration requirement to be met. Whatever objectives may be invoked, they cannot be attained in a case such as the present one, since as we have seen, and registration is impossible.

A Member State cannot penalize a worker who has exercised his right of free movement on the ground that he has failed to comply with a requirement which he is not able to fulfill. In that situation, the registration requirement is rendered meaningless and its sole result is to prevent motor vehicles registered abroad from being provided to Belgian residents.

The Tribunal de police (Police Court), Arlon (Belgium) appears to have reached a similar conclusion in its judgment of 12 March 1998. (25)

The facts were as follows: a person resident in Belgium was accused of having infringed the Royal Decree on the ground that he was driving in the territory of Belgium a motor vehicle belonging to a leasing company established in Luxembourg. The Tribunal de police, Arlon stated:
The Public Prosecution Office appears therefore to consider that, notwithstanding the facts, registration of the motor vehicle in Belgium was obligatory and, therefore, necessarily, possible.

The Tribunal de police, Arlon, found that the Royal Decree requires registration to take place in the name of the owner, but that only persons resident in or having their headquarters in Belgium are entitled to effect such registration, which precludes registration where the owner does not satisfy those conditions. It therefore held that no offence had been committed.

I therefore propose that the reply to the question referred should be that Articles 39 EC and 10 EC preclude a Member State from requiring registration of a vehicle

belonging to a leasing company established in a neighboring Member State, which is hired out to the employer of the user of the motor vehicle in question (namely a worker) who resides in the first-mentioned Member State, at a distance, more specifically, of some 200 km from his place of employment, where the employee in question resides in the first-mentioned Member State during the week and uses the vehicle in order to perform his contract of employment and also during his free time, including weekends and holiday periods.

On the basis of the foregoing, I propose to the Court that the answer to be given to the question referred by the Politierechtbank te Mechelen should be as follows: Community rules, in particular Articles 39 EC and 10 EC, preclude a Member State from requiring registration of a vehicle belonging to a leasing company established in a neighboring Member State, which is hired out to the employer of the user of the motor vehicle in question (namely a worker) who resides in the first-mentioned Member State, at a distance, more specifically, of some 200 km from his place of employment, where the employee in question resides in the first-mentioned Member State during the week and uses the vehicle in order to perform his contract of employment and also during his free time, including weekends and holiday periods (Curia 1997).

The European Court of Justice clearly states that the member states cannot create national laws that may interfere or create obstacles to the Free movement of workers laws stated in the European Community Treaty. Every citizen of the European Union may exercise the right of free movement as long as they are not a burden of the host state and as long as they do not oppose a threat to the host member state.

3.9 DIFFERENT GROUPS OF EUROPEAN UNION CITIZENSHIP

The European Union citizenship tends to have different groups. The first group is the most privilege group who are from one of the old member countries such as Germany, France, United Kingdom, Belgium, Netherlands, Ireland, Luxembourg, Greece, Italy, Spain, Finland, Austria, Denmark, Portugal and Sweden. If the person is a citizen of one of the fifteen member states and used their right of free movement they are in the first group of the European citizens. One may categories the second group as citizen of one of the fifteen old members but the citizen has not use the free movement right and he or she have opportunities to exercise this right. The third group is the citizens of one of the twelve new member states such as Bulgaria, Romania, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. These member state citizens have a temporarily limited right to exercise their Free Movement Rights. Another group of people who may take advantage of the free movement right with the citizens of European Union member state citizens is the third country nationals

who are legally married to European Union citizens who exercise free movement right. The European law states that the member state citizens may take their family with them when they exercise free movement rights as long as they are married. The most disadvantages group relating the European Union citizenship is the third country nationals who are married to European citizens. As this can be analyzed that the third country nationals may only exercise the rights only with the spouse who is an Union citizen. When the marriages break a part they lose all their rights and privilege to stay in the member states.

3.10 DISCRIMINATION – OBSTACLES ON FREE MOVEMENT

It is important to note that the member states cannot create rules discriminating the other Member State citizens because they are all European Union Citizens and under the protection of the European Community law. As it is explained below;

> *National governments are not permitted to introduce arbitrary distinctions or other conditions which, although applicable irrespective of nationality, are liable to affect essentially Community migrant workers, thereby placing them at a particular disadvantage (14). Conflicting national legislation must be repelled or amended, and it is not sufficient that Community law is applied in practice, but not de jure, for this may give rise to uncertainty for those subject to it (Case 167/73 Commission v France (1974) ECR 359)(Kostakopoulou 2001).*

The citizens are protected under their national laws and the European laws. The host states can be taken to court due to complaints to limit the rights of European citizens except using the exceptions that European legal order determined. Also the origin state may face same constraints as well. The member states must be responsible on damages that may cause to the European Citizen who exercise their free movement right. Mr. Trojani, who is a citizen of France, worked in Belgium in 1972 as a self-employed person and went back to Belgium in 2000. When he retuned to Belgium he did not register with the authorities and stayed in a campsite later he stayed in a hostel. During his stay he was taking care of by the Salvation Army and he was given money and worked for 30 hours a week in a special program. The Belgium government opposes to his stay because the officials argue that he has no qualifications to receive help from the state of Belgium and he is not a worker so he should be counted under the terms of Free Movement Worker. One may analyze this with the Trojani case details listed below;

That court granted Mr. Trojani the right to receive provisional financial assistance of EUR 300 from the CPAS. It also decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:
'Can a citizen of the Union in the factual circumstances described in this judgment who has temporary leave to reside, does not have sufficient resources, carries out work for the hostel to the extent of approximately 30 hours a week in the context of a personal reintegration program, and receives in return benefits in kind which cover his basic needs at the hostel itself claim a right of residence as a worker within the meaning of Article 39 EC or Article 7(1) of Regulation No 1612/68, or as a worker pursuing an activity as a self-employed person within the meaning of Article 43 EC, or as a person providing a service, in view of the tasks he performs at the hostel, or as a person for whom services are intended, in view of the benefits in kind granted to him by that hostel, within the meaning of Article 49 EC, or merely because he is taking part in a program for his socio-occupational reintegration?

If not, can he rely directly on Article 18 EC, which guarantees the right to move and reside freely in the territory of another Member State of the Union, merely in his capacity as a European citizen?

What then becomes of the conditions laid down by Directive 90/364 … and/or the "limitations and conditions" laid down in the EC Treaty, in particular the condition as to minimum resources which, if it were applied on entry to the host country, would deprive him of the very substance of the right of residence?

If, on the other hand, the right of residence arises automatically on the basis of citizenship of the Union, could the host State subsequently refuse an application for the minimex or for social assistance (non-contributory benefits), curtailing his right of residence on the ground that he does not have sufficient resources, when those benefits are granted to nationals of the host country subject to conditions which Belgians too must satisfy (proof of their availability for work, proof that they are in need). Must the host country comply with any other rules in order to avoid rendering meaningless the right of residence, such as a duty to assess the situation in the light of the fact that the application for the minimex or for social assistance is temporary, or to take into account the principle of proportionality (would the burden on the State in question be unreasonable)?'

By its first question, the national court essentially asks whether a person in a situation such as that of the claimant in the main proceedings can claim a right of residence as a worker, a self-employed person or a provider or recipient of services, within the meaning of Articles 39 EC, 43 EC and 49 EC respectively

In the context of freedom of movement for workers, it should be recalled that Article 39(3)(c) EC grants nationals of the member states the right of residence in the territory of a Member State for the purpose of employment.

As the Court has held, the concept of 'worker' within the meaning of Article 39 EC has a specific Community meaning and must not be interpreted narrowly. Any person who pursues activities, which are real and genuine, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary, must be regarded as a 'worker'. The essential feature of an employment relationship is, according to that case-law, that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration (see, in particular, Case 66/85 Lawrie-Blum [1986] ECR 2121, paragraphs 16 and 17, and Case C-138/02 Collins [2004] ECR I-0000, paragraph 26).

Moreover, neither the sui generis nature of the employment relationship under national law, nor the level of productivity of the person concerned, the origin of the funds from which the remuneration is paid or the limited amount of the remuneration can have any consequence in regard to whether or not the person is a worker for the purposes of Community law (see Case 53/81 Levin [1982] ECR 1035, paragraph 16; Case 344/87 Bettray [1989] ECR 1621, paragraphs 15 and 16; and Case C-188/00 Kurz [2002] ECR I-10691, paragraph 32).

With respect more particularly to establishing whether the condition of the pursuit of real and genuine activity for remuneration is satisfied, the national court must base its examination on objective criteria and make an overall assessment of all the circumstances of the case relating to the nature both of the activities concerned and of the employment relationship at issue (see Case C-413/01 Ninni-Orasche [2003] ECR I-0000, paragraph 27).

In this respect, the Court has held that activities cannot be regarded as a real and genuine economic activity if they constitute merely a means of rehabilitation or reintegration for the persons concerned (Bettray, paragraph 17).

However, that conclusion can be explained only by the particular characteristics of the case in question, which concerned the situation of a person who, by reason of his addiction to drugs, had been recruited on the basis of a national law intended to provide work for persons who, for an indefinite period, are unable, by reason of circumstances related to their situation, to work under normal conditions (see, to that effect, Case C-1/97 Birden [1998] ECR I-7747, paragraphs 30 and 31).

In the present case, as is apparent from the decision making the reference, Mr. Trojani performs, for the Salvation Army and under its direction, various jobs for approximately 30 hours a week, as part of a personal reintegration programme, in return for which he receives benefits in kind and some pocket money.

Under the relevant provisions of the decree of the Commission communautaire française of 27 May 1999 on the grant of authorization and subsidies to hostels (Moniteur belge, 18 June 1999, p. 23101), the Salvation Army has the task of receiving, accommodating and providing psycho-social assistance appropriate to the recipients in order to promote their autonomy, physical well-being and reintegration in society. For that purpose it must agree with each person concerned a personal reintegration programme setting out the objectives to be attained and the means to be employed to attain them.

Having established that the benefits in kind and money provided by the Salvation Army to Mr. Trojani constitute the consideration for the services performed by him for and under the direction of the hostel, the national court has thereby established the existence of the constituent elements of any paid employment relationship, namely subordination and the payment of remuneration.

For the claimant in the main proceedings to have the status of worker, however, the national court, in the assessment of the facts which is within its exclusive jurisdiction, would have to establish that the paid activity in question is real and genuine.

The national court must in particular ascertain whether the services actually performed by Mr. Trojani are capable of being regarded as forming part of the normal labor market. For that purpose, account may be taken of the status and practices of the hostel, the content of the social reintegration programme, and the nature and details of performance of the services.

On the question of the applicability of Articles 43 EC and 49 EC, it must be stated that, in the case at issue in the main proceedings, neither of those provisions of the EC Treaty may be relied on as a legal basis for a right of residence.

As may be seen from paragraph 20 above, Mr. Trojani performs services on a continuing basis for and under the direction of the Salvation Army, in return for which he receives remuneration.

Now, first, the freedom of establishment provided for in Articles 43 EC to 48 EC, includes only the right to take up and pursue all types of self-employed activity, to set up and manage undertakings, and to set up agencies, branches or subsidiaries (see, in particular, Case C-255/97 Pfeiffer [1999] ECR I-2835, paragraph 18, and Case C-79/01 Payroll and Others [2002] ECR I-8923, paragraph 24). Paid activities are therefore excluded.

Second, according to the settled case law of the Court, an activity carried out on a permanent basis, or at least without a foreseeable limit to its duration, does not fall within the Community provisions concerning the provision of services (see Case 196/87 Steymann [1988] ECR 6159, paragraph 16, and Case C-215/01 Schnitzer [2003] I-0000, paragraphs 27 to 29).

In those circumstances, the answer to the first question must be that a person in a situation such as that of the claimant in the main proceedings, first, does not come under Articles 43 EC and 49 EC and, second, can claim a right of residence as a worker within the meaning of Article 39 EC only if the paid activity he carries out is real and genuine. It is for the national court to carry out the examinations of fact necessary to determine whether that is so in the case pending before it.

The second question:
By its second question, the national court essentially asks whether, if the first question is answered in the negative, a person in the situation of the claimant in the main proceedings may, simply by virtue of being a citizen of the European Union, enjoy a right of residence in the host Member State by the direct application of Article 18 EC
It must be recalled that the right to reside in the territory of the member states is conferred directly on every citizen of the Union by Article 18(1) EC (see Case C-413/99 Baumbast and R [2002] ECR I-7091, paragraph 84). Mr. Trojani therefore has the right to rely on that provision of the Treaty simply as a citizen of the Union.

That right is not unconditional, however. It is conferred subject to the limitations and conditions laid down by the Treaty and by the measures adopted to give it effect.
Among those limitations and conditions, it follows from Article 1 of Directive 90/364 that member states can require of the nationals of a Member State who wish to enjoy the right to reside within their territory that they themselves and the members of their families be covered by sickness insurance in respect of all risks in the host Member State and have sufficient resources to avoid becoming a burden on the social assistance system of that State during their period of residence.
As the Court has previously held, those limitations and conditions must be applied in compliance with the limits imposed by Community law and in accordance with the general principles of that law, in particular the principle of proportionality (Baumbast and R, paragraph 91). It follows from the judgment making the reference that a lack of resources was precisely the reason why Mr. Trojani sought to receive a benefit such as the minimex.

In those circumstances, a citizen of the Union in a situation such as that of the claimant in the main proceedings does not derive from Article 18 EC the right to reside in the territory of a Member State of which he is not a national, for want of

sufficient resources within the meaning of Directive 90/364. Contrary to the circumstances of the case of Baumbast and R (paragraph 92), there is no indication that, in a situation such as that at issue in the main proceedings, the failure to recognize that right would go beyond what is necessary to achieve the objective pursued by that directive.

However, it must be observed that, according to information put before the Court, Mr. Trojani is lawfully resident in Belgium, as is attested by the residence permit which has in the meantime been issued to him by the municipal authorities of Brussels.

It should be recalled here that it is for the Court to provide the national court with all those elements for the interpretation of Community law which may be of assistance in adjudicating on the case pending before it, whether or not that court has specifically referred to them in its questions (see inter alia, to that effect, Case C-241/89 SARPP [1990] ECR I-4695, paragraph 8; Case C-315/92 Verband Sozialer Wettbewerb ('Clinique') [1994] ECR I-317, paragraph 9; and Case C 87/97 Consorzio per la tutela del formaggio Gorgonzola [1999] ECR I-1301, paragraph 16).

In the context of the present case, it should be examined more particularly whether, despite the conclusion in paragraph 36 above, a citizen of the Union in a situation such as that of the claimant in the main proceedings may rely on Article 12 EC, under which, within the scope of application of the Treaty and without prejudice to any special provisions contained therein, all discrimination on grounds of nationality is prohibited.
In the present case, it must be stated that, while the member states may make residence of a citizen of the Union who is not economically active conditional on his having sufficient resources, that does not mean that such a person cannot, during his lawful residence in the host Member State, benefit from the fundamental principle of equal treatment as laid down in Article 12 EC.

In that connection, three points should be made. First, as the Court has held, a social assistance benefit such as the minimex falls within the scope of the Treaty (see Case C-184/99 Grzelczyk [2001] ECR I-6193, in particular paragraph 46).

Second, with regard to such benefits, a citizen of the Union who is not economically active may rely on Article 12 EC where he has been lawfully resident in the host Member State for a certain time or possesses a residence permit.

Third, national legislation such as that at issue in the main proceedings, in so far as it does not grant the social assistance benefit to citizens of the European Union, non-nationals of the Member State, who reside there lawfully even though they satisfy the conditions required of nationals of that Member State, constitutes discrimination on grounds of nationality prohibited by Article 12 EC.

It should be added that it remains open to the host Member State to take the view that a national of another Member State who has recourse to social assistance no longer fulfils the conditions of his right of residence. In such a case the host Member State may, within the limits imposed by Community law, take a measure to remove him. However, recourse to the social assistance system by a citizen of the Union may not automatically entail such a measure (see, to that effect, Grzelczyk, paragraphs 42 and 43).

Consequently, the answer to the second question must be that a citizen of the Union who does not enjoy a right of residence in the host Member State under Articles 39 EC, 43 EC or 49 EC may, simply as a citizen of the Union, enjoy a right of residence there by direct application of Article 18(1) EC. The exercise of that right is subject

to the limitations and conditions referred to in that provision, but the competent authorities must ensure that those limitations and conditions are applied in compliance with the general principles of Community law, in particular the principle of proportionality. However, once it is ascertained that a person in a situation such as that of the claimant in the main proceedings is in possession of a residence permit, he may rely on Article 12 EC in order to be granted a social assistance benefit such as the minimex.

On those grounds, the Court (Grand Chamber) hereby rules:
1. A person in a situation such as that of the claimant in the main proceedings, first, does not come under Articles 43 EC and 49 EC and, second, can claim a right of residence as a worker within the meaning of Article 39 EC only if the paid activity he carries out is real and genuine. It is for the national court to carry out the examinations of fact necessary to determine whether that is so in the case pending before it.
2. A citizen of the European Union who does not enjoy a right of residence in the host Member State under Articles 39 EC, 43 EC or 49 EC may, simply as a citizen of the Union, enjoy a right of residence there by direct application of Article 18(1) EC. The exercise of that right is subject to the limitations and conditions referred to in that provision, but the competent authorities must ensure that those limitations and conditions are applied in compliance with the general principles of Community law, in particular the principle of proportionality. However, once it is ascertained that a person in a situation such as that of the claimant in the main proceedings is in possession of a residence permit, he may rely on Article 12 EC in order to be granted a social assistance benefit such as the minimex (Curia 1997).

This case is an important example of the powers given by the EU citizenship for the free movement right the citizen may exercise different options as long as they do not disrespect the exemptions stated earlier.

3.11 DIFFERENCES IN CITIZENSHIP LAWS

It is important to note different application of Citizenship laws in member states. Even the two major creators of the European Community France and Germany have totally different applications to grant citizenship. According to the French National Law if a person would like to be a French citizen they must full fill the categories listed below;

Conditions to obtain the nationality:
By filiations:
French is the son, legitimate or illegitimate with, at least, one of its parents being of French nationality.
The filiations of the child have no effect on its nationality if it is not established while being a minor.
The sole fact of being born in France does not confer nationality, except for the children of unknown parents or stateless.
The son born in France before January 1994 with at least one parent born in the ancient overseas French territory (before its independency) is also considered a French citizen.
By reason of birth and residence in France

As from September 1st. 1998, every child of foreign parents born in France acquires French nationality at his majority if he is living in France and if he has lived in France, in a continuous or discontinuous way al least five years (starting at the age of 11 years).
Under certain circumstances, nationality can be acquired beforehand starting from sixteen years.

French nationality can also be demanded under certain circumstances by the name of the minor as from the age of thirteen years, always under his personal consent.
This situation affects the children of foreigners born in France which, starting with the application of said law (September 1st., 1998) has three possibilities:

If they desire only to maintain the foreign nationality, they can renounce to the French nationality before the competent French authorities during the six precedent months or during the twelve months that follow their majority.

If they desire to maintain the foreign nationality and acquire the French nationality it is advisable to request for this last before their majority of age.

In case the interested party that fulfills the requirements of the first paragraph does not carry out any of the before mentioned proceedings French law will automatically grant them this nationality at their majority of age.

By marriage to a French citizen:
French nationality can be agreed by declaration before the instance judge or the French consul (if the interested party lives abroad) to each foreigner or stateless which marries a person of French nationality. This benefit can be solicited a year after the marriage was celebrated, and under the condition that the couple keeps living together and the French consort has not lost that nationality.

By naturalization:
The requests for naturalization of residents in France are competence of public organizations at the place of origin for the constitution of the file, and at the ministry of employment for final decision. Foreigners can be naturalized if they can prove residence in France during the five preceding years of the request.

A person, who does not reside in France at the moment of the firm of the decree cannot be naturalized. For residence it is understood a fixed residence that present a stable and permanent character, coincident with the centre of material interests and family bonds. Children of those people who acquire French nationality become French with full rights if they have the same residence as their parents (Eusko Sare 2005).

If a person would like to receive German citizenship the requirements that he or she needs to full fill differs than the French requirements. The German citizenship requirements as follows;

In most cases, you have to fulfill most or all of the following conditions:

1. *A valid Aufenthaltserlaubnis or Aufenthaltsberechtigung residency permit*
2. *Legally resident in Germany for at least 8 years*
3. *A livelihood-guarantee of you and your dependants without recourse to social welfare or unemployment benefits (exceptions are made for people under of 23 years)*
4. *Adequate knowledge of the German language*
5. *On oath on the German constitution*
6. *You have to give up your former citizenship (although there are exceptions to this)*

7. Spouses and children can often be naturalized even if they have not been living in Germany for 8 years. For spouses of German citizens the couple must be married for two years and the spouse resident in Germany for three years before the application can be made.

Children: German Citizenship by Birth
German citizenship is determined by inheritance from parents and not by place of birth. Children with a German mother or father are automatically citizens at birth. But not all children born in Germany are automatically German, in fact, there are 100.000 non-German children born every year. If both parents are foreigners then the child only gets German citizenship automatically from birth if one or more of the parents has been legally living in Germany for a period of 8 years and has a valid Aufenthaltsberechtigung or has had an unbefristete Aufenthaltserlaubnis for a period of three years. These children get German citizenship of as well as that of their parents and then have to choose which citizenship they wish to keep at the age of 18 (Just Landed 2003).

Due to Germany's distinction with the division of the state territory, the Citizenship law of Germany has a different section for the German descendants which include the ethnic Germans. The laws specially made for the ethnic Germans as "Certain ethnic Germans from Eastern Europe and the former Soviet Union may claim German citizenship under the Right of Return law (Wikipedia Encyclopedia 2007). Another explanation of the law states as;

Some persons who lost German citizenship under the Nazi regime (mainly German Jews) may be eligible for naturalization without requiring residence in Germany or renunciation of their existing citizenship. Children and grandchildren of such persons may also be eligible for German citizenship(Wikipedia Encyclopedia 2007).

After carefully observing the differences in the nationality laws of these two European countries it is fair to say that there is an unjust treatment in term of granting European Union citizenship with the requirement of member state citizenship. The government of France changed the National Act in 1998. Before the changes as long as a baby is born in the French soil he or she will be given citizenship. Also the French National Act brought requirements for the people who lived or born in colonies that they do not automatically receive the French Citizenship and the European Union citizenship. Germany has more strict rules on the citizenship and historically what determines the German citizenship is the principle blood relationship. The kids who are born in Germany with foreign parents have a less chance to become German citizen due to very strict requirements that the German government set out. One must note that recently with the change of politics in Germany the right wing parties controls the government and they constantly make changes in the German Constitution to toughen up the rules.

The Patrick Weil's example about the nationality law of France and Germany clearly demonstrates the inequality in the European Union citizenship law. Mr. Weil explains the situation as follows;

> *This new European Union citizenship is based on inequality because according to one's place of birth, a child educated in the European Union either will or will not become a citizen. In effect, one becomes a European citizen by receiving the nationality of one of the States of the European Union. As a result of the differences between the twenty-seven sets of laws regarding nationality (the treaty of Maastricht reaffirmed that they would continue to be determined sovereignty by each of the fifteen member states of European Union), near-absurd conditions of inequality have been created. Let us examine the case of two brothers, who, with their wives, emigrated from Turkey in 1970- one to Paris and one to Frankfurt. Let us say that the following year, each of the wives gives birth to one child. If, after the ratification of the Treaty of Maastricht in 1991, the child born in Paris decides to move in with his uncle in Frankfurt, for example to find a job there, he could theoretically vote in Frankfurt's city elections- unable to speak German unfamiliar with Germany and the problems of the city of Frankfurt. However, his cousin, born in Frankfurt, raised in German society and possibly able to speak only one language –German- would not be able to vote in this same election. The first child would have become French at the age eighteen and therefore voted as a French citizen; the child born in Germany would not have become German as a result of refusing to make a formal request for naturalization which would have necessitated his repudiation of his Turkish nationality. Above all, not being a citizen of one of the fifteen member states of European Union becomes, among foreigners living in France, a factor of discrimination (Weill 1998).*

Mr. Weil gives a significant example on the unequal treatment of immigrants to grant citizenship. It is important to note that in Europe each member state decides who they will grant the citizenship and European Union grants European Union citizenship to only ones that the member states already grant citizenship to. The differences in the nationality laws affect the Union citizenship and it makes it unjust. The main question whether they are citizens or immigrants is answered via Weil's example, your citizenship depends on your country of residence with the domestic citizenship laws.

3.11.1 Chen Case

European Union citizenship is a way to distinct the Member State citizen and determine the distinction between them. As the Helen Wallace explains in her book "at ports of entry of sign separating EU citizens from others the "sheep" from the "goats"" (Wallace 2000). The European Citizens are allowed to take their spouses, dependants (parents of him or her and the parents of the spouse), and their dependant children with them when they are exercising the free movement rights given to them by the European Union

citizenship. Sometimes the member states reject the family member of the European Citizens. One of the highly argued cases is the Chen case. Mrs. Chen gave birth in Irish soil that gives her newborn baby, Irish citizenship and complimentary European Union citizenship. In this case Mrs. Chen falls under the jurisdiction of the European Community law because her baby who, is a European Citizen is dependent on her. The European Community on the dependants of the Union Citizens clearly states that;

> *"Citizenship of the European Union – Right to move and reside freely in the territory of the member states – Directive 90/364 – Minor who is a national of a Member State, is covered by sickness insurance and is in the care of a parent who is a third-country national having sufficient resources for that minor and who is that minor's primary career – Right of residence, both for the minor and for the parent, in another Member State – Conditions for the minor to gain nationality – Not relevant (Art. 18 EC; Council Directive 90/364). Article 18 EC and Council Directive 90/364 on the right of residence confer on a young minor who is a national of a Member State, is covered by appropriate sickness insurance and is in the care of a parent who is a third-country national having sufficient resources for that minor not to become a burden on the public finances of the host Member State, a right to reside for an indefinite period in that State. In such circumstances, those same provisions allow a parent who is that minor's primary career to reside with the child in the host Member State.*
>
> *In that respect, the condition concerning the sufficiency of resources laid down in Directive 90/364 cannot be interpreted as meaning that the minor must possess those resources personally and may not use for that purpose those of a family member. Such an interpretation would add to that condition a requirement as to the origin of the resources which, not being necessary for the attainment of the objective pursued, namely the protection of the public finances of the member states, would constitute a disproportionate interference with the exercise of the fundamental right of freedom of movement and of residence upheld by Article 18 EC.*
>
> *In addition, the application of the Community provisions at issue cannot be refused to the persons concerned on the ground that the parent who is the primary career has created, by means of a stay in a Member State, a situation in which the child expected would be able to acquire the nationality of another Member State in order thereafter to secure for the child and for him or herself a long-term right to reside. Under international law, it is for each Member State, having due regard to Community law, to lay down the conditions for the acquisition and loss of nationality and it is not permissible for a Member State to restrict the effects of the grant of the nationality of another Member State by imposing an additional condition for recognition of that nationality with a view to the exercise of the fundamental freedoms provided for in the Treaty (Curia 1997).*

It is clear that in Mrs. Chen's case, Mrs. Chen has a right to reside because her child is dependant on her but she does not qualify as Irish Citizen that she may not receive the rights and privileges that are given to the Community Citizens. It is clear that in Mrs. Chen's case, she has a right to reside because her child is dependent on her but she does not qualify as an Irish citizen or a Union citizen that she may not receive the rights given to community citizens.

3.12 THE LONG TERM THIRD COUNTRY RESIDENCES AND CITIZENSHIP RIGHTS

The Treaty of Amsterdam set out a framework for the European Union citizenship but the institutions also wanted to draw out a frame for the Member State citizenship in order to avoid unjust treatment. This brought fears for the member states and they strongly opposed the idea on the grounds that European Community law does not have any competence on citizenship and immigration of the member states. The major fear was European Union was becoming more like a state with the competence on citizenship with set rules rather than just creating rules on the Union citizenship. It is also important to note that in local politics citizenship and immigration are subjects that create popularity for the politicians. There are other skeptics other than the member states on the new member citizenship rules made by European Union. The skeptics argue that if the European Union crates a framework for the Member State citizenship procedures; this might not improve the living condition for the immigrants living in European zone and for entrances of the third country nationals. The Treaty of Amsterdam could not establish set rules for the Member State citizenships and citizenship rights for the long-term third country national immigrants in Europe. It only granted the visa free travel for 3 months time. Article 62 (3) and article 63 (4) of EC treaty established this right as follows;

> *Article 62:*
> *3- Measures setting out the conditions under which nationals of third countries shall have the freedom to travel within the territory of the member states during a period of no more than three months.*
> *Article 63:*
> *4. Measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other member states.*
>
> *Measures adopted by the Council pursuant to points 3 and 4 shall not prevent any Member State from maintaining or introducing in the areas concerned national provisions which are compatible with this Treaty and with international agreements (European Union Law Eur-Lex 2006).*

This was a small gesture from the EU to make TCN feel more comfortable with more rights to citizens and TCNs. The Amsterdam Treaty also brought a new right for the Citizens of Europe. The new adjustment on the Citizenship Right is the new language article on reference to the European Institutions. This article allows the European citizens to receive and answer in their own language other than just few official

languages. This was a way of European Union showing to all the citizens of Europe, that there will be no privileged group that will enjoy the citizenship rights more than any other citizen, they are all equal. Another important subject that is added to the Amsterdam treaty is the Social Agreement. It was a shorter version of the common social policy. It lacked the subjects that were needed to add for the Union citizenship framework. Fundamental rights and human rights were added under the treaty as well. The anti-discrimination act was added to the treaty with the significant help from the non-governmental organizations, as article 13 EC. The article 13 clearly defines the fundamental and the Human Rights as follows;

> *Article 13*
> *Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation (European Union Law Eur-Lex 2006).*

Article 13 of EC treaty also gave competence to commission. Even though it had limitations still this was somewhat a breakthrough. The Amsterdam Treaty also transferred the title IV of Visa Asylum Immigration and other policies that title corresponds to the first pillar. The third pillar subjects were revised. The Police Cooperation, Judicial Cooperation stayed in the third pillar and Racism, Xenophobia (fear from strangers) and Protection of Children were all added to the pillar. The transfer of immigration from the third pillar to the first pillar was extremely significant because now European Union had somewhat competence on the matter that affect the European citizens well being. Also extension of the third pillar on Racism and Xenophobia extended the European Unions competencies and brought a broader perspective on the social policy which is directly linked to the European Union citizenship and immigration.

The subjects relating to the third country citizens were not added in the Amsterdam transition period. They could only be decided by Quality Majority Vote (QMV). The Treaty set out that after five years transition period the other visa policies will be decided using Quality Majority Vote or Unanimity. Amsterdam Treaty also incorporated the Schengen Agreement to its legal framework. Free Movement Rights title was placed on the first pillar in the European Union framework. After all the

negotiations that took place and all the agreements that have been made Freedom Security and Justice still stayed as a critical subject to be debated among the member states and the European Union Institutions. The fear from immigration and asylum policies continued and the distinction of European Union citizenship and long-term third country citizens continue to take place in the European politics. This shows us that the even though with the social and parliamentary changes, European Union citizenship shows similarities to supranationalistic approach to citizenship model, it is clearly that they strongly try to follow the nation citizenship model with the majority of the act that has been made.

3.13 THE PROBLEMS OF UNION CITIZENSHIP

One must clearly examine the issues and the unsolved problems of European Union citizenship in order to have a clear understanding of the concept. The European Union citizenship is only applicable to Member State citizens so all the long tem legal residents who have right to vote for European Parliament can not use other rights given to citizens. Some member states allow the long-term third country residences to become citizens after a period of time that they legally work or reside in the member state. On the other hand some other member states do not allow them to become citizens and even they do not allow the newborn babies in their soil from foreign parents to become citizens. If one generalizes the rules legal long-term third country residences are excluded from the European Union citizenship. Additionally depending on the Member State the old colonies or member states outside the European soil excluded from the citizenship or given partial citizenship rights (refer the Aruba case here).

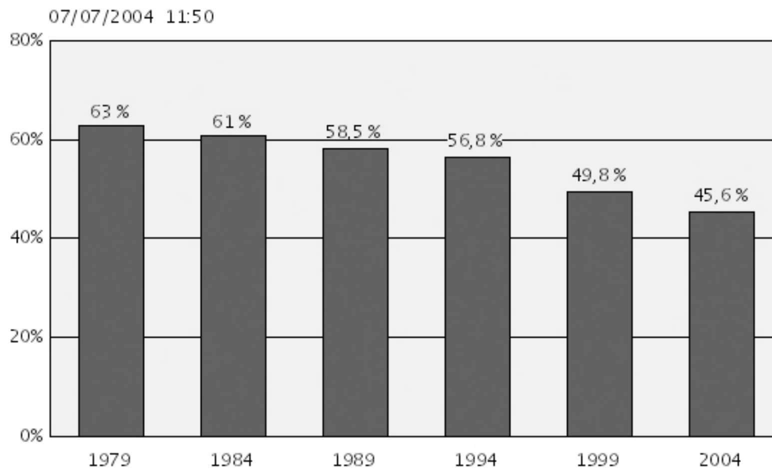
There are no clear physical borders for the European Union citizenship. Once European Union had geographical criteria to admit new members but now even Cyprus geographically located in another continent as a Mediterranean island but historically a European island. Each enlargement of the European Union expands the geographical border of the citizenship. Another important example of the borders of European Union

is the French Guiana, which is in South America. Historical bounds of the member states tend to also differ the physical borders from the European land.

When the geographical borders and the historical ties are diverse, the identity that gathers the Union citizens tends to be a major question in Europe. The major principles that are taken under the European Union treaty “Confirming their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law,” (European Union Law Eur-Lex 2006) and also are the main principles that holds the European identity. European union ensures the citizens of Europe that they will protect their identity with the following clause from the treaty on European Union “Desiring to deepen the solidarity between their peoples while respecting their history, their culture and their traditions,” (European Union Law Eur-Lex 2006) that they carry out with their nationalities. The European Union tries to use the symbols of the Union to create an identity for the citizens of Europe. Some of the European symbols are the flag and the anthem to create a feeling of belonging for the citizens of Europe.

When one analyses the history, it is clear that the identity occurs with history and traditions rather than symbols. It is true that the European Union in other means the European Community has a history of at least six decades but due to lack of social and political integration of the Union the citizens of Europe do not really feel any belonging or any identity that describes their feeling with European Union. One may analyze that the people of Europe, the citizens of Europe, do not really feel any ties to the European identity and to European Union. Even the only European institution that is directly elected by the citizens of Europe, the parliament cannot help the failure of the European identity. According to the statistics in 2004 European Parliament elections turn out rate dramatically fell compared to the previous elections. The statistics below shows that citizens of Europe do not even bother to use their only suffrage right related to European Union that rises the question whether the European Union citizenship mean anything to the Member State citizens.

TABLE 3.13 : Usage of suffrage right in EU for EU elections



(Europa 2007)

Importantly European Union strictly includes the European identity to the treaty text such as treaty on European Union "thereby reinforcing the European identity and its independence in order to promote peace, security and progress in Europe and in the world" (European Union Law Eur-Lex 2006). It is clear that the benefits of the European Union citizenship especially on the free movement right are strongly embraced but even this is not really enough to create a European identity to strengthen the future of European Union citizenship. Common passports or document free travel in Europe can be just the basics for the European identity to grow but the citizenship of Europe needs more European identity to gather people and make them embrace this citizenship. The differences in the religion tends to be distinction among the European citizens that one may examine with the below example;

> *an overview of the Europeans pres coverage of multicultural tensions during the last couple of yeas lead to the conclusion that the question of Islam is perceived in nearly all EU member states as the most pressing and threatening question of the time. The claims articulated by Muslims are seen as divisive and threatening for the idea of a common citizenship based on shared loyalties (Modood 2006).*

The Muslim citizens of Europe tend to face difficulties. It is clear to examine the matter with the below example;

> *The very basic demand is that religious people, no less than people defined by 'race' or gender, should not suffer discrimination in job and other opportunities. So, far example, a person trying to dress in accordance with their religion or who protects a religious identity (such as a Muslim woman wearing a headscarf, a hijab) should not be discriminated against in employment. Up to the end of 2003 there was no legal ban on such discrimination in Britain and the government argued that the case*

> *for it was not proven. The legal system thus left Muslims particularly vulnerable because while discrimination against yarmulke- wearing Jews and turban-wearing Sikhs was deemed to be unlawful racial discrimination, Muslims, unlike these other faith communities were not deemed to be a racial or ethnic group. Nor were they protected by the legislation against religious discrimination that did exist in one part of Britain: being explicitly designed to protect Catholics, it covers only Northern Ireland. The best that Muslims were able to achieve was to prove that the discrimination against them was indirectly against their ethnic characteristics: that they suffered discrimination by virtue of being, say, a Pakistani or an Iraqi (Moodod 2006).*

The European citizens are in need of loyalty, solidarity and culture to hold them together like the way their nationalism holds them together in the member states. They need a "sense of identity" (Kostakopoulou 2001) to hold them together and to feel belonging to the supranational body of European Union. One of the ways that the European Union is trying to gather people and exchange their cultures knowledge is with Erasmus Europe is trying to unite people and create a transaction among their cultures and knowledge. The program Erasmus is created aiming to gather the citizens of Europe and show them the benefits of their rights that they gain with the European Union citizenship since 1987. The ideal Society that European Union would like to create for the European citizens is a democratic, and open to the cultures of Europe to gather them all. The task is very complicated because currently there are 27 member states in European Union and they all have different traditions, languages and most importantly they all have different cultures. European Union is trying to establish a system that all the citizens of Europe can benefit the rights given by creating mobility for people and for their thoughts. Due to the failure of the European Union Institutions attempts to add the long term third country nationals and even the continuous skepticism towards the Member State nationals living in the other countries other than their home countries European society is still under evolution to create a peaceful social living condition.

Also the citizens of Europe are currently inactive in the European politics. Only institution that is depended on their idea is the European Parliament which was hardly active in the European decision making process until the treaty on European Union. The European Citizens have no say on the commission which is one of the major institutions

of the European Union. The politic of the European Union is strongly influenced by the Council of minister. The major two political power that the European Citizens hold is the suffrage right. Additionally the turnout rate of the European Parliament elections tend to that shows that the European Citizens do not really trust in European politics or believe in European System that they do not even use their only political right as Citizens to vote for this system.

4. THE ASSOCIATION AGREEMENT COUNTRY NATIONALS AND EU CITIZENSHIP RIGHTS

4.1 GUROL CASE AND ASSOCIATION AGREEMENT

According to the European Community Treaty the citizens of Association Agreement made countries also have privileges in the Union. One of the cases that European Court of Justice discussed on is the case about Gaye Gurol regarding the Association Agreement. Mrs. Gurol is a Turk born in Germany. Mrs. Gurol preferred to do a year program in Turkey in one of the universities but her application was denied due to fact that the officials categorized her status as 'other foreign students' that mean that if her program qualifies as a crucial requirement for her program she may receive support. In this case Mrs. Gurol agrees that she has right to receive the support due to fact that her father is qualified to receive vocal training support for her daughter due to legal residency he spent in Germany. The details regarding the Association Agreement and the other findings of the court continues as follows;

> *A – The EEC/Turkey Association Agreement:*
> *The aim of the Association Agreement, according to Article 2(1) thereof, is to promote the continuous and balanced strengthening of trade and economic relations between the Contracting Parties, including relations concerning workers, by progressively securing freedom of movement for workers (Article 12) and by abolishing restrictions on freedom of establishment (Article 13) and on freedom to provide services (Article 14), for the purpose of improving the standard of living of the Turkish people and facilitating the accession of the Republic of Turkey to the Community at a later date (fourth recital in the preamble and Article 28).*
> *4. To that end, the Association Agreement provides for a preparatory stage to enable the Republic of Turkey to strengthen its economy with aid from the Community (Article 3), a transitional stage during which a customs union is progressively to be established and the economic policies of Turkey and the Community are to be aligned more closely (Article 4) and a final stage, which is to be based on the customs union and is to entail closer coordination of the economic policies of the Contracting Parties (Article 5).*
> *5. Article 6 of the Association Agreement reads: 'To ensure the implementation and the progressive development of the Association, the Contracting Parties shall meet in a Council of Association which shall act within the powers conferred upon it by this Agreement.' The Association Council thus has the power to take decisions to attain the objectives of the agreement in the cases provided for therein (Article 22(1) of the Association Agreement). Each of the parties is to take the measures necessary to implement the decisions taken.*
> *6. Article 9 of the Association Agreement stipulates: 'The Contracting Parties recognize that within the scope of this Agreement and without prejudice to any special provisions which may be laid down pursuant to Article 8, any discrimination*

on grounds of nationality shall be prohibited in accordance with the principle laid down in Article 7 of the Treaty establishing the Community.'
7. Article 12 of the Association Agreement provides: 'The Contracting Parties agree to be guided by Articles 48, 49 and 50 of the Treaty establishing the Community for the purpose of progressively securing freedom of movement for workers between them.'
8. Article 1 of the Additional Protocol, which was signed in Brussels on 23 November 1970 and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972 (5) (hereinafter 'the Additional Protocol'), lays down the conditions, arrangements and timetables for implementing the transitional stage referred to in Article 4 of the Association Agreement. Under Article 62 thereof, the Additional Protocol is to form an integral part of that agreement.
9. That Additional Protocol includes a Title II, entitled 'Movement of Persons and Services', Chapter I of which deals with Workers.
10. Article 36 thereof lays down the timetable for the progressive achievement of the freedom of movement for workers between the member states of the Community and Turkey in accordance with the principles set out in Article 12 of the Association Agreement and states that the Association Council is to adopt the rules necessary to that end.
B – Decision No 1/80
11. The Association Council adopted Decision No 1/80 on 19 September 1980. Surprisingly, this decision has never been published in the Official Journal. (6) The third recital in the preamble to Decision No 1/80 states: 'Whereas, in the social field, and within the framework of the international commitments of each of the Parties, the above considerations make it necessary to improve the treatment accorded workers and members of their families in relation to the arrangements introduced by Decision No 2/76 of the Association Council'.
12. Of prime importance in the present case is Article 9, which reads as follows: 'Turkish children residing legally in a Member State of the Community with their parents who are or have been legally employed in that Member State, shall be admitted to courses of general education, apprenticeship and vocational training under the same educational entry qualifications as the children of nationals of that Member State. They may in that Member State be eligible to benefit from the advantages provided for under the national legislation in this area.'
13. Article 10(1) of that decision provides: 'The member states of the Community shall as regards remuneration and other conditions of work grant Turkish workers duly registered as belonging to their labor forces treatment involving no discrimination on the basis of nationality between them and Community workers.'
C – Regulation No 1612/68
14.Article 12 of the regulation states:
'The children of a national of a Member State who is or has been employed in the territory of another Member State shall be admitted to that State's general educational, apprenticeship and vocational training courses under the same conditions as the nationals of that State, if such children are residing in its territory. The member states shall encourage all efforts to enable such children to attend these courses under the best possible conditions'(Curia 1997).

As one may see that above the European Court of Justice analyzes the benefits and the rights that came via the Association Agreement. Association Agreement gives certain privileges in the respect of preparing one State to integrate. The immigrants from Turkish origin may benefit from these benefits under the certain criteria's such as being a legal resident of a member state for a certain amount time that their family members are eligible to receive education and social rights in that member states. At certain

times the Human Right organizations strongly disagreed that the rights given and listed above in the Gaye Gurol case are direct discrimination to the others in Europe who cannot benefit from these rights.

In Gaye Gurol's case the members state argues that Mrs. Gurol's case does not satisfy the Germany's regulations in its national law as explained below;

> *D – National legislation*
> *According to the first sentence of Paragraph 5(2) of the Bundesausbildungsförderungsgesetz (Federal Law on grants for training and higher education; hereinafter 'the BAföG'), students with a permanent residence in Germany are to be awarded an educational grant for study at an educational or training institute abroad, if:*
> *'1. their studies are beneficial in the light of their previous education and at least part of that education or training can be recognized as being of the requisite or normal length of the education or training; or*
> *2. in the context of international cooperation between a German and a foreign educational or training institute, mutually complementary teaching in a single course of education or training is provided alternately by the German and by the foreign institute; or*
> *3. after attending a German educational or training institute for at least one year, education or training is continued at an institute in a Member State of the European Union, and sufficient language knowledge is present.'*
> *According to the fourth sentence of Paragraph 5(2) of the BAföG, the first sentence applies to the students referred to in Paragraph 8(2) of the BAföG ('other foreigners') only if the residence abroad is prescribed in educational or training provisions as a part of the education or training which must necessarily be carried out abroad.*
> *According to Paragraph 8(1) of the BAföG, grants for education or training are to be awarded to:*
> *'1. Germans, within the meaning of the Basic Law;*
> *2. Stateless foreigners within the meaning of the Law on the legal status of stateless foreigners in federal territory;*
> *3. Foreigners who have a temporary residence in Germany and are recognized as entitled to asylum in accordance with the Law on asylum procedure;*
> *4. Foreigners who are normally resident in Germany and are refugees under Paragraph 1 of the Law on measures for refugees accepted in the context of humanitarian aid actions;*
> *5. Foreigners who are normally resident in Germany, are recognized as refugees and are entitled to stay in the territory of the Federal Republic of Germany on more than just a temporary basis;*
> *6. Foreigners who are normally resident in Germany and are recognized as having protection against deportation in accordance with Paragraph 51(1) of the Law on foreigners;*
> *7. Foreigners who have their permanent residence in the area in which the Law applies, if one of the parents is a German within the meaning of the Basic Law;*
> *8. Students who in accordance with the Law on residence/EEC have been granted freedom of movement as children, who subsequently have a right to remain as children or who subsequently do not have the right of free movement or the right to remain only because they are 21 years of age or over and receive maintenance from their parents or a marriage partner;*
> *9. Students having the nationality of another EC Member State or of another State party to the European Economic Area Agreement and who were employed in Germany before the beginning of the education or training; there must in principle*

be a connection between the activity pursued during that employment and the content of the education or training.'

According to Paragraph 8(2)(2) of the BAföG, other foreigners are awarded grants for education or training if, during the six years last preceding the commencement of the part of the education or training capable of subsidy, at least one parent lived and was lawfully employed in Germany for a total of three years.

The views of the national court: In the explanation to the questions referred for a preliminary ruling the national court points out that the wording of the relevant national provisions of the BAföG does not grant the applicant any entitlement to a grant for study abroad. In addition, the applicant cannot invoke the general principle of equality laid down in Article 3 of the Basic Law. Furthermore, the national court considers that no entitlement to a grant for a semester's study in Turkey exists by virtue of Article 2 of the First Protocol to the European Convention on Human Rights and Fundamental Freedoms, in conjunction with Article 14 thereof. In addition, there can be no entitlement under Article 3(1) of Decision No 3/80 because the award of a grant for study abroad does not come within the substantive scope of Decision No 3/80 as one of the kinds of social security benefit listed in Article 4(1)(a) to (h) thereof.

Does the first sentence of Article 9 of Decision No 1/80 of the EEC/Turkey Association Council have direct effect in the domestic legal systems of member states of the European Community, so that Turkish children residing legally in a Member State of the Community with their parents who are or have been legally employed in that Member State, and who have the same qualifications as the children of nationals of that Member State, are entitled to equal access to general education, apprenticeship and vocational training?
2. If Question 1 is answered in the affirmative: Do Turkish children still qualify as "residing legally with their parents" if they establish and maintain their own principal residence at the place of their university education and are registered with only a subsidiary residence at their parents' address?
3.If Question 2 is answered in the affirmative:
Does the first sentence of Article 9 of Decision No 1/80 of the EEC/Turkey Association Council confer on the beneficiaries of that provision entitlement not only to equal access to educational facilities but also to equal access to State benefits granted by the Member State with the aim of facilitating participation in education or training, or is the first sentence of Article 9, in conjunction with the second sentence of Article 9, of Decision No 1/80 of the EEC/Turkey Association Council to be interpreted as reserving to member states the possibility of making the grant of social benefits in the area of education to those persons covered by the first sentence subject to other conditions or of limiting those benefits?
4.If Questions 2 and 3 are answered in the affirmative:
Does that also apply to a university education in the Turkish homeland for the beneficiaries?'
D – Proceedings before the Court
In this case written observations have been lodged by the defendant in the main proceedings (through the Bezirksregierung Köln), the German Government, the Austrian Government and the Commission. The applicant set out her views orally at the hearing on 21 October 2004, as did the defendant, the German Government and the Commission. The defendant, the Austrian Government and the German Government argue that the applicant can derive no entitlement to a grant for study abroad from Article 9 of Decision No 1/80. The Commission and the applicant, on the other hand, take the view that a child of a Turkish worker is entitled to a grant to study abroad by virtue of Article 9 of Decision No 1/80.

1. First question:

By its first question the Verwaltungsgericht asks whether the first sentence of Article 9 of Decision No 1/80 has direct effect in the territory of the member states.
In Demirel (7) the Court held that a provision in an agreement concluded by the Community with non-member countries must be regarded as being directly applicable when, regard being had to its wording and the purpose and nature of the agreement itself, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure. The same criteria apply in determining whether the provisions of a decision of the Association Council can have direct effect. (8)

The first sentence of Article 9 of Decision No 1/80 reads as follows: 'Turkish children residing legally in a Member State of the Community with their parents who are or have been legally employed in that Member State, shall be admitted to courses of general education, apprenticeship and vocational training under the same educational entry qualifications as the children of nationals of that Member State.' In precise and unconditional terms Turkish children are granted the right to be admitted to courses of education on the basis of the same educational qualifications as nationals of the host Member State. The provision contains a clear and unconditional obligation to afford equal treatment to resident German and Turkish students. The category of persons protected by Article 9 of Decision No 1/80 must be admitted to educational facilities under the same conditions, that is to say without discrimination on grounds of nationality. As the national court has already noted in the case documents, the first sentence of Article 9 contains the requisite degree of precision and unconditionally to be directly applicable. The conditions under which the entitlement is granted are also laid down clearly and do not require clarification by the national legislature. Therefore, the implementation and effectiveness of the first sentence of Article 9 is not conditional on the adoption of a detailed national measure and is consequently directly applicable. The answer to the first question referred by the Verwaltungsgericht must be that the first sentence of Article 9 of Decision No 1/80 has direct effect in the member states of the European Community.

2. Second question:
By its second question the national court asks whether Turkish children qualify as 'residing legally with their parents' if they establish and maintain their own principal residence at the place of their university education and are registered with only a subsidiary residence at their parents' address.

The Commission points out that Article 9 of Decision No 1/80 merely requires that children reside with their parents. No other conditions, such as the existence of family life or a permanent residence, are laid down. The abovementioned article also draws no distinction between the various kinds of residence, for example in the form of principal residence or subsidiary residence. Therefore, the Commission takes the view that the applicant qualifies as residing with her parents if she is registered at her parents' home in Philippsburg as a subsidiary residence. The Commission considers that this interpretation is consistent with the spirit and purpose of Article 9 of Decision No 1/80. Furthermore, the provision does not impose on Turkish children any restriction on the choice of a particular type of education, other than that the relevant educational entry qualifications be met. For these reasons the children of Turkish workers are entitled to choose a course of study, and thus a place of study, independently of their parents' place of residence. Any other interpretation of the residence requirement would improperly restrict the entitlement granted by Article 9 of Decision No 1/80.

In the view of the German Government, Article 9 of Decision No 1/80 requires that the children and parents live together under the same roof. This condition is also satisfied where during his or her course of study a child takes a room or flat at a different location but lived previously under the same roof as his or her family, that

is to say before commencing his or her studies. Otherwise the entitlement to access to education would be seriously limited, at least in geographical terms. Neither the meaning nor the purpose or wording of the condition relating to residence with parents precludes a child leaving his or parents' residence to study. Therefore, the national court must examine whether the applicant lived under the same roof as her family before commencing her studies.

The wording of Article 9(1) of Decision No 1/80 requires that Turkish children must reside with their parents in order to be entitled to access to education. I share the German Government's view that this provision means that the children of Turkish workers must have been resident in the parental home before commencing their studies. However, it may be necessary for the child to establish a residence in another town if the parents' residence is too far from the institute at which the child of a Turkish worker intends to follow his or her studies. Certainly in a large country such as Germany children pursuing studies do not always have the possibility of doing so from the parental home. For that reason, the entitlement granted by Article 9 of Decision No 1/80 could not be fully exercised if the choice of education were limited to that provided at the parents' place of residence. A more restrictive interpretation of this residence requirement would place an impermissible restriction on the entitlement of the children of Turkish workers to access to education.

35. Such an interpretation of Article 9 of Decision No 1/80 is consistent with the aim of granting the family members of Turkish workers certain advantages to facilitate and accelerate their integration into the social life of the host country. This is also stated specifically in the third recital in the preamble to Decision No 1/80: 'Whereas, in the social field, and within the framework of the international commitments of each of the Parties, the above considerations make it necessary to improve the treatment accorded workers and members of their families in relation to the arrangements introduced by Decision No 2/76 of the Association Council'.

Therefore, the answer to the second question referred by the Verwaltungsgericht must be that Turkish children still qualify as 'residing legally with their parents' if they leave the parental home upon commencing their chosen studies in order to establish residence at their place of study.

3.Third and fourth questions:
The applicant in the main proceedings and the Commission, on the one hand, and the defendant in the main proceedings and the German and Austrian Governments, on the other, take diametrically opposed views on the answer to the third and fourth questions.
The Commission, which was supported at the hearing by the applicant in the main proceedings, submits in the first place that the second sentence of Article 9 of Decision No 1/80 has direct effect and, consequently, contains a prohibition of discrimination.

In support of its view that this provision has direct effect, the Commission relies on the wording thereof and on the purpose of Decision No 1/80, as can be inferred from Article 12 of the Association Agreement and Article 36 of the 1972 Additional Protocol which provide for the progressive achievement of the freedom of movement for workers. Furthermore, the entitlement to access to education guaranteed by the first sentence of Article 9 of Decision No 1/80 would be undermined if Turkish children had no permanent entitlement to the benefits referred to in the second sentence thereof.
The entitlement to access to education might also be undermined if the entitlement to be derived from the direct effect of the second sentence of Article 9 did not include a similar entitlement for German nationals.

In the event that the Court does not share its view regarding the direct effect of the second sentence of Article 9, the Commission submits, in the alternative, that the first sentence of Article 9, which in any event has direct effect, should be interpreted as granting entitlements to the same benefits as those available to German students.

In its view, such an interpretation finds support in the similar provision contained in Article 12 of Regulation No 1612/68 which, although framed in broader terms, has the same intended purpose as the first sentence of Article 9 of Decision No 1/80, namely to promote the social integration of children of migrant EC workers, in this case Turkish workers, by ensuring that they are able to pursue studies on the same footing as children having the nationality of the host Member State.

The defendant in the main proceedings, and also the German and Austrian Governments, take the view that the wording of the second sentence of Article 9 of Decision No 1/80 precisely imposes no obligation on the member states to make public funds available to facilitate the participation of Turkish children in education under the same conditions as those which apply to nationals of the host Member State. As is apparent from it's wording, this provision gives member states the possibility of granting the same benefits. The implementation thereof is left to the discretion of the national legislature.

In order to answer the question of interpretation raised in this case, reference must be made not only to the wording of Article 9 of Decision No 1/80 but also the scheme and purpose thereof as established by the progressive implementation of the Association Agreement between the Community and Turkey.

Initially the Association Council made little progress on implementation of the provision contained in Article 12 of the Association Agreement relating to 'progressively securing freedom of movement for workers'. Progress was accelerated somewhat after the 1970 Additional Protocol had been approved by Regulation No 2760/72 (see paragraphs 8 to 10 above). This acceleration resulted first in Decision No 2/76 of the Association Council and then Decision No 1/80 in question.

Chapter II of Decision No 1/80 contains the social provisions. The first section of this chapter deals in particular with questions relating to employment and the free movement of workers. Even though the purpose of this section is, according to the third recital in the preamble, to improve, in the social field, the treatment accorded workers and members of their families in relation to the arrangements introduced by Decision No 2/76 of the Association Council, the content and wording thereof reveal a large degree of caution on the part of the Association Council as the competent legislative body.

This is also evident from a number of provisions of this section of the decision which laid down rules which are more restrictive in almost every respect than those laid down in Articles 39 EC to 42 EC and the secondary Community legislation based thereon.

For example, in Article 6 of the Decision Turkish workers are granted an entitlement to access to the employment market of the country in which they reside which is subject to strict conditions. Moreover, in exercising that right they are placed at a disadvantage by comparison with nationals of the member states. The rules laid down in Article 7 of Decision No 1/80 concerning the access of the members of Turkish workers' families to the employment market in the country in which they reside are considerably more restrictive than those which apply to nationals of the member states. The same is true of the very restrictive rules imposing strict conditions which Article 8 of Decision No 1/80 contains in relation to the intra-Community movement of Turkish workers.

When an overall comparison is made of the body of rules which apply to Turkish workers within the European Community under Decision No 1/80 and those which apply to nationals of the member states, it is striking that the former body of rules is not based on the principle of equality and non-discrimination. The individual rights and entitlements are set out exhaustively in the relevant provision. Where the decision refers to equal treatment of Turkish workers and those of the host State, the scope thereof is defined precisely. For example, Article 10(1) of the decision prohibits discrimination against Turkish workers on the basis of their nationality as regards remuneration and other conditions of work. However, the equal treatment which Article 10(2) of the decision affords to them as regards assistance from the employment services is again subject to strict conditions.

Incidentally, I should point out that as regards the free movement of persons within the European Community the legal position of Community nationals who maintain their residence within the Community in a country other than their country of origin is still not identical, in terms of entitlements to State benefits, to that of nationals of the country to which they have moved. Furthermore, primary and secondary Community law provide for broader treatment as nationals of a Member State for persons who are to be regarded as economic migrants than for those who fall within the scope of Directive 90/364/EEC (9) or for students who fall within the scope of Directive 93/96/EEC. (10) The tension between the principle of equality and the distinctions made in that regard by primary and secondary Community law is characterized by the free movement of persons within the Community. It has given rise to case law in which the bounds between the operation of the principle of equality and the distinction intended by the Community legislator are somewhat redefined but nevertheless observed per se. (11) This tension between the principle of equality and the distinction expressly intended by the competent legislative body also arises in this case.

In the light of the foregoing the legal position of Turkish workers under Decision No 1/80 can be described as privileged in comparison with that of other workers from non-member countries. Although Article 12 of the Association Agreement expressly provides for a gradual development of this position towards that of Community nationals, the Association Council, as the competent legislative body in this case, has thus far failed to take more far-reaching steps. In my view, it therefore follows that the answer to the questions referred must be found primarily on the basis of the wording, scheme and context of Decision No 1/80 itself and that great care is called for in interpreting this wording by analogy with primary and secondary Community law governing the free movement of workers who are Community nationals. If the Association Council had intended to bring about greater congruity between the legal position of Turkish workers and that of workers from the member states, it would have itself, as the competent legislative body, ensured that there was greater uniformity in terms of content between Decision No 1/80 and the primary and secondary Community law relating to the free movement of workers.

Therefore, it would not be right to interpret Article 9 of Decision No 1/80 by analogy with Article 12 of Regulation No 1612/68, as the Commission proposes. It is clear from the differences in the wording of the two provisions that the competent legislative body in this case precisely intended rules which were not identical. It seems to me that the Court must respect the obvious intention of the legislative body, or at least take account thereof.

The wording of Article 9(1) of Decision No 1/80 entitles Turkish children residing legally in a Member State to be admitted to courses of general education, apprenticeship and vocational training under the same educational entry qualifications as the children of nationals of that Member State. I share the Commission's view, which is not explicitly disputed by the Austrian and German

Governments, that the requirement relating to equal treatment contained in this provision, which strictly speaking relates only to access to general education, can have substantive meaning in respect of certain – expensive – forms of education only if Turkish children are in fact enabled to take part in such education. It is that to which the second sentence of Article 9 refers: 'They may in that Member State be eligible to benefit from the advantages provided for under the national legislation in this area'.

A literal and systematic interpretation of this provision, which complements the first sentence of Article 9, does not provide grounds for conferring direct effect thereon or for regarding it as establishing implicit equal treatment. If the competent legislative body had intended to lay down an equal treatment requirement having direct effect it could have simply worded the provision differently: 'they shall, on the same footing as children of nationals of that Member State, be eligible to benefit from the advantages provided for under the national legislation in this area'. In this connection it is significant that explicit and imperative terms were chosen in the following Article 10(2) of the decision.

I do not consider that the somewhat acrobatic-looking interpretation method employed by the Commission is worthy of application. It relies on an analogy with Article 12 of Regulation No 1612/68 which that legislative body could have easily adopted but evidently chose not to.

Consequently, it is all the more clear that the two sentences of Article 9 should be interpreted together. As pointed out at paragraph 54 above, the second sentence is an 'enabling clause' complementing the first sentence which imposes on the member states an obligation also to secure Turkish children's entitlement to access to education in fact. Although such a substantive obligation still leaves the member states a certain margin of discretion – which, as is evident from the second sentence of Article 9, is also intended –, this margin is restricted when viewed in conjunction with the first sentence: Turkish children must also actually be able to follow the courses of education and training to which they are entitled to be admitted. That is to say, they must be eligible for the actual facilities required to do so.

In so far as public benefits and facilities made available to apprentices and students in the form of grants, allowances, advances and loans in order to enable them to follow courses of study are intended to make it possible actually to follow the relevant courses of study, it follows from this interpretation of Article 9 that they must also accrue to Turkish students.

Conversely, where the benefits granted to Turkish students for the purpose of following a course of study or training are more limited than or different from those for children of its own nationals, a Member State must demonstrate that this difference does not adversely affect its obligation under Article 9 of Decision No 1/80 to ensure that the result sought by this article is attained, namely that Turkish children are not only admitted to courses of general education, apprenticeship and vocational training on the same footing but are also actually enabled to follow such courses.

This also applies to public benefits and facilities made available to apprentices and students for the purpose of following courses of study abroad. Children of Turkish workers must be enabled properly to follow and complete their chosen course of study and where study abroad forms an integral part thereof, this too has effects on the entitlements of the children of Turkish workers. In such a case too the Member State must enable Turkish children actually to exercise the entitlement granted to them.
60. It is for the national court to consider whether this obligation has been fulfilled on the basis of the facts.

> *IV – Conclusion:*
> *In view of the foregoing I propose that the Court should answer the questions referred by the Verwaltungsgericht Sigmaringen as follows:*
> *'Article 9 of Decision No 1/80 of the EEC/Turkey Association Council of 19 September 1980 must be interpreted as meaning that: the first sentence of that provision has direct effect in the member states; children of Turkish workers still qualify as "residing legally with their parents" if they leave the parental home upon commencing their chosen studies in order to establish residence at their place of study; it is for the national court to determine whether national law applied to Turkish nationals such as the applicant in the main proceedings in fact enables them to exercise their entitlement to be admitted to courses of general education, apprenticeship and vocational training.'(Curia 1997).*

In the courts conclusion, they underlined and noted that the national court will decide with the evidence whether Mrs. Gurol's case fulfills the requirements states in the Association Agreement. Even though the third country nationals are not directly under the European Court of Justice's competence, in the past they strongly tried to extend the Union citizenship rights to them as well.

4.2 SEVINCE CASE

It is important to note that the Association Agreement bring very significant benefits for the third country nationals as long as they full fill the terms that are stated in the agreement. Another significant case regarding the Association Agreement is the Sevince case listed below. The host countries refusal to grant him the residential permit even though he completed the required time to spend for the Association Agreement caused this case to be taken to European Court of Justice. The courts findings on the case of Sevince as follows;

> *It is apparent from the documents before the Court that on 11 September 1980 Mr. Sevince was refused an extension to the residence permit which had been granted to him on 22 February 1979 on the ground that the family circumstances which had justified the grant of the permit no longer existed. The appeal lodged against that decision, which had full suspensive effect, was definitively dismissed by the Raad van State on 12 June 1986. During the period in which he benefited from the suspensory effect of the appeal, Mr. Sevince obtained an employment certificate which remained valid until the abovementioned judgment of the Raad van State was delivered on 12 June 1986.*
>
> *Claiming that he had been in paid employment for a number of years in the Netherlands, on 13 April 1987 Mr. Sevince applied for a residence permit. In support of his application, he relied on Article 2(1)(b) of Decision No 2/76, according to which a Turkish worker who has been in legal employment for five years in a Member State of the Community is to enjoy free access in that Member*

State to any paid employment of his choice, and on the third indent of Article 6(1) of Decision No 1/80, according to which a Turkish worker duly registered as belonging to the labor force of a Member State is to enjoy free access in that Member State to any paid employment of his choice after four years' legal employment . His application was rejected, by implication, by the Netherlands authorities.

An appeal against that decision was brought before the Raad van State, which decided to stay the proceedings until the Court of Justice had given a ruling on the following questions:

The first question:
The national court's first question is essentially whether an interpretation of Decisions Nos 2/76 and 1/80 may be given under Article 177 of the of the EEC Treaty.

By way of a preliminary observation, it should be borne in mind that, as the Court has consistently held, the provisions of an agreement concluded by the Council under Articles 228 and 238 of the EEC Treaty form an integral part of the Community legal system as from the entry into force of that agreement (see judgments in Case 12/86 Demirel [1987] ECR 3719, paragraph 7 and in Case 30/88 Greece v Commission [1989] ECR 3711, paragraph 12).

The Court has also held that, since they are directly connected with the Agreement to which they give effect, the decisions of the Council of Association, in the same way as the Agreement itself, form an integral part, as from their entry into force, of the Community legal system (see judgment in Case 30/88 Greece v Commission, supra, paragraph 13).

Since the Court has jurisdiction to give preliminary rulings on the Agreement, in so far as it is an act adopted by one of the institutions of the Community (see judgment in Case 181/73 Haegeman [1974] ECR 449), it also has jurisdiction to give rulings on the interpretation of the decisions adopted by the authority established by the Agreement and entrusted with responsibility for its implementation.

That finding is reinforced by the fact that the function of Article 177 of the EEC Treaty is to ensure the uniform application throughout the Community of all provisions forming part of the Community legal system and to ensure that the interpretation thereof does not vary according to the interpretation accorded to them by the various member states (see judgments in Case 104/81 Kupferberg [1982] ECR 3641 and in Joined Cases 267 to 269/81 SPI and SAMI [1983] ECR 801).

It must therefore be stated in reply to the first question submitted by the Raad van State that the interpretation of Decisions Nos 2/76 and 1/80 falls within the scope of Article 177 of the EEC Treaty.

The second question:
The second question submitted by the Raad van State is whether Articles 2(1)(b) and 7 of Decision No 2/76 and Articles 6(1) and 13 of Decision No 1/80 have direct effect in the territory of the member states.

In order to be recognized as having direct effect, the provisions of a decision of the Council of Association must satisfy the same conditions as those applicable to the provisions of the Agreement itself.

In Demirel, supra, the Court held that a provision in an agreement concluded by the Community with non-member countries must be regarded as being directly

applicable when, regard being had to its wording and the purpose and nature of the agreement itself, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure (paragraph 14). The same criteria apply in determining whether the provisions of a decision of the Council of Association can have direct effect.

In order to determine whether the relevant provisions of Decisions Nos 2/76 and 1/80 satisfy those criteria, it is first necessary to examine their terms. Article 2(1)(b) of Decision No 2/76 and the third indent of Article 6(1) of Decision No 1/80 uphold, in clear, precise and unconditional terms, the right of a Turkish worker, after a number of years' legal employment in a Member State, to enjoy free access to any paid employment of his choice.

Similarly, Article 7 of Decision No 2/76 and Article 13 of Decision No 1/80 contain an unequivocal "standstill" clause regarding the introduction of new restrictions on access to the employment of workers legally resident and employed in the territory of the contracting States.

The finding that the provisions of the decisions of the Council of Association at issue in the main proceedings are capable of direct application to the situation of Turkish workers duly registered as belonging to the labor force of a Member State is confirmed by the purpose and nature of the decisions of which those provisions form part and of the Agreement to which they relate.

According to Article 2(1) of the Agreement, its purpose is to promote the continuous and balanced strengthening of trade and economic relations between the parties, and it establishes between the European Economic Community and Turkey an association which provides for a preparatory stage to enable Turkey to strengthen its economy with aid from the Community, a transitional stage for the progressive establishment of a customs union and for the alignment of economic policies, and a final stage based on the customs union and entailing close coordination of economic policies (see judgment in Case 12/86 Demirel, supra, paragraph 15). As far as freedom of movement for workers is concerned, Article 12 of the Agreement, forming part of Title II concerning implementation of the transitional stage, provides that the contracting parties agree to be guided by Articles 48, 49 and 50 of the EEC Treaty for the purpose of progressively securing freedom of movement for workers between them. Article 36 of the Additional Protocol signed on 23 November 1970, annexed to the Agreement establishing an association between the European Economic Community and Turkey, concluded by Regulation (EEC) No 2760/72 of the Council of 19 December 1972 (Official Journal 1973 C 113, p. 17, hereinafter referred to as the "Additional Protocol") lays down the time-limits for the progressive attainment of such freedom of movement and provides that the Council of Association is to decide on the rules necessary to that end.

Decisions numbers 2/76 and 1/80 were adopted by the Council of Association in order to implement Article 12 of the Agreement and Article 36 of the Additional Protocol which, in its judgment in Demirel, supra, the Court recognized as being intended essentially to set out a programme. Thus, in the preamble to Decision No 2/76 reference is expressly made to Article 12 of the Agreement and Article 36 of the Additional Protocol and Article 1 of the decision lays down the detailed arrangements for the first stage of implementation of Article 36 of the Additional Protocol. The third recital in the preamble to Decision No 1/80 refers to improving, in the social sphere, the conditions available to workers and members of their families in relation to the arrangements introduced by Decision No 2/76. The fact that the abovementioned provisions of the Agreement and the Additional Protocol essentially set out a programme does not prevent the decisions of the Council of Association which give effect in specific respects to the programmers envisaged in the Agreement from having direct effect.

The conclusion that the articles of Decisions Nos 2/76 and 1/80 mentioned in the second question referred to the Court can have direct effect cannot be affected by the fact that Article 2(2) of Decision No 2/76 and Article 6(3) of Decision No 1/80 provide that the procedures for applying the rights conferred on Turkish workers are to be established under national rules . Those provisions merely clarify the obligation of the member states to take such administrative measures as may be necessary for the implementation of those provisions, without empowering the member states to make conditional or restrict the application of the precise and unconditional right which the decisions of the Council of Association grant to Turkish workers.

Similarly, Article 12 of Decision No 2/76 and Article 29 of Decision No 1/80, which provide that the contracting parties are, each for its own part, to take any measures required for the purposes of implementing the provisions of the decision, merely lay emphasis on the obligation to implement in good faith an international agreement, an obligation which, moreover, is referred to in Article 7 of the Agreement itself.

The direct effect of the provisions at issue in the main proceedings cannot, furthermore, be contested merely because Decisions Nos 2/76 and 1/80 were not published. Although non-publication of those decisions may prevent their being applied to a private individual, a private individual is not thereby deprived of the power to invoke, in dealings with a public authority, the rights which those decisions confer on him.

As regards the safeguard clauses which enable the contracting parties to derogate from the provisions granting certain rights to Turkish workers duly registered as belonging to the labor force of a Member State, it must be observed that they apply only to specific situations. Otherwise than in the specific situations which may give rise to their application, the existence of such clauses is not in itself liable to affect the direct applicability inherent in the provisions from which they allow derogations (see judgment in Case 104/81 Kupferberg, supra).

It follows from the foregoing considerations that it must be stated in reply to the second question submitted by the Raad van State that Article 2(1)(b) of Decision No 2/76 and/or Article 6(1) of Decision No 1/80 and Article 7 of Decision No 2/76 and/or Article 13 of Decision No 1/80 have direct effect in the member states of the European Community.

The third question:
The national court's third question seeks to determine whether the expression "legal employment" contained in Article 2(1)(b) of Decision No 2/76 and in the third indent of Article 6(1) of Decision No 1/80 covers a situation where a Turkish worker is authorized to work during the period for which the operation is suspended of a decision refusing him a right of residence, against which he has appealed.

In replying to that question it must first be stated that the abovementioned provisions merely govern the circumstances of the Turkish worker as regards employment, and make no reference to his circumstances concerning the right of residence.

The fact nevertheless remains that those two aspects of the personal situation of a Turkish worker are closely linked and that by granting to such a worker, after a specified period of legal employment in the Member State, access to any paid employment of his choice, the provisions in question necessarily imply - since otherwise the right granted by them to the Turkish worker would be deprived of any effect - the existence, at least at that time, of a right of residence for the person concerned.

The legality of the employment within the meaning of those provisions, even assuming that it is not necessarily conditional upon possession of a properly issued residence permit, nevertheless presupposes a stable and secure situation as a member of the labor force.

In particular, although legal employment over a given period gives rise, at the end of that period, to recognition of a right of residence, it is inconceivable that a Turkish worker could contrive to fulfill that condition, and consequently be recognized as being vested with that right, merely because, having been refused a valid residence permit by the national authorities during that period and having exercised the rights of appeal provided for by national law against such refusal, he benefited from the suspensory effect deriving from his appeal and was therefore able to obtain authorization, on a provisional basis pending the outcome of the dispute, to reside and be employed in the Member State in question .
Consequently, the expression "legal employment" contained in Article 2(1)(b) of Decision No 2/76 and in the third indent of Article 6(1) of Decision No 1/80 cannot cover the situation of a Turkish worker who has been legally able to continue in employment only by reason of the suspensory effect deriving from his appeal pending a final decision by the national court thereon, provided always, however, that that court dismisses his appeal.

It must therefore be stated in reply to the third question submitted by the national court that the term "legal employment" in Article 2(1)(b) of Decision No 2/76 and the third indent of Article 6(1) of Decision No 1/80 does not cover the situation of a Turkish worker authorized to engage in employment for such time as the effect of a decision refusing him a right of residence, against which he has lodged an appeal which has been dismissed, is suspended Operative part.

On those grounds:
(1) The interpretation of Decision No 2/76 of 20 December 1976 and Decision No 1/80 of 19 September 1980 of the Association Council set up by the Agreement establishing an Association between the European Economic Community and Turkey falls within the scope of Article 177 of the EEC Treaty.
(2) Article 2(1)(b) of Decision No 2/76, cited above, and Article 6(1) of Decision No 1/80, cited above, and Article 7 of Directive No 2/76 and Article 13 of Decision No 1/80 have direct effect in the member states of the European Community.
(3) The term "legal employment" in Article 2(1)(b) of Decision No 2/76, cited above, and the third indent of Article 6(1) of Decision No 1/80, cited above, does not cover the situation of a Turkish worker authorized to engage in employment for such time as the effect of a decision refusing him a right of residence, against which he has lodged an appeal which has been dismissed, is suspended" (European Union Law Eur-Lex 2006).

The European Union applies the terms of the Association Agreement as long as the required background terms are full filled. European Court of Justice continuously obliges to the member states to apply and give the rights that established with Association Agreement but as we may see in the Sevince case once the terms that are stated with the agreement are not full filled the court concludes on the benefit of the Member State.

5. EUROPEAN IMMIGRATION CONCEPT

5.1 EUROPEAN IMMIGRATION AND THE TREATIES

It is important that one should not analyze the European Union citizenship without analyzing the European immigration. The European immigration has strong ties to the European states histories. In one hand some member states have immigration due to their historical ties with their old colonies, such as France and United Kingdom. On the other hand some states have immigration due to their welcoming to the immigrants as labor force such as Germany after the Second World War. During the time frame of the World War One and the World War Two the European nations adopted new systems such as visas and residency/ work permits for the other country citizens. Regardless the reasoning of the historical immigration Europe was a safe heaven for the immigrants until the mid seventies. During the mid 70's the European nations started to bring limits to the immigration due to economic reasons and the states started procedures to protect their borders from the illegal immigration. Until the Treaty on European Union, European Immigration was neglected like the European Union citizenship. The Maastricht Treaty placed the Immigration under the third pillar of which subjects are under the nations own competence. The Amsterdam Treaty gave hope for a common immigration policy for Europe with the transfer of the subject from the third pillar to the first pillar. When the European Immigration was moved to the first pillar the member states made sure that the European Institutions will not have a full competence on the issue so the subject was simply always stuck between the first and the second pillars of the European structure with unanimity decision making requirement that the member states brought on the subject. Due to the fact that European Union does not have a common immigration policy, immigration takes place in the treaty with the free movement of workers clause as follows;

> *Article 61*
> *In order to establish progressively an area of freedom, security and justice, the Council shall adopt:*
> *(a) Within a period of five years after the entry into force of the Treaty of Amsterdam, measures aimed at ensuring the free movement of persons in accordance with Article 14, in conjunction with directly related flanking measures with respect to external border controls, asylum and immigration, in accordance with the provisions of Article 62(2) and (3) and Article 63(1) (a) and (2)(a), and*

measures to prevent and combat crime in accordance with the provisions of Article 31(e) of the Treaty on European Union;
(b) other measures in the fields of asylum, immigration and safeguarding the rights of nationals of third countries, in accordance with the provisions of Article 63;
(c) measures in the field of judicial cooperation in civil matters as provided for in Ar ticle 65;
8(d) appropriate measures to encourage and strengthen administrative cooperation, as provided for in Article 66;
(e) measures in the field of police and judicial cooperation in criminal matters aimed at a high level of security by preventing and combating crime within the Union in accordance with the provisions of the Treaty on European Union.
Article 62
The Council, acting in accordance with the procedure referred to in Article 67, shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt:
1. Measures with a view to ensuring, in compliance with Article 14, the absence of any controls on persons, be they citizens of the Union or nationals of third countries, when crossing internal borders;
2. Measures on the crossing of the external borders of the member states which shall establish:
(a) standards and procedures to be followed by member states in carrying out checks on persons at such borders;
(b) rules on visas for intended stays of no more than three months, including:
(i) the list of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement;
(ii) the procedures and conditions for issuing visas by member states;
(iii) a uniform format for visas;
(iv) rules on a uniform visa;
Official Journal of the European Union EN 29.12.2006C 321 E/66
3. Measures setting out the conditions under which nationals of third countries shall have the freedom to travel within the territory of the member states during a period of no more than three months.
Article 63
The Council, acting in accordance with the procedure referred to in Ar ticle 67, shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt:
Official Journal of the European UnionEN29.12.2006 C 321 E/67
3. Measures on immigration policy within the following areas:
(a) conditions of entry and residence, and standards on procedures for the issue by member states of long-term visas and residence permits, including those for the purpose of family reunion;
(b) illegal immigration and illegal residence, including repatriation of illegal residents;
4. Measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other member states. Measures adopted by the Council pursuant to points 3 and 4 shall not prevent any Member State from maintaining or introducing in the areas concerned national provisions which are compatible with this Treaty and with international agreements.

Measures to be adopted pursuant to points 2(b), 3(a) and 4 shall not be subject to the five-year period referred to above.
Article 64
1. This title shall not affect the exercise of the responsibilities incumbent upon member states with regard to the maintenance of law and order and the safeguarding of internal security.
2. In the event of one or more member states being confronted with an emergency situation characterized by a sudden inf low of nationals of third countries and

without prejudice to paragraph 1, the Council may, acting by qualified majority on a proposal from the Commission, adopt provisional measures of a duration not exceeding six months for the benefit of the member states concerned.
Article 65
Measures in the field of judicial cooperation in civil matters having cross-border implications, to be taken in accordance with Ar ticle 67 and in so far as necessary for the proper functioning of the internal market, shall include:
(a) improving and simplifying:
the system for cross-border ser vice of judicial and extrajudicial documents,
cooperation in the taking of evidence,
the recognition and enforcement of decisions in civil and commercial cases, including decisions in extrajudicial cases;
(b) promoting the compatibility of the rules applicable in the member states concerning the conflict of laws and of jurisdiction;
Official Journal of the European UnionEN 29.12.2006C 321 E/68
(c) eliminating obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the member states.
Article 66
The Council, acting in accordance with the procedure referred to in Ar ticle 67, shall take measures to ensure cooperation between the relevant departments of the administrations of the member states in the areas covered by this title, as well as between those departments and the Commission.
Article 67
1. During a transitional period of five years following the entry into force of the Treaty of Amsterdam, the Council shall act unanimously on a proposal from the Commission or on the initiative of a Member State and after consulting the European Parliament.
2. After this period of five years:
the Council shall act on proposals from the Commission; the Commission shall examine any request made by a Member State that it submit a proposal to the Council,
the Council, acting unanimously after consulting the European Parliament, shall take a decision with a view to providing for all or parts of the areas covered by this title to be governed by the procedure referred to in Ar ticle 251 and adapting the provisions relating to the powers of
the Court of Justice.
3. By derogation from paragraphs 1 and 2, measures referred to in Ar ticle 62(2)(b) (i) and (iii) shall, from the entry into force of the Treaty of Amsterdam, be adopted by the Council acting by a qualified majority on a proposal from the Commission and after consulting the European
Parliament.
4. By derogation from paragraph 2, measures referred to in Ar ticle 62(2)(b) (ii) and (iv) shall, after a period of five years following the entry into force of the Treaty of Amsterdam, be adopted by the Council acting in accordance with the procedure referred to in Article 251.
5. By derogation from paragraph 1, the Council shall adopt, in accordance with the procedure referred to in Article 251:
the measures provided for in Ar ticle 63(1) and (2)(a) provided that the Council has previously adopted, in accordance with paragraph 1 of this Ar ticle, Community legislation defining the common rules and basic principles governing these issues,
Official Journal of the European UnionEN29.12.2006 C 321 E/69
the measures provided for in Ar ticle 65 with the exception of aspects relating to family law. Official Journal of the European UnionEN 29.12.2006C 321 E/70 (European Union Law Eur- Lex 2006).

5.2 THE SCHENGEN AGREEMENT

As one may take from the treaty clauses the European institutions do not have competencies and rights to intervene on the immigration issue. The ECJ creates competencies to intervene on immigration subjects when the case subjects are related to competency areas. The decisions taking to the treaty has not been fulfilled by the member states that shows member states are not willing to give more competencies to EU institutions on the subject. Amsterdam treaty also added the Schengen Agreement into its legal framework. The Schengen Agreement was made in 14th June 1985 by original five members Belgium, France, The Netherlands, Luxembourg and Germany. The five member states created a program to remove all internal border checks. The plan includes the SIS Schengen information system to create cooperation combating on illegal immigration outside border checks. The main measures aimed to gain by the Schengen Agreements as follows;

> *the removal of checks at common borders, replacing them with external border checks; a common definition of the rules for crossing external borders and uniform rules and procedures for controls there; separation in air terminals and ports of people traveling within the Schengen area from those arriving from countries outside the area; harmonization of the rules regarding conditions of entry and visas for short stays; coordination between administrations on surveillance of borders (liaison officers and harmonization of instructions and staff training); the definition of the role of carriers in measures to combat illegal immigration; requirement for all non-EU nationals moving from one country to another to lodge a declaration; the drawing up of rules for asylum seekers (Dublin Convention, replaced in 2003 by the Dublin II Regulation); the introduction of cross-border rights of surveillance and hot pursuit for police forces in the Schengen States; the strengthening of legal cooperation through a faster extradition system and faster distribution of information about the implementation of criminal judgments; the creation of the Schengen Information System (SIS)(Europa 2007).*

All the terms of Schengen are created to gather a cooperation area to mostly combat illegal immigration. The Schengen countries currently give the visas according to their national procedures that also cause an unjust treatment. One country may give visa easier than other as it can be imagined.

5.3 TAMPER AGENDA

It has been noticeable that the almost all the member states of European Union are attractive for immigrants from all around the world. The member states agreed on the matter that in order to protect the Europe after the abolition of internal borders, they must set a common immigration law to protect their external borders. The main theme of the European Immigration approach is to create a healthy system to support the European market without destroying the social setting of Europe. Even though the member states tend to set different laws on immigration unfortunately the illegal immigration continues. Due to need of creating a common immigration policy, at the European Council in Tampere in 1999 a guideline was accepted. The Temper Agenda consist of major plans to improve immigration all over Europe as follows;

Tampere agenda

1. *it be based on a comprehensive approach to the management of migratory flows so as to find a balance between humanitarian and economic admission;*

2. *it include fair treatment for third-country nationals aiming as far as possible to give them comparable rights and obligations to those of nationals of the Member State in which they live;*

3. *a key element in management strategies must be the development of partnerships with countries of origin including policies of co-development;*

4. *As the first step in creating a common EU immigration policy, the European Commission presented in November 2000 a communication to the Council and the European Parliament in order to launch a debate with the other EU institutions and with member states and civil society. The communication recommended a common approach to migration management which should take into account the following:*
5. *the economic and demographic development of the Union;*
6. *the capacity of reception of each Member State along with their historical and cultural links with the countries of origin;*
7. *the situation in the countries of origin and the impact of migration policy on them (brain drain);*
8. *the need to develop specific integration policies (based on fair treatment of third-country nationals residing legally in the Union, the prevention of social exclusion, racism and xenophobia and the respect for diversity)(European Commission 2007).*

In order to receive success from the Tamper the member states agreed on using the open method coordination on the immigration. This method was previously used on the Social Policy that allows the member states to work more independently on the matters

of immigration that needs solutions. The Tamper Agenda gave results on the issues such as family reunification with the council Directive 2003/86/22. This was important for the immigrants all over the Europe that showed them that Union also improves their life conditions and they are an important group in the European society. Another important decision that came after Tampere is the European Union Long-Term residence status given to the immigrants who worked in the member states for 5 year legally. This was a way to encourage the immigrants to obey the rules and be legal immigrants to enjoy the right that are given by European Union and the right will be given in the future.

The Tamper Agenda strongly supported the integration of the immigrants to eliminate the illegal immigration that under the light of the Agenda European Institutions put together projects for students, researchers and for the community to incorporate the citizens of Europe and the immigrants together. The member states were aware of the facts that the major reason of the immigration is the underdevelopment of the third countries, that the agenda brought help to the source of the immigration the third countries in economic and social perspectives. It is important to note that the Denmark, United Kingdom and Ireland did not join the agenda. Denmark fully opted out and the United Kingdom and Ireland joined the other member states on project and term basis.

5.4 HAGUE PROGRAM

After the Tamper Agenda expired the member states needed a new plan to continue to work on immigration issues. In 2004 European Union's member states gathered around to create a 5-year program based on the core values of the creation of union that will serve for resolutions the current issues of Justice and Home Affairs. The Hague Program is a key to enter 2010 with resolution on the 10 key areas that require the Union's attention and enhanced cooperation. The major interest areas of the Hague program are protecting and extending the Fundamental and citizenship rights, fighting against terrorism in a cooperated manner, fighting against the immigration, protecting the external borders and to making sure of the unions safety, creating a common asylum policy for all member states, creating an approach that will impact the development of

the union, enhancing the cooperation among the security forces of the union, fighting against the organized crime, creating a like justice system for all member states, and as the last but not the least creating and guaranteeing the funding for the main objectives of the program. All these objectives carefully explained in the Hague program with road maps. In the last two year since the program took effect only some of the policy areas had improvements but the informal Home Affairs and Justice Council of Ministers strongly state that they are working on the future improvements of the Hague program objectives. The Hague Programme's 10 priorities follow as;

1. *Fundamental rights and citizenship:*
   Ensure the full development of policies enhancing citizenship, monitoring and promoting respect for fundamental rights.
2. *The fight against terrorism:*
   Focus on different aspects of prevention, preparedness and response in order to further enhance, and where necessary complement, member states capabilities to fight terrorism.
3. *Migration management:*
   Define a balanced approach to migration management developing a common immigration policy at Union level, while further strengthening the fight against illegal migration and trafficking in human beings, notably women and children.
4. *Internal borders, external borders and visas:*
   Further develop an integrated management of external borders and a common visa policy, while ensuring the free movement of persons.
5. *A common asylum area:*
   Work towards the establishment of a common asylum area taking into account the humanitarian tradition and respect of international obligations of the Union and the effectiveness of a harmonized procedure.
6. *Integration: the positive impact of migration on our society and economy*
   Adopt, support and incentive measures to help member states deliver better policies on integration so as to maximize the positive impact of migration on our society and economy.
7. *Privacy and security in sharing information:*
   Strike the right balance between privacy and security in the sharing of information among law enforcement and judicial authorities, fully respecting fundamental rights of privacy and data protection, as well as the principle of availability of information.
8. *The fight against organized crime:*
   Develop and implement a strategic concept on tackling organized crime at EU level, including knowledge of the phenomenon, law enforcement cooperation, judicial cooperation, legislative and non-legislative initiatives, and cooperation with third countries and international organizations. Make full use of and further develop Europol and Eurojust.
9. *Civil and criminal justice: an effective European area of justice for all;*
   Guarantee an effective European area of justice by ensuring an effective access to justice for all and the enforcement of judgments.
10. *Freedom, Security and Justice: sharing responsibility and solidarity;*
    Give meaning to notions of shared responsibility and solidarity between member states by reviewing the type of policy and financial instruments that can meet the objectives of Freedom, Security and Justice in the most efficient way (European Commission 2007).

Since Hague Program European Union is still trying to create common policies on the issue areas of JHA, data sharing tends to effect the immigration, asylum, and the fight against terrorism issues. On the other hand the expansion of citizenship rights, protection and promotion of the Fundamental rights especially on the areas of violence against women and the protection of children stays in the agenda but waits for the major improvements and funding. The objects of the Hague Program are still in progress but unfortunately in the first two years of the program necessary improvements on the issue areas are not developed efficiently well enough.

5.5 FRAMEWORK OF IMMIGRATION EUROPEAN INSTITUTIONS AND THE PROBLEMS

In Europe foreign capital, goods and services have been highly accepted but the foreign workers have been rejected. The Xenophobia is still strong in Europe and the public rejects transferring the states competencies on immigration to European Union framework. "This has been dramatized by the success of anti-immigration radical Right parties in France, Austria, Denmark, the Netherlands and Italy" (Borzel 2003). European Union accomplished to establish a system among the member states and this area is called 'European internal space'. European Union has a policy framework for other third country nationals (TCN). The role of European Court of Justice cannot be neglected in the process. Through direct effect and supremacy European Court of Justice strongly worked on establishing harmonization on European Union matters, especially on citizenship and immigration matters the court extended the scope of the European Community. The member states try to oversee the legal role of European Court of Justice. It is important that the council has the say on immigration due to unanimity. "Council, which still votes by unanimity where immigration is concerned. Thus, it would seem that the ECJ is the only organization that could grant TCN rights, due to the legacy of successful rights claims within EU free movement law" (Borzel 2003). It is important to note that the free movement of workers is absolutely linked with immigration and actually the court has competence on free movement so this grants them some say on the matter. The European Union immigration policy augments the states sovereignty rather than dictating the member states with a set of difficult tasks

and rules. “The strongest argument against international immigration policy being controlled by national governments comes from those who give primacy to one of the following two factors: ‘transnational discourse of human rights’” (Borzel 2003).

The Maastricht Treaty was a significant chance for the European immigration to set a common framework but it could not establish that the subject was placed on the third pillar. The next treaty Amsterdam transferred the subject from member state centered to supranational pillar. Amsterdam could do a lot more than just the pillar transfer like the European Court of Justice to have direct effect due but the rejection from Denmark and United Kingdom limited the acts that can be done on immigration. “TCNs remain only the ‘objects’ of EU policy and law, and cannot be ‘actors’ in their own legal right since they have no standing to use direct effect (by bringing ECJ-justifiable claims to national courts)” (Borzel 2003).

One of the important points of the immigrations is the rights that the immigrants gained by the Association Agreements. In the case of Gaye Gurol, one may analyze the importance and the rights given to TCNs with the Association Agreement on the courts decision. Even though the member states were reluctant to give any rights or protection the Association Agreement countries citizens mostly Turks and Africans exercise the given rights. One may argue that European Union strongly supports the ideas such as ‘equality’ then all the third country nationals must be able to exercise the same rights and privileges with the Associate Agreement countries. Unfortunately the European Court of Justice does not take any steps towards the application of these special rights to all immigrants in Europe.

Another point that can be taken as an ‘opening’ for the European Court of Justice to gain jurisdiction on third country nationals is the directive that was created requiring the member states to add an anti-racial discrimination law by 2003. With this law TCNs can make a claim to the national courts regarding discrimination which let the European Court of Justice to take place. At least for the last decade the Commission and the European Union bodies have been trying to support the TCN rights but the subjects are

still under the member states jurisdiction. Especially extreme right wing parties strongly support for the subject to stay as a national political matter rather than supranational. Business interest lobbied for the TCN rights through Unicel (European Employer Federation). It is very clear to analyze with the Rush Portuguesa case taken to the court that the European Court of Justice gave rights and protection for the legal immigrant labors under the economic reasons more than social reasons indirectly.

The key element of the plan was to create a strong shelf to avoid the third nation citizens in Schengen zone. International human rights organizations and immigration councils such as Amnesty International strongly opposed this. In June 1990 the Schengen implementing convention was made and planned to take action in 1995. The Palma document and this were the following the same grounds. The Schengen included strengthening police control on the borders and abolition of internal borders. The Schengen and Palma documents showed the standpoint of the member states and the European Union on immigration. The non EU immigrants were seen as "unwelcome" intruders" (Kostakopoulou 2001).

As Heather Grabbe explains in her book;

> *As governments across the European continent seek to tackle internal security threats, the Schengen zone could become harder to traverse rather than easier. It is possible that the politic of fear will lead to the re-introduction of document checks within countries, and particularly on borders. And it is very likely that EU governments will employ new methods to track the movements of people across their territories. EU countries made most progress in liberalizing the movement of people during the years immediately following the end of the cold war, and before the attacks in the USA in 2001 and in Spain in 2004. Those dozen years may come to be seen as the heyday of freedom for travelers in the EU, before the pendulum swung back towards security (Henderson 2005).*

Grabbe clearly states the truth in Europe because especially after the terrorist attacks the immigrants have harder time to acquire citizenship or any other rights. The member states continuously look for reasons to create tracking systems for immigrants with the protection of common market.

The terror attack especially brought tougher time for Muslim immigrants. One of the major of EU is the treatment but as it is stated below, the society wants the Muslim immigrants to change or leave the Union. It is explained as below;

> *When Europeans complain that Muslims have not integrated and cannot integrate, they rely on a narrow and dubious view of integration. European states have long seen themselves and many continue to see themselves as nation nation-states based on shared national culture, including a shared view of the world, vision of the good life, personal and collective values, customs, and social and moral practices. For many Europeans cultural unity is the indispensable basis of political unity and must be maintained at all cost. If immigrants including the Muslims wish to become and be accepted as full and equal members of society, they should assimilate into national the national culture. If they insist on retaining their cultural identity and remaining different, they should not blame others for refusing to accept them as equals (Modood 2006).*

Some member states such as France and Germany once welcomed the immigrants but now they are trying to find reasons to expel them. As the text written regarding the French policy states;

> *during the thirty glorious years', until the official stop to recruitment in 1974, immigration was an encouraged and welcomed phenomenon. Since then, immigration has continued under a different label, and has been perceived on and off as detrimental to the economy and as a threat to the social norms (Zimmerman 2005).*

5.6 COMPARISON OF MEMBER STATES' POLICIES ON IMMIGRATION

In European Union, some of the member states prefer to opt out from the common immigration policy. It is important to recognize that European Union has no internal border checks. Especially the Schengen countries have a tougher project to maintain. Member states have had to meet higher standards on border controls in land and seaports, and Schengen members in particular have been under pressure to ensure better control. However, given the simultaneous rise in the number of those seeking to enter the EU illegally; these attempts at strengthening external borders do not appear to have led to an overall reduction in the number of illegal entrants. Moreover, tighter control of Germany and Austria's external borders appear to have shifted smuggling routes to south European sea routes. This form of smuggling by sea has been far more prone sensationalist media coverage. Thus despite more intensive attempts to control external borders, the problem of illegal entry is in many ways far more of a popular concern in many EU countries than it was in the first half of the 1990s, before concern EU and Schengen cooperation had really gained momentum (Boswell 2003). It is important to

note that illegal immigration is a common problem for European Union even though member states tend to have different policy approaches on the subject.

For example have a different approach on immigration. German immigration laws made a significant change in its history with a new proposal in 2001. One may examine this as below;

> *After nearly four years of negotiations, the German government and the opposition agreed upon a new immigration law, which passed the German Federal Council in July 2004. The law allows legal immigration of workers only in the case of highly qualified foreigners, such as engineers, computer specialists, and scientists. In addition, self-employed people who offer a certain number of jobs to natives will be allowed to immigrate, and the law makes it easier for responsible officials to deport hate preachers and terror suspects(Zimmerman 2005).*

One must accept that immigrant plays a great role in the rebuilding of Germany especially on the Western part of the Germany until the fall of the Berlin Wall. After the conflict in Eastern Europe, the Eastern Germany became attractive for the immigrants as it is explained below;

> *Between 1989 and 1992 Germany had to absorb three million immigrants, and it received over a quarter of a million displaced persons from the conflict in the former Yugoslavia. The level racist attacks rose alarmingly in the early 1990s. Many of these occurred in the new eastern Lander, which were undergoing socio-economic and political upheaval and had little experience of receiving immigrants (Bosswell 2003).*

Even the high number of immigration and the problems that may cause cannot be the excuse for the Germany's new laws on immigration. Germany makes the immigration laws strict but in the mean time, they are leaving the current immigrants out of the society with creating laws to harden for them to be oriented in the society with requirements that cut ties with their nationality. On the other hand even though France has been known as a "Xenophobic" country, it is easier for a legal immigrant to gain rights and integrate to the system as long as they speak the language. It is explained below as;

> *French immigration policy has been to accept people that either had accepted or were wiling to accept French language and culture. Such a policy seemed easy to implement, since the major source countries of immigration were the former colonies (Zimmerman 2005).*

In Europe almost all the countries differ on their immigration policies. Some member state citizens fear that the immigrants could take their jobs, some fear that their country and the culture change due to immigration but it is very clear that the immigrants have

been taking the jobs that the natives are reluctant to do. “Public concern about displacement of native workers by immigration labor appear to have little foundation. Immigrants tend to fill gaps in the labor supply, taking jobs that native workers are unable or unwilling to do” (Boswell 2003). One may see the reality of tie with the United Kingdom and Poland case. It is true that Poland now is a Member State but it is still less developed than United Kingdom. In United Kingdom almost all the people who work for low wage in the service industry or hospitality industry are Polish. The same category applies to Turks in Germany and the Algerians in France.

6. CONCLUSION

It is important to note that due to the fact that European Union is extremely attractive for the immigrants from all around the world. Even though the member states try to stop the immigration in some way they have to allow them for the future of Europe. As it is explained below;

> *A widely cited UN study argues that the EU would need an intake of almost 674 million immigrants between 2000 and 2050 in order to retain current dependency ratios. Of this aggregate EU figure, the UK would require over one million per year, France 1.8 million, Germany 3.6 million and Italy 2.3 million. Although recruiting young migrant workers may temporarily meet the demand for labor, once they are integrated migrants tend to adopt similar fertility patterns to those of nationals. Thus an increase in immigration will at best delay the process of ageing population by a few generations: it is not a long-term solution (Boswell 2003).*

Depending on the country the first and the second generation of immigrants became European Citizens. In some countries such as Germany even the third generation immigrants could not establish themselves as citizens of the member state and the European Union. The immigrants who could not obtain the European Union citizenship avoids integration to the society that causes social problems for the rest of the residents of Europe. The studies show that as long as the immigrants continue to be seen as foreigners or temporary labor their integration time becomes longer. As Boswell explains in his book;

> *Most obviously, the ethnic concept of identity contributed to an unwillingness to acknowledge that the immigration of guest workers in the 1950 and 1960 could or would result in their permanent residence and integration. The common assumption until the 1980s was that guest workers and their families would not become permanent members of German society. Even once their permanent settlement became undeniable reality, Germany remained reluctant to allow the naturalization of non-ethnic German immigrants, retaining an essential jus sanguinis conception of nationality (2003, pg 33).*

One may take a careful look in the European history that shows us the differences in the nationality building systems. It is true to say for Germany that;

> *the growing number of applicants for citizenship, immigrants' battles in court for their rights, and the application for public funding confront German society today with the realities of being an immigrant country. This challenge which is historically new for a society which had long considered itself ethnically homogenous. This has never excluded immigration, but has implied turning one's back on its*

consequences. The return of repressed creates anxieties which refer to the (grossly overstated) fear of losing control over one's own affairs and of becoming a minority in one's own realm, perhaps not yet in society as a whole, but definitely in neighborhoods and regions of high immigration. These anxieties crystallize where Islam is concerned, because society fears the capacity of religion to articulate, to organize and sustain difference in the immigration process (Modood 2006).

In today's global world no country can seal their borders or try to eliminate the ones that are not similar to them. The key in Europe is the harmony. The European Union and the culture that carries out is consists of 27 different countries this means that at least 27 different group of people is in the European melting pot. The member states still determine their citizenship rules and their immigration laws that cause an unjust treatment of people in Europe, because sometimes an immigrant brother becomes a citizen in one member state and another one is still seen as immigrant even though they full fill the same requirements. For the future of the European Union, the competencies on citizenship and immigration must be extended and set on common grounds to create a better-harmonized society. The countries have different immigration histories. For example Great Britain has colonial ties, but the important point is that European Union must create a common citizenship and immigration policy in order to avoid the unjust treatment that is occurring now. Maybe in a decade or so with a common citizenship and immigration law no one will ever ask the question for the inhabitants of the European Union "are they citizens or immigrants?"

It is very important to note that the citizenship and immigration will be a very important question for the future of European Union. If the Union delays to answer the questions about immigration and the citizenship status, not just Europe but the world will be experiencing problems rose by the lack of solutions to European citizenship and immigration.

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