T.C.
MARMARA UNIVERSITY
INSTITUTE OF EUROPEAN UNION
DEPARTMENT OF EUROPEAN UNION LAW

THE CONCEPT OF EUROPEAN CITIZENSHIP AND ITS EVOLUTION

Masters Thesis

ESRA AĞRALI

Istanbul, 2015

T.C.
MARMARA UNIVERSITY
INSTITUTE OF EUROPEAN UNION
DEPARTMENT OF EUROPEAN UNION LAW

THE CONCEPT OF EUROPEAN CITIZENSHIP AND ITS EVOLUTION

Masters Thesis

ESRA AĞRALI

Supervisor: Yrd. Doç. Dr. Gerçek ŞAHİN YÜCEL

Istanbul, 2015

T.C.
MARMARA ÜNİVERSİTESİ
AVRUPA BİRLİĞİ ENSTİTÜSÜ

ONAY SAYFASI

Enstitümüz AB Hukuku Anabilim Dalı Türkçe / İngilizce Yüksek Lisans Programı öğrencisi Esra Ağralı'nın *"THE CONCEPT OF EUROPEAN CITIZENSHIP AND ITS EVOLUTION""* konulu tez çalışması 03.06.2015 tarihinde yapılan tez savunma sınavında aşağıda isimleri yazılı jüri üyeleri tarafından OYBİRLİĞİ / OYÇOKLUĞU ile BAŞARILI bulunmuştur.

Onaylayan:

Yrd. Doç. Dr. Gerçek Şahin Yücel	Danışman	.....
Prof. Dr. Ercüment Tezcan	Jüri Üyesi	.....
Doç. Dr. Faruk Kerem Giray	Jüri Üyesi	.....

Onay
Prof. Dr. Müzaffer DARTAN
Müdür

24/06/2015 Tarih ve 2015/7 Sayılı Enstitü Yönetim Kurulu kararı ile onaylanmıştır.

ÖZET

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

ABSTRACT

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

ABSTRACT

The applications while the begining of development process of the European Union had considered the individuals only by their contributions to the economy. However, after it was realized that the political union in Europe cannot be achieved without the active participation of European communities, new policies on "building a closer Union between European communities" have been started to applied. Although the primary resources on Union citizenship is based on to Council decisions in the early 1970s, the concept has started to be clarified especially with the effective jurisprudences of European Court of Justice. In 1980s, the efforts on establishing the content of the European citizenship has gained speed, and the idea on regulating rights exclusive to the concept of European citizenship has been introduced. Maastricht Treaty is the milestone on this field, which was entered into force in 1993. Maastricht Treaty has established for the first time, a direct legal link between Union and Member State citizens. The concept of Union citizenship is totally different from the concept of classical citizenship. The Union citizenship is a complementary identity, and does not take the place of nationla citizenship. On the other hand, being a Union citizen is under the condition to be a citizen of a Member State first; therefore, the acquisition or loss of the citizenship have been left to the national regulations of Member States, thus a special and secondary structure has been envisaged. In terms of content, Union citizenship confers four fundamental rights to its citizens; such as right to free movement and residence, right to vote and stand for election in the municipal and EP elections, right to diplomatic and consular protection, right to petition the EP and apply to the Ombudsman. Several regulations regarding these rights have been made in Union's primary and secondary resources. Although all those rights have importance, the right to free movement and residence occurs as the most debateful right in terms of case laws. The Court has been faced many conflicts on free movement and residence. Although, there are problems on implementation of the rights, the concept of Union citizenship has become a key policy for determining the future of Union. Thus establishing a democratic and balanced Europe requires the direct participation of Union citizens, as well as Union institutions, to the process. In this regard, it is possible to say that the future of Union citizenship depends on the integration process of European Union. Therefore, it can be commented that the concept of Union citizenship does not complete its evolution due to the European integration process has not been completed yet. Therefore, the concept of European Union citizenship has been evolved since 1970s and still evolving especially by the important rulings of the Court of Justice.

THE CONCEPT OF EUROPEAN CITIZENSHIP AND ITS EVOLUTION

ABSTRACT

INDEX

ABBREVIATIONS

INTRODUCTION……1

PART I

THE CHARACTERISTICS OF EUROPEAN UNION CITIZENSHIP AND ITS HISTORICAL EVOLUTION

I. CONCEPT OF CITIZENSHIP IN CLASSICAL TERMS

A. Concept Of Citizenship……5

1. In General Terms……5
2. Relationship Between "Nationality" and "Citizenship"……7

B. General Principles Of Citizenship Law……9

C. Grounds Of Citizenship Law……11

(i)National Grounds……...11

(ii) International Grounds……..12

II. HISTORICAL EVOLUTIONARY PROCESS OF THE EUROPEAN UNION CITIZENSHIP

A. In General……..12
B. Towards Union Citizenship……..14
   1. Developments Before Maastricht……14
   2. Maastricht Process……..20

3. Maastricht Treaty……22

C. Developments After Maastricht Treaty……24
1. Danish Problem……...24
2. Report of the High-Level Group on the Free Movement of Persons……..26
3. Amsterdam Treaty……...28
4. European Union Charter of Fundamental Rights and Treaty of Nice…….30
5. Draft Constitutional Treaty and Lisbon Treaty……...32
5.1. Treaty Establishing a Constitution for Europe…….32
5.2.Treaty of Lisbon……34

PART II

THE CONTENT AND FUTURE OF EUROPEAN CITIZENSHIP

I. THE CONTENT OF EUROPEAN CITIZENSHIP……..38

II. RIGHTS OF EUROPEAN UNION CITIZENS……..39

1. Right to Free Movement and Residence……...40
1.1. In General……...40
1.2.The Evolution of Right to Free Movement and Residence…….42
1.2.1. Process Before TFEU……42
1.2.2. Process After TFEU……..44

1.3.Issues, Debates and Cases on Right to Free Movement and Residence in the EU.48
1.3.1. Disputes on Article 18 of EC, Judgement of the ECJ untill Begining of 2000s……48
1.3.2. Recent Judgements of the ECJ on Right to Free Movement……58

2. Right to Vote and Stand for Election in EP and Municipal Elections……68
2.1.Right to Vote and to Stand as a Candidate at Municipal Elections……69
2.2.The Right to Vote and to Stand in European Parliamentary Elections……...74
2.3.Critics on Right to Vote and Stand for Election in EP and Municipal Elections...84

3. Right to Diplomatic and Consular Protection……85

3.1. In General……...86

3.2.Legal Arrangements on Right to Diplomatic and Consular Protection……..87

4. Right to Petition the European Parliament and to Apply to the Ombudsman……93

4.1.Right to Petition the European Parliament……94

4.2.Right to Apply to the European Ombudsman……97

4.3.Differences Between Article 227 and 228 TFEU……100

III. Summary of the Rights of European Citizens……...101

CONCLUSION……105

BIBLIOGRAPHY……...110

ABBREVIATIONS

AB: Avrupa Birliği

Bull: Bulletin

CFSP: Common Foreign and Security Policy

CPAS: Public Social Assistance Centre for Ottignies-Louvain-la-Neuve

EC: European Communities

ECHR: European Court of Human Rights

ECJ: European Court of Justice

ECSC: Euopean Coal and Steel Community

EEA: European Economic Area

EEC: European Economic Community

EMU: Economic and Monetary Union

EP: European Parliament

EU: European Union

ICJ: International Court of Justice

IGC: Intergovernmental Conference

OCT: Self-governing Overseas Territory

O.J: Official Journal

QCC: Qualified Commonwealth Citizens

Supp: Supplement

TEC: Treaty Establishing the European Community

TEU: Treaty on European Union

TFEU: Treaty on Functioning of the European Union

UDHR: Universal Decleration of Human Rights

UK: United Kingdom

USA: United States of America

WEU: Western European Union

INTRODUCTION

The Europe was re-constructed after World War II, and the establishment of the European Union has sterenghtened this construction and built a cooperation between the European countries. After that, now its time to build the "Europeans". To build a common European identity and a citizenship concept in frame of common values and equal rights, the Union had started to work since the first times. However, the Union firstly passed to process of economic integration. During this economic integration process, the Union removed the custom duties and trade barriers between Member States, and adopted single currency to get strenghten their relationship and cooperation in economic area. Besides, the Union has evolved by strenghtening its political integration together with its economic power. Therefore, Member States' nationals became the main factor to provide the political integration, who were not a part of decision making process of economic integration in first times of the Union.

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

Maastricht Treaty brougt a new approach to the concept of Union citizenship. By Maastricht, the concept of Union citizenship was included into Union law and became one of the most important subjects of the Court of Justice. In post-Maastricht process, the concept of Union citizenship and the rights of citizens has continued to develop by the attempts of the Court of Justice and new Treaty provisions, such as

Amsterdam Treaty, Draft Constitution of Union and lastly Lisbon Treaty. However, there were many provisioms on Union citizenship, but in those resources, there were not any definition of Union citizenship. It was just defined as that Union citizenship is not replace but the complementary of national citizenship.

The concept of Union citizenship is different from concept of classical citizenship. Those differences are based from the European Union and its sui generis legal order. The supranational structure of European Union caused such a sui generis process on construction of legal basis and content of citizenship concept. As a result, a concept was occured which is dependent and complementary to the citizenship of Member States.

European Union has power over Member States, and imposes rights and legal obligations to them. The Union gains this power and legitimacy by individuals who are the fundamental subject of states to gain legitimacy. Therefore, it is impossible to think a Union whithout individuals.

On the other hand, European Union has been using the term of "individual" for the begining, and give big importance to prioritize the individuals. In this perspective, it can be seen that individuals are one of the most important subject of the Union law. In this frame, a question occurs that are the individuals at the center of Union's structure, and do the actions of Union are done as individual-centric. Scholars debate on these questions for years. However, no matter how these question are exist, they concern one subject which the integration process of European Union directly effects individuals and this process transforms the statue of individuals. The statue of individuals were determined only by the law of the states which they are holding the nationality; however, by the evolution of Union and its integration process, the statue of individuals has been evolved too and changed to the "Citizens of the Union." As a result, there occured a sui generis citizenship statue between the Union and its individuals.

Before Maastricht, the concept of Union citizenship were not in agenda of Union. However, it has gained importance by the provisions of Maastricht Treaty and

become one of the main issues of Union law. It can be seen that the relationship of Union and individuals is not an output of a conscious policy, but it occurs depending on the cycle of Union's evolution. By years, the Union has used the terms of "An Union closer to its citizens" and " A Union for the citizens" has become such a motto and a principle in its official documents.

Another important point here that if citizens are so important for European Union, then it sholud be debated what Union does for its citizens, in case of the advantages and rights of being a citizen of Union, and do those advantages and rights have assurance. The assurance is important because, whithout a guarantee, all of the advantages and rights are meaningless. In basis of these concerns, the statue and rights arisen from this statue lay down. Legally, in frame of these concers, three points are occured such as; the legal statue and rights of citizens in European Union, protection of fundamental rights of the citizens, and protection of freedom and safety of the citizens. European Union has been doing many legal and political attempts on achieving those points.

On the other hand, the Court of Justice also roles and contirbutes on protecting the statue and rights of the citizens bu its jurisprudences. However, there has been conflicts between the provisions or decisions of the Court and national laws. the interests of Member States and provisions of the Union law has been conflicted in years adnd still it does not reached a final solution and certain implications.

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

citizens in Union legal order may change in future implementations and attempts of the Union.

In this study, it will be focused on the conflicts between the Union and Member States. As an introduction, firstly the characteristics of Euroepan Union citizenship and its evolution will be explained by comparing with classical terms of citizenship. After that, the rights conferred by being a citizen of the Union and conflicts between Member States and Union law will be explained, especially in frame of jurisprudences of the Court in important case laws happened in years. Later, in conclusion, the current situation of the concept of Union citizenship in Union legal order will be explained. The aim of this study is to explain what is the meaning of Union citizenship and how the statue of individuals has transformed from the begining of the Union. To enlighten the questions in minds, it is necessary to explain first what the concept of Union citizenship means in real and legally, then it is possible to understand the evolutionay process and current situation of the citizens in Union under the debates on implementation of rights conferred by the provisions of primary law of European Union as well as the case laws and directives as its secondary law. Therefore, such a way will be carried out in this study to better information and understanding.

PART I

THE CHARACTERISTICS OF EUROPEAN UNION CITIZENSHIP AND ITS HISTORICAL EVOLUTION

The concept of European Union citizenship has a wide context. It is different from classical term of citizenship; however, it also has similarities in case of individulas. Every national of a state has citizenship rights on the state they reside. However, in European Union the citizens of Member States have different and additional rights rather than non-Union nationals. Therefore, to determine and observe those differences and similarities between these two type of citizenship; in this part of the study, first of all it will be discussed the concept of citizenship in classical terms as an introduction, and after that the historical evolutionary process of the European Union citizenship will be explained in summary.

I. CONCEPT OF CITIZENSHIP IN CLASSICAL TERMS

In this chapter, it will be focused on the explanation of the concept of classical citizenship in frame of its aspects, and after that it will be mentioned the general principles of citizenship law and grounds of citizenship law under seperate topics.

A. Concept Of Citizenship

The concept of classical citizenship may be studied under two topics as; in gerenal terms and the relationship between the terms of "nationality" and "citizenship".

1. In General Terms

The subject of expression of the concept of citizenship is closely related with the concept of "state". Citizenship in broad terms is that determines the institutionalized relationship between the citizen and the state. Although today the national borders have

been removed and globalization becomes widespread, citizenship still maintains its importance as a legal status. As this feature, citizenship separates a state's nationality from another state's nationality, foreigners and stateless persons.

A *state* is an organized community living under one government. The most commonly used definition is Max Weber's,[1] which describes the state as a compulsory political organization with a centralized government that maintains a monopoly of the legitimate use of force within a certain territory. According to a common definition in international law, 'a state as an international person should possess the following qualifications:

(a) a permanent population,

(b) a defined territory,

(c) a political governance which is independent from any other authority,

(d) capacity to enter into relations with other states'.[2]

The concept of "state" cannot be thought apart and independent from individuals and a particular community. The "humanity constituent" of a state, in other words a permanent population which is dependent a state, is one of the most important and essential grounds which founding a state.[3]

There are many definitions on "humanity constituent" of the state: Nation, people, population etc. However, according to the international law, today the only valid measure is "nationality bound".[4] The link between the state and the individual for international law purposes has historically been the concept of nationality. Each state has the capacity to determine who are to be its nationals and this is to be recognized by other states in so far as it is consistent with international law.[5]

[1] Richard Swedberg and Ola Agevall, **The Max Weber Dictionary: Key Words and Central Concepts,** Stanford University Press, 2005, p.148.
[2] Malcolm. N. Shaw, **International Law,** 5. Edition, Cambridge: Cambridge University Press, 2005, p.
[3] Rona Aybay, **Vatandaşlık Hukuku,** 5. Edition, Istanbul: Istanbul Bilgi Üniversitesi Yayınları, 2004, p.3.
[4] Hüseyin Pazarcı, **Uluslararası Hukuk,** 2. Edition, Ankara: Turhan Kitabevi, 2004, p.141.
[5] Shaw, p.232.

2. Relationship Between "Nationality" and "Citizenship":

There are many confusions as to whether the terms of *nationality* and *citizenship* are the same concept and in same scope.

Nationality is the legal relationship between a person and a nation state.[6] Nationality normally confers some protection of the person by the state, and some obligations on the person towards the state. It differs technically and legally from citizenship, although in most modern countries all nationals are citizens of the state and all citizens are nationals of the state.

Citizenship denotes the link between a person and a state or an association of states. Possession of citizenship is normally associated with the right to work and live in a country. A person with citizenship in a state is called a *citizen* of it, however, *citizenship* is used generally for "real persons" but *nationality* is used for "legal persons". In a number of countries, nationality is legally a distinct concept from citizenship, or nationality is a necessary but not sufficient condition to exercise full political rights within a state or other polity.[7] On the other hand, the "nation" was the body of citizens whose collective sovereignty constituted them a state which was their political expression.[8] Also, there are many debates on whether the terms of "nationality" and "citizenship" express the same notion in terms of scope. Today, the most of the modern countries accept the terms of "nationality" and "citizenship" in same concept, but "nationality" is accepted as the broad expression of "citizenship", and it is more preferred in international law documents; which citizenship is focused on the internal political life of the state, more equal and democtaric expression for real persons who are dependent a state without any discrimination and nationality is a matter of international

[6] *Türkiye Cumhuriyeti Adalet Bakanlığı Sözlüğü.*
[7] Olivier W. Vonk, **Dual Nationality in the European Union: A Study on Changing Norms in Public and Private International Law and in the Municipal Laws of Four EU Member States,** The Netherlands: Martinus Nijhoff Publishers, 2012, p.19.
[8] E. J. Hobsbawm, **Nations and Nationalism since 1780-Programme, Myth, Reality,** 2. Edition, United Kingdom: Cambridge University Press, 1992, p.19.

dealings, which covers monarchies and oversea territories and human factor of all countries.[9]

Historically, the important point is the implementation which comes from ancient times which seperates the community in two as "active and passive". In ancient city-states foreigners, slaves, women and children were regarded as passive community and bereft from rights. However, a minority of men were regarded as the active community and citizen *(civis)*, and they had the rights of community and duties.[10]

However, "citizenship" as a legal concept in modern terms was later occured. The meaning of the concept of citizenship was introduced in modern terminology especially in European countries in 19th century. In fact, in monarchial states thus the relationship between the monarch and citizens and the citizens' adherence to the monarch, the terms of "people", "vassal" and "nationality" had been used a long time.[11]

The most comprehensive document on nationality is "European Convention on Nationality" of Council of Europe uses the term of "nationality"; however, "Explanatory Report on the Convention clearly states that "nationality" is synonymous with the term of "citizenship." "nationality" is defined in Article 2 of the Convention as;

"the legal bond between a person and a State and does not indicate the person's ethnic origin". It thus refers to a specific legal relationship between an individual and a State which is recognised by that State. As already indicated in a footnote to paragraph 1[12] of this explanatory report, with regard to the effects of the Convention, the terms "nationality" and "citizenship" are synonymous."[13]

Therefore, both nationality and citizenship are 'the legal bond between a state and an individual which determines the relationships of reciprocal rights, duties and responsibilities'. Therefore, in some parts of this study, the term of "nationality" can be

[9] Bryan S. Turner and Engin F. Isin (Ed.), **Handbook of Citizenship Studies,** London: SAGE Publications Ltd., 2002, p.278-279.
[10] Aybay, p.8.
[11] Ergin Nomer, **Vatandaşlık Hukuku,** 8. Edition, Istanbul: Filiz Kitabevi, 1989, p.9.
[12] Footnote(2) : Most countries of central and eastern Europe use the term "citizenship" which has the same meaning as the term "nationality" used in the European Convention on Nationality and by most western European States.
[13] *Council of Europe, Explanatory Report of European Convention on Nationality.*

used instead of "citizenship"; however, it does not change the scope and refers to citizenship.

B. General Principles Of Citizenship Law:

Citizensip is being a part of a state or an association of states. In constitutional countries, persons must be subject to the state by the "citizenship bound" to take advantage of rights which are promised in the constitution by the state. Those persons are called *citizen* and they have the right of political participation.

Each country determines its own qualifications of being its citizen in their domestic law, it is inherent, exclusive and independent from other countries' rules.[14] Nationality (nationhood), place of birth and culture are the primary qualifications. In this scope, if the parents are citizens of a given state, if the person was born in a given state or marrying with a citizen of a given state, it is possible to be the citizen of that state. Those qualifications are vary in each country, because the bound between state and person are different in details.[15]

In case of citizenship, there are three principles which are stated in Article 15 of "The Universal Declaration of Human Rights":[16]

"Everyone has the right to a nationality: This principles refers that no one shall not become stateless and be arbitrarily deprived of his nationality. Statelessness is a legal concept describing the lack of any nationality. It denotes the absence of a recognized link between an individual and any state; and stateless is the person who has not a nationality or whose nationality is unidentified. This situation poses many problems, such as validity in civil law relations, equal distribution of public responsibility and depriving persons from the diplomatic protection.[17] Therefore, this is

[14] Aybay, p.15.
[15] For example in Germany, there were the obligation a few years ago that one of the parents must be German, in France the person must be born within the territories of France, in USA persons must approve that they are harmonized and integrated to the American community, culture and tradition.
[16] This decleration was adopted by the General Assembly of the United Nations in 1948. See United Nation Official Website.
[17] Osman Fazıl Berki, **Devletler Hususi Hukuku, Tâbiiyet ve Yabancılar Hukuku,** Ankara: Güzel Sanatlar Matbaası, 1963, p.22.

a very important circumstance which shall be avoided and prevented by all individuals, states and international communities."

"Eveyone shall only have one nationality: If a person has more than one nationality, such as double nationality or multi nationality, it can be problematic in person-state relationship. Therefore, the principle of single nationality is adopted to determine the rights and duties of person and solve the disputes on which state protects him.[18] However, if a person has more than one nationality, it is a well-accepted principle in international law that each state has the right to prioritize its citizenship and regard the person as its citizen."[19]

"No one shall be denied the right to change his nationality: Nationality is not an irrevocable bond for a person. If a person desires he is able to cut his relation with the state which he has legal and political bond, and take another country's citizenship. This principle is closely related with concept of human rights, yet no state shall arbitrarily deny the person's demand to change his nationality. Everyone has the right to change his involuntary nationality which comes by birth, if he fulfil the legal conditions."

Those principles are the subject of states' national competences, and aims to take into consideration while regulating the nationality disputes.

There is one more principle except above mentioned which had entered into force with *Nottebohm* case by the ruling of International Court of Justice (ICJ). This principle refers as "effective nationality." Nottebohm, a German citizen born in Hamburg, spent much of his life from 1905 to 1943 in Guatemala living and operating a business, but in 1939 began the process of becoming a naturalized citizen of Liechtenstein in order to be a national of a neutral country as World War II got underway. Liechtenstein granted Nottebohm citizenship in 1939, but the court notes that even once that occurred, Nottebohm spent little time in the country itself. After a period abroad, Nottebohm attempted to return to Guatemala with his passport from Liechtenstein, but as a German national in the eyes of Guatemala and the United States, both of whom were now engaged in the war on the allied side, Nottebohm was refused

[18] Berki, p.30-31.
[19] Aybay, p.60.

entry as an enemy alien and then extradited to the United States where he was held in an internment camp until the end of the war in 1945.[20]

The legal question at issue here was whether or not Nottebohm's citizenship in Liechtenstein gave Liechtenstein standing to press for restitution or compensation on his behalf, and in fact the nature of citizenship itself. The legal principle under question is that of "effective nationality" which attempts to establish something more than the basic notion of what nation someone claims to be part of, but rather in which nation they actually have deep ties, such as family, and a life and vocation.[21]

The ICJ held that the case brought by Liechtenstein was inadmissible on the grounds that in the international sense, Nottebohm did not demonstrate "effective nationality" with regard to Liechtenstein. The Court considered the following aspects of nationality in coming to this decision: "there is the habitual residence of the individual concerned but also the centre of his interests, his family ties, his participation in public life, attachment shown by him for a given country and inculcated in his children".

By this judgement, it became certain that the legal bond between state and individual is not affected by exceptional cases such as double nationality; also in such cases the third state or international court can be ruled out one of the two citizenship bond. On the other hand, the subjective interpretation of nationality was occured by Nottebohm decision.

C. Grounds Of Citizenship Law

The citizenship law is the subject of both domestic and intenational law; therefore, it should be considered in scope of these two categories:

(i) ***National Grounds*****:** Every state regulates its own rules on acquisition and loss of its citizenship according to its sole discretion.[22] These rules can be vary according to the legal systems of the states. Those rules are unique, inherent in their

[20]*Nottebohm (Liechensteinv. Guatemala) Second Phase,* 1955.
[21] *Case Briefing: Nottebohm (Liechenstein v. Guatemala) (ICJ April 6, 1955).*
[22] Aybay, p.16

domestic laws and independent from other states' rules on same conditions. On the other hand, the principles which above mentioned are the common rules which accepeted by several national laws.

(ii) ***International Grounds*****:** The international grounds of citizenship law are based on international agreements. Some of them are desired to be in force on a specific area; such as The European Convention on Nationality; however, some of them covers and for every state in the world; such as United Nations Treaty Series; Lahey, 12 April 1930.[23] However, in some international agreements, rules on citizenship are regulated with additional protocols or explanatory reports.

In this scope, each state can determine its own citizenship laws according to their own conditions and domestic dynamics. Those rules differ from state to state; therefore, the subject shall be evaluated as issue of domestic law. However, regulations on citizenship law may have effects on outside of the state (international area), so none of the states avoid and independent from international principles.

II. HISTORICAL EVOLUTIONARY PROCESS OF THE EUROPEAN UNION CITIZENSHIP

The historical evolutionary process of the European Union citizenship has a wide context; therefore, it would be better to examine the process under seperate topics to understand the issue easier. First of all, the process will be explained in general terms, and after that the main process towards Union citizenship, it covers Maastricht period, which is the most important development of Union citizenship.

A. In General

The European Union (EU) is different from classical state and international organization concepts, and refers a different structure. In other words, the EU imposes rights and obligations for member states and individuals, has direct effect on national

[23] Aybay, p.16.

laws and has the capacity to make regulations over the national laws.[24] Besides, the EU may have decisions which are effective in social and economic life of individuals.

The principle of "supranationality" defines this sui generis structure of the EU. This term was launched in international relations by the EU. This term evolved by the European Communities (EC) after 1950, and according to many lawyers, the fundamental element of the EU is supranationality.[25] Yet, the EC which is the basis of the EU, was formed on the idea of building an organizational structure which has power on the national authorities and forms a cooperation in every area between the member states, also it aimed to form this structure different from classic international organizations and give important competences in order to built a single Union. Therefore, they did not aimed to restrict the national sovereignty, but to transfer some of the sovereign competences to the Union.[26]

This supranational characteristic of the EU directly effects the Union law. In fact, by the landmark judgement of *Costa v. Enel* in 1964, the European Court of Justice (ECJ) established the "supremacy of EU law over the laws of its member states.[27] The "supremacy" of the EU law is accepted as a fundamental principle and it is evaluated as a natural consequence of the supranational structure.

The EU has this power and legitimacy by individulas who are the basic grounds of states. Therefore, it is impossible to think the EU independent from individuals.[28] On the other hand, the EU has focused on individuals and prioritize them since the first times of the Union, yet one of the subjects of the Union law is individuals. The fact of "the statue of individuals is only determined by the state which he is its national" has been changing and evolving in frame of the EU. As a result of the sui generis relation between the EU and individuals is emerged a citizenship status which is exclusive to the EU.

[24] Ercüment Tezcan, **Avrupa Birliği Hukuku'nda Birey,** 1. Edition, İstanbul: İletişim Yayınları, 2002, p.13.
[25] Haluk Günuğur, **Avrupa Birliği ve Hukuk Düzeni,** Ankara: EKO Avrupa Yayınları, 2006, p.78.
[26] Günuğur, p.79.
[27] European Court of Justice, 15.7.1964, Case 6-64, *Flaminio Costa v. E.N.E.L.*, ECR 00585.
[28] Tezcan, p.13.

In official documents of the EU, the relationship between the Union and individuals is mentioned as motto such as "a Union closer to the citizens" or " a Union for citizens and by the citizens." On the other hand, there are three points occurs in legal relationship between the EU and individuals.[29] These are;

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

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

B. Towards Union Citizenship

The most important step in evolutionary process of Union citizenship is Maastricht period. The developments has not happen after Maastricht Treaty, but also there were many develpoments and efforts before Maastricht Treaty entered into force. Therefore, it would be better to examine the developments under three topics as developments before and during Maastricht process, and the details of the Treaty.

1. Developments Before Maastricht

The EU citizenship has been the center of the debates during the integration process since 1980s, but the Union citizenship entered to the positive law of the EU with the Maastrich Treaty.[30] Before the Maastricht Treaty, the citizenship status was not involved in founder treaties; however, some rules on the base of this status were envisaged. The most significant example of this the article 12 of the Treaty Establishing the European Community (TEC) which is on prohibition of national discrimination, and article 14 on providing free movement in internal market.[31] The article 12 refers that;

[29] Tezcan, p.16.
[30] Günuğur, p.47.
[31] Tezcan, p.23.

"Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited."[32]

The article 14 subparagraph 2 refers that;

"The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty."[33]

On the other hand, according to Article 17(1) EC, *'every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship'.* So, two points should be emphasised here. First, EU citizenship depends on Member State nationality. As such, only a person holding the nationality of an EU Member State can become an EU citizen. This means that there are currently 28 ways of becoming an EU citizen. Second, and it is a consequence of the derivative nature of EU citizenship, it does not replace national citizenship. EU citizenship should not therefore be confused with a state-like pan-European form of citizenship nor be understood as giving rise to a European nationality. It is conceptually decoupled from nationality and as a matter of fact from any form of European nationalism.[34]

Article 17(2) EC identifies EU citizenship with a legal relationship between the Union and Member State nationals to which are attached specific rights and duties. These correspond to the rights and duties which are already guaranteed by the Treaty and secondary legislation. As such, Articles 18–21 EC can be equated to a standstill clause that prevents the erosion of the acquis communautaire. It also follows, however, that EU citizenship is evolutionary and can expand to new rights together with the

[32] Haluk Günuğur, **Treaties Establishing the European Union,** Ankara: EKO Avrupa Ekonomik Danışma Merkezi Yayını, 2005, p.159.
[33] Günuğur (Treaties Establishing the EU), p. 160.
[34] Samantha Besson and André Utzinger, "Introduction: Future Challenges of European Citizenship-Facing a Wide-Open Pandora's Box", **European Law Journal,** Vol.13, No.5, (September 2007), p.576.

expansion of the scope of the EC Treaty. The list of rights attached to EU citizenship in Articles 18–21 EC mostly recapitulates pre-existing rights and is not exhaustive.[35]

While a desire to create a "Europe for Citizens" or a "People's Europe" dates back to the early 1970s it was not until the Spanish pressed the issue at Maastricht that the idea of Union citizenship took concrete form. A new Part Two, entitled 'Citizenship of the Union' was added to the Treaty of European Union in 1992. Article 8(1) provides that *"Citizenship of the EU is hereby established".* Articles 8(a)-8(e) then lists a number of specific rights which citizens can enjoy.[36] This insertion in the Treaty is the first official move of a streetcar which already started its clattering journey a long time ago.

In 1973 Copenhagen Summit, one of the most important step was taken by "Declaration on European Identity."[37] The Declaration emphasized the common European civilization, common heritage, values and life style which the current nine member states share. The document is important due to the concept of European identity was come up for the first time.

In 1974, at the Paris Summit of the Heads of State, a working party was established to study 'the conditions under which the citizens of the member states could be given social rights as members of the Community.'[38] One year later the report on a road 'Towards European Citizenship' proposed to establish a passport union and the introduction of special rights, to be granted by the member states to nationals of other member states. These special rights consisted of some civil and political rights, a nucleus of elements linked with citizenship which could be extended, as preferential treatment to privileged foreigners.[39] The "Tindemans Report"[40] repeated the desirability of extending special rights to the nationals of other Community member states.[41]

---

[35] Besson and Utzinger, p.576.
[36] *The Maastricht Treaty-Provisions Amending The Treaty Establishing The European Economic Community With A View To Establishing The European Community*, Maastricht, 7 February 1992.
[37] **Declaration on European Identity,** Bulletin of the European Communities, December 1973, No:12, p.118-122.
[38] Hans Ulrich Jessurun d'Oliveira, "Chapter 6: European Citizenship: Its Meaning, Its Potential", Renaud Dehousse (Eds.), **Europe After Maastricht An Ever Closer Union?** in (126-148), München: Law Books in Europe, 1994, p.126.
[39] d'Oliveira, p.126.
[40] **Report on European Union,** Bulletin of the European Communities, Supplement 1/76.
[41] **Report on European Union,** Bull. EC Supp. 1/76, p.26.

The Tindemans Report was prepared in 1975[42] by Belgian Prime Minister Leo Tindemans. By this report, the idea of European citizenship was proposed in written for the first time, and included offers to several rights in favor of citizens.[43] The report emphasizes that:

"The construction of Europe is not just a form of collaboration between States. It is a rapprochement of peoples who wish to go forward together, adapting their activity to the changing conditions in the world while preserving those values which are their common heritage…Europe must be close to its citizens."[44]

In the report, two courses of action was proposed under the chapter of "A Citizen's Europe:"

- the protection of the rights of Europeans, where this can no longer be guaranteed solely by individual States;
- concrete manifestation of European solidarity by means of 'external signs' discernible in everyday life.

The report highly preferred to use the sentence of *"We the Peoples of the European Community"* and the desire on European citizenship became apparent.

The next important step in the process was in 16 Ocober 1977; the *"Scelba Report"* was proposed to the European Parliament (EP) by Mario Scelba who is the rapporteur for the European Parliament Political Affairs Committee.[45] He proposed to consolidate the legal position of Community citizens and granting special rights to Community citizens. In his report, Mr Scelba had considered separately two subjects of capital importance:

- the incorporation in the Community legal system of civil and political rights and the extension of protection to these rights as was already provided for at Community level in the sector of economic rights;

[42] Due to the Report was come out in 1976, in some resources the date of the Report is mentioned as 1976.
[43] Tezcan, p.22.
[44] **Report on European Union,** Bull. EC Supp. 1/76, p.26.
[45] *Proceedings of the Round Table on 'Special rights and a charter of the rights of the citizens of the European Community' and Related Documents,* 1978, Archive of European Integration.

- the placing of other Community citizens on an equal footing with national citizens in the field of civil and political rights.

In 1980s, to establish the citizenship concept on people's mind, the common cultural values and benefit from media tools. Thus, the propaganda of European citizenship was intensively made.[46] In 1981 Luxembourg Summit, an important step was taken in passport policy, the Council adopted "The decision on the creation of a uniform European passport".[47] Thus, this is accepted as an important development towards the process of creating a passport union.

In that vein, "Draft Treaty Establishing the European Union" was proposed to the EP by *Altiero Spinelli* in 1984. In Article 3 of the Draft mentiones on concept of Union citizenship, and refers that citizenship of the Union shall be dependent upon citizenship of a Member State; may not be independently acquired or forfeited. Citizens of the Union shall take part in the political life of the Union in the forms laid down by this Treaty, enjoy the rights granted to them by the legal system of the Union and be subject to its laws.[48]

The "Fontainebleau Summit" was held within the same year. At the end of the Summit French President *François Mitterand,* encouraged to establish two temporary committees to prepare a report on possibilities to establish a deeper European integration. Therefore, to emphasize the importance of creating 'People's Europe' and adopting the necessary measures to strengthen and promote identity and image of the citizens, an *ad-hoc* committee was set up which *Pietro Adonnino*[49]is the chairman. In the report[50] from *Adonnino Committee* the European citizenship is evaluated in two dimensions as internal and external dimensions. In external dimension, citizenship is evaluated as a indicator of a European identity for third countries; in internal dimensions, it is evaluated to provide betterment in citizens' daily lives.

---

[46] M. Tayfun Okman, **Avrupa Birliği Anayasası'nın Temelleri,** Ankara: Atılım Yayınları, 2005, p.71-72.
[47] Resolution of the Representatives of the Governments of the Member States of the European Communities, meeting within the Council of 23 June 1981, Official Journal, C 241, 19.09.1981, p.0001-0007.
[48] Treaty Establishing the European Union, O.J., C 77/33, 14 February 1984.
[49] **Report from the Commission on the Citizenship of the Union,** Commission of the European Communities, COM(93) 702, Brussels, 21.12.1993, p.1.
[50] **A People's Europe,** Reports from the ad hoc Committee, Bulletin of the European Communities, Supplement 7/85.

On the basis of the report and subsequent developments in the Community and among the member states concerning special rights of citizens, in particular the European Council in Paris in December 1974, the Committee submits proposals to the European Council in the following areas:[51]

- The citizen as a participant in the political process in the Community,
- The citizen as a participant in the political process in the member states,
- Consultation of citizens on transfrontier issues within the Community,
- The citizen in relation to Community legal instruments,
- The citizen as traveller outside the Community.

The report focuses and emphasizes the importance of European identity and obligation to create a European citizenship. One of the symbols which aim to create a Europeanness consciousness, The "Europe Flag" was officially adopted in June 1985. On the other hand, fourth part of the 9th Symphony of *Ludwig van Beethoven* was adopted as "Official hymn" and 9th of May was adopted as "Europe Day" within the same period. All of these initistives aim to raise the awareness of Europeans about their common history.

Since the recession of the early 1980s, prompted by the oil crisis of 1978, threat of the Cold War by Soviet Union, USA and Japan, Europe was under a big pressure and political tension. In 1970s, during the detente period Europe wanted to decline the USA effect over the continent. These circumstances prompted a relance of the integration process, as a way of combating the decline in economy.[52] As a result, due to the desire to built a more integrated and independent Europe, the member states had carried out more steps on this objective. By "Single European Act" the internal market was established in 31 December 1992. By that date, "an area without internal frontiers" was to be realised 'in which free movement of goods, persons, services and

[51] Antje Wiener, **European Citizenship Practice-Building Institutions of a Non-State,** USA: Westview Press, 1998, p.133.
[52] Damian Chalmers and Adam Tomkins, **European Union Public Law, Texts and Materials,** Cambridge: Cambridge University Press, 2007, p.17.

capital is ensured in accordance with the provisions of this Treaty.'[53] By this Act, a closer Union for member states and people had clarified since the integration process.

At the begining, individulas were evaluated within the scope of economic freedoms rather than member state nationals. The citizens of a member state who reside in another member state were not considered as a third country citizen. However, this was a limited approach, but it provided rights to the individuals such as free movement and non-discrimination on citizenship and gender. Those rights were also provided to the workers who are member state nationals.

The ECJ had recognized that the rights are valid for every citizen in member states whether they are immigrants or not. This was also mentioned in Rome Treaty. The ECJ emphasized that it is the individulas' rights to expect all member states shall abide the Community law including their own state. This principle was brought into question for the first time with *Vand Gend en Loos* case.[54]

However, this citizenship approach which includes only economic rights was not sufficient for building 'People's Europe', whereas at the begining of European integration, Jean Monnet, who is one of the most important founders of this project, said that "we are not building a coalision between the states, but a union between the people."[55], the integration project were executed far from the people of Europe; therefore, it was successful in economic and technical points, but it had many deficits in political and cultural perspectives. In other words, although a union between people were envisaged rather than states, an integration process which is diconnected from Europeans was occured.

2. Maastricht Process

Although many developments were reached until 1990s, the most significant and important step is taken by the Maastrich Treaty, which was signed in 1992, and entered into force in 1993. In 1970s the citizenship status was based on the idea of

[53] Chalmers and Tomkins, p.19.
[54] Elizabeth Meehan, "Citizenship and Social Inclusion in the European Union", in Maurie Roche and Rik Van Berkel (Ed.), **European Citizenship and Social Exclusion,** England: Ashgate Publishing Ltd., 1997, p.24-25.
[55] Pascal Fontaine, Citizen's Europe, Brussels, COM.Ec. 1993, p.5

creating a common European identity, on the other hand in 1980s, citizenship regulations were based on principles of equality and solidarity. However in 1990s, citizenship was evaluated as a concrete element which direclty effects the evolution of European Political Union.[56]

In 27 February 1990, the EP adopted *Martin Report*[57], which emphasized the necessity to transform the European Community to a federal European Union as soon as possible. In addition, in report it was expressed that the Community competences are so modest in area of "Citizens' Europe", and it was offered that the rules on European citizens would added into the founder treaties.[58]

The European citizenship was come up again in 4 May 1990 by the proposal of Spanish Prime Minister *Felipe Gonzales.* He offered to built the political union in Europe over three pillars as "an integrated economic area", "a common foreign and security policy", and "common citizenship". Also, Spain supported to urestricted free movement and right to elect and stand for election should be included in scope of European citizenship.[59]

At the end of September 1990, Spain sought to define the proposed European citizenship in a memorandum entitled "Towards a European Citizenship,"[60] which argued that the idea of European Union required creating an integrated space in which the European citizen plays a central and fundamental role.

As a result of all of those efforts, the concept and context of Union citizenship had become one of the most important subjects which involve into the Community documents. During the Intergovernmental Conference (IGC) in 14 December 1990, it was decided to establish a protection mechanism for rights granted by the Union citizenship.[61]

---

[56] Wiener, p.252.
[57] *"Martin Report",* EP Official Website (EP Doc A3-270/90).
[58] Wiener, p.218.
[59] Willem Maas, "The Evolution of EU Citizenship", **Memo for Princeton Workshop on the State of the European Union,** Vol.8, 2005, p.11.
[60] **The Spanish Memorandum on European Citizenship,** Towards a European Citizenship, Council Document, SN 3940/90 of 24 September 1990.
[61] Wiener, p.270.

3. Maastricht Treaty

The 1993 amendments to the EC Treaty introduced by the Treaty of Maastricht put in a place a new and rather novel section on citizenship.[62] The concept of "Citizenship of the Union", introduced at Maastricht, formed a key part of the Community's response, aiming to provide the glue to help bind together nationals of all the member states.[63] The preamble to the Treaty on European Union (TEU) states that the High Court Contracting Parties "resolved to establish a citizenship common to nationals of their countries." In Article B, under the heading 'Common Provisions', one of the objectives of the Union is stated to be "to strengthen the protection of the rights and interests of the nationals of its member states through the introduction of a citizenship of the Union".[64] The detailed TEU provisions on citizenship are contained in a new Part Two of the EC Treaty. Articles 8-8e EC, as inserted by the TEU, contain the provisions on Union citizenship. A citizenship of the Union is established, to be conferred on every person holding the nationality of a member state. The Article 9 under the heading 'Provisions on Democratic Principles' in the "Consolidated Version of the Treaty on European Union"[65] refers that;

"Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship."

The TEU does not create a nationality of the Union, but rather a complementary citizenship to citizenship of a member state. The reference to the nationalities of the member states is important. It states clearly the limited nature of EU citizenship. It links back directly to one of the framework 'constitutional' provisions of the Treaty of Maastricht itself.[66]

The main provisions on Union citizenship in Maastricht Treaty are regulated in Article 8 (8a-8e) which is inserted Part two "Citizenship of the Union":[67]

Article 8 refers that;

---

[62] Jo Shaw, "European Citizenship: The IGC and Beyond", **European Integration online Papers (EIoP),** Vol.1, No.003, 1997, p.2.
[63] Barnard, p.409.
[64] Twomey O'Keeffe (Ed.), **Legal Issues of the Maastricht Treaty,** UK: Wiley Chancery Law, 1994, p.89-90.
[65] **Consolidated Version of Treaty on European Union,** O.J., C 83/13, 30.03.2010.
[66] Shaw (The IGC and Beyond), p.2.
[67] *The Maastricht Treaty-Provisions Amending The Treaty Establishing The European Economic Community With A View To Establishing The European Community*, Maastricht, 7 February 1992.

"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."

The following provisions go on to confer some specific rights including, such as;

Article 8a states that "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"(Article 8a)

Article 8b(1) states that "The 'right to vote or stand in municipal elections for those citizens residing in member states of which they are not nationals"

Article 8b(2) states that "The right to vote or stand in European parliamentary elections for the same group of citizens"

Article 8c states that "EU citizens finding themselves in the territory of a third country where their own country is not represented have the right to diplomatic or consular protection by any member state which is represented there."

Article 8d states that "The 'right to petition the European Parliament and to apply to the Ombudsman' established under Article 13."

Some of those rights were exist before Maastricht Treaty; but some of them are introduced by this Treaty. Right of free movement and right to petition the EP existed before; however, the right to vote or stand in municipal elections and European parliamentary elections, right to apply to the Ombudsman, and right to diplomatic or consular protection by any Member State which is represented there are the rights which are granted by Maastricht Treaty.[68]

A Union citizenship is established with the Maastricht Treaty and by the addition of *'every person holding a nationality of a member state shall be a citizen of the Union'* the fundamental principle on the issue is determined.[69]The citizenship status which is granted by Maastricht Treaty is a supplementary statue to the national citizenship of a member state. Thus, the Article 8 of the Treaty showed a structural approach by determining that the Union citizenship is dependent to holding a nationality

[68] Tezcan, p.27-28.
[69] Tezcan, p.27.

of a member state. In other words, acquisition or loss of the Union citizenship is not independent from acquisition or loss of the nationality of a member state.[70]

Another important point about the Treaty is its Article 8e; which refers that "the Commission shall report to the EP, to the Council and to the Economic and Social Committee in every three years on the application of the provisions of this part (Part Two), and this report shall take account of the developments of the Union". The European Commission proposed its first report in 1993 and started the process. In this report[71], it is expressed that the political bound between the EU and the member state citizens is established by the Maastricht Treaty; and this will provide the constitution of European identity.[72]

C. Developments After Maastricht Treaty

The Maastricht Treaty is the milestone of establihing a Union citizenship, and this concept were tried to develop after the Treaty entered into force. On the other hand, the concept of Union citizenship was considered as an important step to refresh the subjects on democracy deficit in the EU. In this topic, it will be mentioned the problems which occured after Maastricht, reports Of Union institutions and further treaties and developments after Maastricht.

1. Danish Problem

The first major incident that completely upset all plans for an early ratification was the rejection of the Treaty on European Union by the Danish population on 2 June 1992. The 'nej' of their citizens not only shocked the Danish government and parliament which realized that they were facing a serious communication problem with their electorate, but also caused a shock-wave throughout the whole of Europe.[73]

---

[70] Gülören Tekinalp and Ünal Tekinalp (Eds.), **Avrupa Birliği Hukuku,** İstanbul: Beta Yayınları, 1997, p.21.
[71] **Report from the Commission on the Citizenship of the Union,** Commission of the European Communities, Brussels, 21 December 1993.
[72] Wiener, p.271.
[73] Sophie Vanhoonacker, "From Maastricht to Karlsruhe: The Long Road to Ratification", Finn Laursen and Sophie Vanhoonacker (Eds.). in **The Ratification of the Maastricht Treaty: Issues, Debates and Future Implications.** Maastricht-The Netherlands: European Institute of Public Administration, Martinus Nijhoff Publishers, 1994, p.4.

Typically, the existence of citizenship of the Union, paralel to member states' nationality, does not seem to cause excessive conceptual problems in some of the member states with a Roman law tradition. Given their constitutional traditions, the generalization of the enjoyment of certain rights of citizenship poses no insuperable obstacles for member states. Doctrinal and political problems have appeared in relation to the lack of conceptual distinction between citizenship and nationality, where the question: 'Is it possible to consider the existence of citizenship that does not imply a paralel nationality and/or does not question the nationality of a given member state?' becomes fully meaningful.[74] This paradox was at the root of the problem raised in Denmark regarding the concept of citizenship of the Union.

Accordingly, Denmark interprets citizenship of the Union as the fulfilment of its Treaty obligations, regarding the implementation of the catalogue of rights explicitly listed by the TEU. Obviously, this interpretation neutralises the potential challenge to nationality that may be posed by the current stage of development of the citizenship of the Union.[75]

Two Declarations by the European Council have endorsed a similar construction. In its Birmingham Declaration, the European Council made it clear that "citizenship of the Union brings our citizen additional rights and protection without in any way taking the place of their national citizenship".[76]

The Danish problem was finally solved at the Edinburgh Summit of 11 and 12 December 1992 by the clarification of some of the controversial provisions of the Treaty, such as the principle of citizenship of the Union, participation in the third phase of Economic and Monetary Union (EMU) and relations with the Western European Union (WEU).[77] In Edinburgh, the European Council repeated that rights and protection granted by the citizenship of the Union do not in any way take the place of national citizenship.[78] The Treaty was finally adopted in a second referendum on 18 May 1993.

[74] O'Keeffe, p.114.
[75] O'Keeffe, p.115.
[76] Birmingham Declaration-a Community close to its citizens, Bulletin of the EC, No.10/1992, Annex I, p.9.
[77] Laursen and Vanhoonacker, p.5.
[78] O'Keeffe, p.115.

2. Report of the High-Level Group on the Free Movement of Persons

The European Commission provided to set up a working group in 14 January 1996 to determine the problems on free movement of workers. The High-Level group was chaired by *Simone Veil.* The High-Level Group presented its report[79] on the Free Movement of Persons to the Commission on 18 March 1997. The report contains a series of concrete measures to ensure that more people can take advantage of their rights to free movement within the EU. The main conclusion is that, apart from a few exceptions, the legislative framework to ensure free movement of people is in place, and that the majority of individual problems can be solved without changes in legislation. However, particular emphasis is put on the need for member states to improve co-operation among themselves, notably in border regions, to ensure better training of officials and to devote more attention to the protection of individual rights. The report referred that the problems on free movement of persons could be arranged to good effect under seven headings, namely:[80]

- entry and residence;
- access to employment;
- social rights and family status;
- tax and financial status;
- cultural rights;
- the special situation of third-country nationals;
- protection of the rights of individuals.

The main recommendations of the report are;[81] information about and for people moving around the Union should be improved, a new optional one year residence card should be introduced for EU citizens staying more than three months, but less than a year in another Member State, free movement rights should be brought in line with the new concept of European citizenship, access to employment in other Member States must be facilitated, employment in the public sector should be opened up, social rights need modernising, particularly for pensioners, family rights should be

[79] **Report of the High-Level Group on the Free Movement of Persons,** Rapporteur Mrs. Simone Veil, Bulletin of the EU 3-1997, Union Citizenship, p.12.
[80] *Report of the High Level Panel on the Free Movement of Persons Chaired by Mrs Simone Veil,* 1997.
[81] *Report of the High Level Panel on the Free Movement of Persons*, p.4-7.

amended to reflect social change, more emphasis is needed on language training to facilitate free movement and cultural exchanges, greater equality of tax treatment should be achieved, the situation of legally resident third country nationals can be improved irrespective of Member States' immigration policies, it is vital that the rights of individuals are guaranteed, free movement of people should come under the responsibility of a single Commissioner.

The recommendations in the report are focused on the rights and obligations of European citizenship. The group's main conclusion is that, with a few exceptions, the legislative framework for the free movement of persons is in place and that most of the problems encountered could be resolved without changing the legislation, primarily by focusing on cooperation between the member states, particularly frontier states, and on the training of national civil servants.[82] The inclusion of citizenship of the Union under Article 8 of the Maastricht Treaty has, in the words of the report, "pointed to a new objective: to extend, without any discrimination, the right of entry and residence to all categories of nationals of Member States."[83] However, the report also expressed that European citizenship does not give rise to unrestricted rights.

The report had a broad repercussion in the Union. The Commission took most of the recommendations of the report into consideration for Action Plan for the Single Market[84] in 4 June 1997. The Action Plan aims to enable the single market to function fully and effectively by setting out in detail the priority measures to be taken to improve the functioning of the single market by 1 January 1999, and establish an internal market for all citizens by carrying concrete actions on eliminating border controls, promoting labor mobility in the EU, and protecting social and consumer rights.[85] This report provided to extend the scope of the rights granted by the European citizenship[86], and expressed that the Union citizenship will pick up a steam in the future.

[82] **Report of the High-Level Group on the Free Movement of Persons,** Bull. EU 3-1997, Union Citizenship, p.13.
[83] *Report of the High Level Panel on the Free Movement of Persons,* p.3.
[84] **Action Plan for the Single Market,** CSE(97)1 final, 4 June 1997.
[85] *Action Plan for the Single Market,* 1997.
[86] Tezcan, p.47-48.

3. Amsterdam Treaty

While the developments were continuing on the structure and functioning of the Union, the Italian government which the current President of the Council of the EU proposed to the Council to make changings on Union's founder treaties; whereon the IGC met in 29 March 1996 in Turin, Italy. The proposals on Union citizenship during the conference can be lumped in three groups:[87]

First one is the proposals to concrete the concept of Union citizenship which was determined in Maastricht Treaty. This group includes proposals such as proposals on eliminating borders on right of free movement and residency of Union citizens, turning the diplomatic and consular protection in Article 20 into a real diplomatic protection, and informing Union citizens about right to vote and stand for election.

Second group proposals are on improving Union citizenship with several rights and extend the scope of Union citizenship. Also, proposals on citizens' right to demand information on Union questions and right to contribution of Union citizens to the public issues can be evaluated within this group.

Finally the third group proposals are on protection of fundamental rights and freedoms. The esssential developments on Union citizenship was made by Maastricht Treaty; therefore, the Union did not aim to make changings on the basis of principles; merely it was planned to make reforms on the issues which the Maastricht Treaty is unsatisfying.[88]

In frame of those disputes, at the end of the IGC which lasts for more than a year, during the Summit in 16-17 June 1997, *Amsterdam Treaty* was adopted, the Treaty was signed in 2 October 1997 and entered into force in 1 May 1999.[89]

Amsterdam Treaty basicly aims to simplify and renumber the treaties. The articles 8-8e on Union citizenship was changed as articles 17-22 with Amsterdam Treaty.

On the other hand, the clause of "*Citizenship of the Union shall complement and not replace national citizenship"*[90] was added to the article 17 which was the article

[87] Tezcan, p.88.
[88] Tezcan, p.89.
[89] **Treaty of Amsterdam, Amending the Treaty on European Union, The Treaties Establishing the European Communities and Certain Related Acts,** O.J., C 340, 10 November 1997.

8 of TEU. Thereby, the relationship between Union citizenship and national citizenship was clarified, and it emphasized that the Union citizenship is complementary and not replace national citizenship. From this point of view it is possible to say two important consequences in practice. First one is, the precondition of being a Union citizen is to hold a Member State nationality. The second consequence is, the Union citizenship is complementary and supplementary for national citizenship. It was also clearly expressed that the Union citizenship shall not be given to the third country nationals, at least for that period.[91]

Another reform which Amsterdam Treaty brought is the clause which was added to the Article 21. The caluse refers that 'every citizen of the Union may write to any of the institutions or bodies[92] referred to in this Article or in Article 4 in one of the languages mentioned in Article 248[93] and have an answer in the same language.'[94]

On the other hand, another reform which was brought by Amsterdam Treaty is inclusion of Schengen acquis into the Union's acquis communutaire.[95] The Schengen acquis matters for the right of free movement, and it was become a part of Union acquis with a Protocol and it was expressed 'confirming that the provisions of the Schengen acquis are applicable only if and as far as they are compatible with the European Union and Community law'[96]

Another important reform on Union citizenship in Amsterdam Treaty is on decision making procedure in Article 18 which regulates the right of free movement and residence. Hereby, by referring Article 189b of the Treaty, the effective contribtion of the European Parliament on regulations of the related rules were provided.[97]

Consequently, due to the essential reforms were made by Maastricht Treaty, the effect of Amsterdam Treaty would be limited; however, it was aimed to improve the

---

[90] Treaty of Amsterdam, Article 2/9, p.27.
[91] Tezcan, p.92.
[92] The institutions in question are the European Parliament, Council, Commission, Court of Justice and Court of Auditors.
[93] The languages in question are the Danish, English, Finnish, Greek, Irish, Portuguese, Spanish and Swedish.
[94] Treaty of Amsterdam, Article 2/11, p.27.
[95] Tezcan, p.93.
[96] See **"Protocol integrating the Schengen acquis into the framework of the European Union",** Protocol-B, "Protocols Annexed To The Treaty on European Union and to the Treaty Establishing the European Community', Treaty of Amsterdam, p.93.
[97] Treaty of Amsterdam, Article 2/12, p.27.

fundamental principles by complementary elements, and improve the functioning of those principles.

4. European Union Charter of Fundamental Rights and Treaty of Nice

The concept of citizenship of the EU is based on a structure of fundamental rights which is recognized and guaranteed by all Member States. This structure is based on the common values of European people and the concept of respect to human rights is included within this structure. Thus, the Union has never ignored the fundamental rights and freedoms, even it had not a fundamental rights document[98], and the ECJ has given big importance and attention on funamental rights and documents. For that purpose, the *Charter of Fundamental Rights of the European Union*[99] was adopted in *Nice Summit* in 7 December 2000. During the same Summit, *Treaty of Nice* was signed in 26 February 2001. By this Treaty, some developments were reached eventhough they are not directly related with citizenship, but related especially with the decision making procedures.[100]

The Charter combines the political, civil, economic and social rights of the Union citizens within a single document; thereby, it provides the principle of 'indivisibility of rights'. The rights granted by the Charter would be valid for every individual, execpt the rights of Union citizens which are granted under 'Chapter V'(Citizens' Rights).[101]

In Chapter V, firstly the right to vote and to stand as a candidate at elections to the EP is issued.[102] This article refers that *'every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.*' which includes the same context as the article 8b(2) of Maastricht Treaty refers.

The second article (article 40) refers the right to vote and to stand as a candidate at municipal elections. According to this article *'every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member*

[98] Füsun Arsava, "Avrupa Birliği Temel Haklar Şartı", **Ankara Avrupa Çalışmaları Dergisi,** Vol.3, No.1, 2003, p.2.
[99] **Charter of Fundamental Rights of the European Union,** O.J., C 364/01, 18 December 2000.
[100] Tezcan, p. 137.
[101] Arsava, (AB Temel Haklar Şartı), p.12.
[102] EU Charter OF Fundamental Rights, Article 39.

State in which he or she resides under the same conditions as nationals of that State.' This article is also comply with the article 8b(1) of the TEU.

The next article 41/1 is on right to good administration. This article refers that *'every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union'*. This paragraph has a characteristics of a principle.[103] The subparagraph 2 of the article explains the rights included:

- the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
- the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
- the obligation of the administration to give reasons for its decisions.

Those rights are very important on relationship between citizen-Union, and creates interesting developments.[104]

The Article 42 of the Charter is on right of access to documents, which refers that *'any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents'.* This article is also complies with the Maastricht Treaty grants as many articles above mentioned.

The right to refer to the Ombudsman(article 43) and right to petiton (article 44) were also regulated as same with Maastricht Treaty refers. However, the important point here is that the rights of access to documents, refer to the Ombudsman, and right to petition to the EP were regulated not only for Union citizens, but also for every person.

On the other hand, in Article 45, the right of freedom of movement and of residence is regulated. According to the article, there is a seperation between Union citizens and third country nationals. The subparagraph 1 of the article refers that *'every citizen of the Union has the right to move and reside freely within the territory of the Member States.'*; however, the subparagraph 2 refers that *'freedom of movement and residence may be granted, in accordance with the Treaty Establishing the European*

[103] Tezcan, p.139.
[104] Tezcan, p.139.

Community, to nationals of third countries legally resident in the territory of a Member State'. By this expression, there occurs a way for third country nationals who are legally resident within a Member State to enjoy the right of free movement and of residence.[105]

Consequently, the articles under the Chapter V are generally parallel to the provisions of Maastricht Treaty, yet some provisions were repeated with same expressions. However, the important point in here is the rights of Union citizens were scattered in the founder treaties and they were combined into a single document under the title of 'Fundamental Rights'. On the other hand, the Charter clarifies that the EU sees which rights as valuable to protect, and increases the chance of recognization of common law order by determining the scope and meaning of fundamental rights and rights and obligations of the individuals.[106]

5. Draft Constitutional Treaty and Lisbon Treaty

The processes of draft constitutional Treaty and Lisbon Treaty were happened ensuingly. However, due to their importance and effects are different, they will be explained as two seperate topics to avoid from complications.

5.1.Treaty Establishing a Constitution for Europe

After Nice Summit in 7-9 December 2000, it was decided to establish a Draft Constitution for the EU. Thereby, a Convention met which 105 representers were organized, and the Convention started its practises in 28 February 2002. The process was end with the proposal of the "Draft Constitutional Treaty" in *Salonica Summit* in 20 June 2003.

The draft text was approved in 18 June 2004 during the IGC in Brussels, and in 29 October 2004, during Rome Summit it was signed by the current 25 Member States.[107] The Draft Constitution enters into force after all Member States approval according to their national law.[108]

---

[105] Tezcan, p.140.
[106] Arsava, (AB Temel Haklar Şartı), p.5.
[107] Okman, p.112-113.
[108] **Treaty Establishing a Constitution for Europe,** 16 December 2004, O.J. C 310.

In Draft Constitutional Treaty issued the Union citizenship under a seperate article. The "Part I, Title II" of the Treaty is "Fundamental Rights and Citizenship of the Union", and the Article 8 of the Treaty regulates the Union citizenship as:[109]

1. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship and shall not replace it.

2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Constitution. They shall have:

(a) the right to move and reside freely within the territory of the Member States;

(b) the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;

(c) the right to enjoy, in the territoryof a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State;

(d) the right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the Constitution's languages and to obtain a reply in the same language.

These rights shall be exercised in accordance with the conditions and limits defined by the Constitution and by the measures adopted thereunder.

The scope of the Union citizenship is regulated as abone in the Treaty; on the other hand, the context of the Union citizenship was regulated under "Part II, Title V" of the Treaty which is "Citizens' Rights". This Title expresses the Citizens' Rights as:[110]

- Right to vote and to stand as a candidate at elections to the European Parliament (Article II-99),
- Right to vote and to stand as a candidate at municipal elections (Article II-100),
- Right to good administration (Article II-101),
- Right of access to documents (Article II-102),
- Right to refer to the Ombudsman (Article II-103),

[109] Treaty Establishing a Constitution for Europe, Article I-10, p.13-14.
[110] Treaty Establishing a Constitution for Europe, p.50-51.

- Right to petition the EP (Article II-104),
- Right to freedom of movement and of residence (Article II-105),
- Right to diplomatic and consular protection (Article II-106).

The context of the articles are totally complies with Maastricht Treaty and EU Charter of Fundamental Rights. However, in Draft Constitutional Treaty, there are some regulations for Union citizens in other articles; for example, the Chapter I of the Title III (Internal Policies and Action) includes the articles on internal market; and the Article III-130, subparagraph 2 refers that *"The internal market shall comprise an area without internal frontiers in which the free movementof persons, services, goods and capital is ensured in accordance with the Constitution."* and any discrimination based on nationality shall be prohibited.[111]

Although the Draft Constitutional Treaty does not include a new reform for Union citizens, it is stil important to combine the definition and context of Union citizens under a single Constitution article. On the other hand, the Treaty includes the EU Charter of Fundamental Rights under a seperate title; therefore, the fundamental rights of the EU are guaranteed by a Constitution.

5.2. Treaty of Lisbon

The Treaty of Lisbon[112] amending the Treaty on European Union and the Treaty establishing the European Community. Negotiations to modify EU institutions began in 2001, resulting first in the Treaty establishing a Constitution for Europe, which would have repealed the pre-existing European treaties and replaced them with a "constitution". Although ratified by a majority of Member States, this was abandoned after being rejected by French and Dutch voters in 2005. After a "period of reflection", Member States agreed instead to maintain the pre-existing treaties, but to amend them, salvaging a number of the reforms that had been envisaged in the constitution. An amending "reform" treaty was drawn up and signed in Lisbon in 2007. It was originally intended to have been ratified by all member states by the end of 2008. This timetable failed, primarily due to the initial rejection of the Treaty in 2008 by the Irish electorate,

[111] Treaty Establishing a Constitution for Europe, p.58-59.
[112] **Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community,** O.J., 17 December 2007, C 306, Vol.50, 2007.

a decision which was reversed in a second referendum in 2009 after Ireland secured a number of concessions related to the treaty.[113] The Lisbon Treaty is the latest of the Treaties which, to date, have amended the Treaties on the basis of which the Communities and the European Union were founded, such as the Single European Act (1986), the Treaty on European Union (Maastricht Treaty, 1992), the Amsterdam Treaty (1997) and the Treaty of Nice (2001).[114] In this process, the Rome Treaty was renamed to the Treaty on the Functioning of the European Union (TFEU).

Lisbon Treaty issued the Citizenship of the EU under "Part Two" by the heading of "Non-Discrimination and Citizenship of the Union" between the articles 18-25. The Article 18 of the Treaty prohibited any discrimination on grounds nationality, which amends the Article 12 of TEC, and has the same wording. Article 19 encourages the Article 18 and states that the EU institutions may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.[115]

Article 20 states that the *"Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship."*

Article 20 totally complies with the Article 17 of TEC and Article 8 of Maastricht Treaty. Subparagraph 2 of the Article 20 expresses the rights that Union citizens can enjoy:[116]

(a) the right to move and reside freely within the territory of the Member States;

(b) the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;

(c) the right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and

[113] Jens-Peter Bonde, **From EU Constitution to Lisbon Treaty,** Foundation for EU Democracy, and the EU Democrats in cooperation with Group for Independence and Democracy in the European Parliament, 2009, p.11-20.
[114] *Treaty of Lisbon,* Council of the European Union.
[115] **Consolidated Version of the Treaty on the Functioning of the European Union,** O.J., C 115, 9 May 2008.
[116] Consolidated Version of the TFEU, p.56-57.

consular authorities of any Member State on the same conditions as the nationals of that State;

(d) the right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language.

These rights shall be exercised in accordance with the conditions and limits defined by the Treaties and by the measures adopted thereunder.

Articles 21, 22 and 23 explaines those citizens' rights one by one which Article 20/2 states. Those rights have already been mentioned in TEC and Treaty of Masstricht.

However, an important reform that Treaty of Lisbon granted: Article 24 states that the Treaty creates the right of "citizens' initiative". In other words, European citizens may ask the Commission to propose a "draft law" if they gather at least one million signatures from a significant number of Member States. The Treaty provides that *"not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties"*.[117]

Shortly before the entry into force of the Lisbon Treaty in December 2009, the Commission published its *Green Paper on a European Citizen's Initiative*.[118] A formal proposal for the first legislative regulation envisaged under Article 24(1) TFEU followed several months later.[119] This article provides that in order to birng citizens closer to the decision making process in Europe, the Lisbon Treaty introdeces, quite, uniquely, details which will foster citizen participation in the Union's democratic life.[120]

Consequently, Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community. The provisions on Union citizenship was issued as same wording with the TEC and Maastricht Treaty. On the other hand, as

[117] **Green Paper on a European Citizens' Initiative,** Commission of the European Communities, COM(2009) 622 final, Brussels, 11.11.2009, p.3.
[118] COM(2009) 622 final.
[119] Michael Dougan "*What are We to Make of Citizens' Initiative?",* **Common Market Law Review,** Vol.48, No.6, December 2011, Kluwer Law &Business, p.1810.
[120] "The Lisbon Treaty and Citizens' Powers in the European Union", Sheet 4.

in Draft Constitutional Treaty, the EU Charter of Fundamental Rights was also issued under a seperate title and so, the fundamental rights and freedoms which the EU values was approved by all Member States, although the Consitution was rejected. On the other hand, the Treaty of Lisbon introduced a reform of “Citizens’ Initiative” which fosters citizen participation in the Union’s democratic life. The most current provisions on the citizenship of the Union are based on Treaty of Lisbon which the ECJ bases its judgements on.

PART II
THE CONTENT AND FUTURE OF EUROPEAN CITIZENSHIP

The concept of European citizenship has a very wide context; therefore, it also covers an important part of Union legal order. The content of European citizenship covers the subjects of the rights of individuals, and also provisions of Treaties and secondary law, relating with the efforts of the Court. In this chapter, first of all the content of Union citizenship will be studied in general terms, and after that the rights of citizens will be mentioned in detail as relating with the provisions of primary law together with the efforts of the Court.

I. THE CONTENT OF EUROPEAN CITIZENSHIP

The concept of European Union citizenship requires specific principles to define its content; thus, as it is defined in Maastricht Treaty and Article 2 of the Draft Constitution; the common values of Europe are freedom, democracy, equality, respect to human rights and rule of law. Alongside those values, it is emphasized that the European communities are loyal to the principles of pluralism, discretion, justice, solidarity and non-discrimination. However, the future of the Union citizenship cannot be depend only those principles and, it would become more clear by the rights granted to the Europeans.[121]

In the beginning, the Founder Treaties thought the individuals only in economic perspective and had showed a limited approach on citizenship; however, this limited approach has become to change by the courageous jurisprudence of the ECJ, such as its decisions on protection of fundamental rights, prevention of non-discrimination, protection of privacy, immunity of domicile, legal protection against executive actions, right to objection and freedom of expression.[122] At this point, by the Maastricht Treaty, the concept of citizenship gained a legal statue and validity, and it

[121] Maurice Roche, "Citizenship and Exclusion: Reconstructing the European Union", Maurice Roche and Rik Van Berkel (Eds.), in **European Citizenship and Social Exclusion** (3-23), England: Ashgate Publishing Limited, Aldershot, 1997, p.15.
[122] Tezcan, p.20-21.

reinforced the courageous approach of the ECJ, by granting important rights to the European citizens.

The Maastricht Treaty brought a legal validity to the Union citizenship for the first time. The rights which the Maastricht Treaty granted to the Union citizens are virtually as; right to move and reside freely within the Union territories, right to vote or stand in municipal elections for those citizens residing in member states of which they are not nationals, diplomatic and consular protection, and right to petition the EP and to apply to the Ombudsman. Those rights were set by the TEC and Maastricht Treaty, and continued to protect in draft constitution and Lisbon Treaty.[123]

Some of those rights were set by the Rome Treaty, such as Right to free movement. The rights such as diplomatic protection and right to elect were set for the first time with the Maastricht Treaty. Although the legal procedure to follow right to elect were not clearly mentioned in Maastricht, this issue can not be regulated at Union level, but by the harmonization between the member states.[124]

To understand better the concept of European citizenship it would be better to analyse and explain the rights of EU citizens. While explaining those rights it would be clear that all the evolution of Treaties, Directives and Court's jurisprudences on the rights and concept of the European citizenship shows that the concept of European citizenship continues it evolution and gains new approaches by those regulations.

II. RIGHTS OF EUROPEAN UNION CITIZENS

The European citizens have four basic rights such as; right to free movement and residence, right to vote and stand as a candidate in the European Parliament and municipal elections, right to diplomatic and consular protection, right to petition the Parliament and apply to the European Ombudsman. The right to free movement and residence will be explained first, as the first and the most important right that conferred to the citizens. The Court faces many cases and disputes mostly on free movement and residence; therefore, it covers the widest part of the concept of EU citizenship in Court's

[123] Roche, p.26.
[124] Carlos Closa, "The Concept of Citizenship in the Treaty on European Union". **Common Market law Review,** Vol.29, No.6, 1992, p. 1159.

approach. After explaning right to free movement and residence, other rights of Union citizens will be explained too. Those rights are also important in case of citiens, therefore they will be explained either by their important provisions and effects.

1. Right to Free Movement and Residence

As the most important part of the rights of citizens and the concept of European citizenship in general, the right to free movement and residence will be studied under different titles in this study. First of all, the study will start by explaining the right to free movement and residence in general, later the evolution of the right as the processes before and after TFEU will be mentioned; and after that the details of the right and legal context of it will be explained. The provisions of Treaties, arrangements by secondary law, and as the determinator factor, the efforts of the Court will be explained case by case either.

1.1.In General

The free movement of persons is the cornerstone of the Union citizenship provisions, as it had been throughout the evolution of the concept of European citizenship. The right to free movement is regarded a right for citizens within the concept of Union citizenship, and it is granted to all Member States due to the reason of Union citizenship. The right to free movement is not general and unlimited, it may be subject to Union law limitations. Therefore, the right to free movement is determined in accordance with the Union conditions, and it would be established in an area of without internal borders.[125]

The other perspective of the right to free movement is "right to residence". Without granting right to residence, the application of right to free movement is practically impossible; therefore, these two rights are related and dependent each other. In accordance with the Treaties, these two rights has been issued together, also the ECJ ruled in its *Raulin*[126] judgement in 26 February 1992, the persons are allowed to enjoy

[125] Semra Eren Saylan, "Avrupa Birliği Vatandaşlığı ve Gelişim Süreci", Yüksek Lisans Tezi, Ankara Üniversitesi Sosyal Blimler Enstitüsü Avrupa Birliği ve Uluslararası Ekonomik İlişkiler (Hukuk) Anabilim Dalı, Ankara, 2007, p.82.
[126] V. J. M. Raulin v Minister van Onderwijs en Wetenschappen, Case C-357/89 (1992), ECR I-1027.

"right to free movement" and "right to residence" together, and these two rights are not independent from each other.

The right to move and reside freely within the territories of the Member State was regulated and resolved to explicit provision by the Article 18 of TEC. By this provision, this right has been evaluated as independent from an economic activity, and considered as a fundamental individual right.[127] The idea of elimination of the borders between member states and individuals is based on the foundation period of the European Economic Community (EEC). In the begining, free movement of individuals was only considered as an economic actor; however, later it became to evaluate within a wider perspective. In this frame, wider interpretation of the ECJ on "economic activity" and "social advantages", played an important role on this improvement; as a result, the right of free movement and residence has gotten wider through students, job-seekers, family members of the workers and anyone who wants to benefit from this right.[128]

The right to free movement and residence is the most problematic part of the four fundamental rights - right to free movement and residence, right to vote and stand for election, right to diplomatic and consular protection, right to apply Ombudsman and write petition to the EP - which the EU citizenship grants. Therefore, this right will be evaluated in more detail in this study. The provisions of Treaties and rulings of the ECJ have big importance on shaping the conditions of the right to free movement and residence; therefore these points will be also mentioned in detail while explaining the evolution and future of this right.

[127] Tezcan, p.31.
[128] Tezcan, p.32.

1.2.The Evolution of Right to Free Movement and Residence

The evolution process of the right to free movement and residence may be studied as two topics as the processes before and after TFEU entered into force, because after Maastricht Treaty, the most important developments on Union citizenship and the rights of citizens were reached by TFEU. Therefore, to catch the current developments and the situation of the concept of Union citizenship, it would be better to take TFEU as the baseline. After explaining the evolution processes before and after TFEU, it will be mentioned the conflict which the Court faced, and its jurispudences not only based on Treaty provisions, but also its new attempts by adding different approaches in cases.

1.2.1. Process Before TFEU

Article 8(a) of EC provides for freedom of movement and residence within the territory of the Member States. This is stated to be subject to the limitations and conditions laid down by Maastricht Treaty and by the measures adopted to give it effect. The exceptions to the rights of free movement regarding public policy, public security and public health continue to apply.[129]

Free movement of persons is one of the fundamental freedoms enshrined in the Agreement on the European Economic Area (the EEA Agreement). It includes the right for EEA nationals to enter, move within, reside and, where appropriate, remain in an EEA State other than the State of which the EEA national is a citizen. In exercising this right, any discrimination on grounds of nationality is prohibited. Within the European Community this right was originally subject to that the person exercising the right was engaged in an economic activity in that State. It was in 1990 when the three residence directives were adopted. These were Directive 1990/364 on a general right to residence[130], Directive 1990/365 on retired persons[131] and Directive 1993/96 on students.[132] The right of residence was conditional according to two criteria: first, the non-economic migrant needed to have comprehensive medical insurance; second, he

[129] O'Keefe, p.93.
[130] Council Directive of 28 June 1990 on the right of residence, O.J., L 180/26, 13.7.1990, p.26-27.
[131] Council Diective of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity, O.J., L 180, 13.7.1990, p.28-29.
[132] Council Directive of 29 October 1993 on the right of residence for students, O.J., L 317, 18.12.1993, p.59-60.

needed to have sufficient resources so as not to become a burden on the social security system of the host Member State. The introduction of the European Union citizenship together with the development of the ECJ's decision ended up in a situation of an outdated legislation. Therefore, in 2004 the specifics of the EU citizenship were written down in the so-called "citizenship directive".[133] It repealed and replaced most of the relevant secondary legislation that existed before to provide a single and coherent framework detailing the Union's citizen's rights.[134]

By entring into force those directives, the beneficiaries of the right to free movement and residence were defined. The Union citizens and their family members are entitled to the right of residence within the territories of Member States. However, some limitations were set on application of this right; according to the Commission's submission, a Union citizen can only be deported, other than in the case of decisions on grounds of public policy, public security or public health, if he/she does not meet the conditions laid down by the Union law for the grant of a right of residence or no longer meets those conditions. On the other hand, Union citizens shall have the right of residence, provided that they themselves and the members of their families are covered by sickness insurance and have sufficient resources to avoid becoming a burden on the social assistance system of the host Member State during their period of residence.[135]

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

While it is true that the general right of nationals of Member States to reside in other Member States was laid down in Community law well before the Treaty of Maastricht came into force, that Treaty has placed this right on a new conceptual basis

[133] Council Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004, O.J., L 158, 30.4.2004.
[134] Lehte Roots, "European Union Citizenship or Status of Long-Term Resident: A Dilemma for Third Country Nationals in Estonia", **Baltic Journal of European Studies,** Talinn University of Technology, Vol.2, No.1(11),p.69.
[135] Geschrieben von Daniel Naujoks, ECJ: Union citizens, move and reside freely, C-408/03, Directive 90/364/EEC.

by enshrining it in the Treaties themselves. Accordingly, it has now been put on a par with other rights central to Union law and is thus in general to be construed broadly.[136]

Besides the directives reforming and regulating the right to free movement and residence, an important step was taken by Amsterdam Treaty. The "Schengen Acquisition" has been included into the EU frame. The Schengen Convention is based on the agreement signed in 1985 by Germany and France. Later, by the contribution of Benelux countries, the Schengen Agreement was signed.[137] The "Convention Implementing the Schengen Agreement was signed in 1990 and entered into force in 1993, which gives more detailed expression to the objectives enshrined in the Agreement. The Schengen acquis was integrated into the Union legal order by Amsterdam Treaty. The Schengen acquis constitutes a body of law that is intended to permit the progressive abolition of internal borders between participating the 'Schengen States' in conjunction with rules on freedom to travel, a common short-term visa policy, standard rules on external border controls and flanking measures such as the "Schengen Information System", which inter alia contains a list of persons who should be refused entry into any of the Schengen States.[138] As it aims to remove border controls for individuals between the Member States and and provide free movement between themselves. All the remaining Member States except United Kingdom and Ireland, adopted the Convention in time. The Schengen Convention is an important step to establish and improve the right to free movement and residence in the Union, which may be considered as a pillar of completion of right to free movement.

1.2.2. Process After TFEU

Article 21 (1) of the TFEU provides its citizens with the rights that forms an essential element of European citizenship – the right to move and reside freely and to settle anywhere within the European Union's territory. Its importance has been also enshrined in the preamble of the Charter of Fundamental Rights.

---

[136] **Report from the Commission on the Citizenship**, Commission of the European Communities, 1993, p.5.
[137] Tezcan, p.94-95.
[138] Elspeth Guild, Steve Peers and Jonathan Tomkin, **The EU Citizenship Directive,** United Kingdom: Oxford University Press, 2014, p.92.

There are important legislative texts that reflect the situation; one is removing barriers to free movement, a second is allowing the EU citizens and their family members to travel and reside anywhere in Europe, a third one ensures that they are covered by social security and the fourth one recognises their professional qualifications.[139]

Article 21(1) of the TFEU states that *"Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect".*[140]

On the other hand, the TFEU also states in its Article 45 that; *"Freedom of movement for workers shall be secured within the Union. 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".*[141] This Article shows that the issue of free movement of workers is under the subject of the right to free movement and residence in frame of Union citizenship.

It is one of the four freedoms on which the single market is based. The aim of establishing free movement of workers in a labour market was for a long time the dominant feature of EU regulation in employment and industrial relations. The primary aim of the EU within this frame is to secure workers guarantees with regard to improvement of their living and working conditions and to promote their social advancement while satisfying the economic policies of the particular Member States. However, the Treaty has provided Member States with wide discretionary powers; it means that the host Member State is entitled to impose on workers public policy limitations, if that can be justified on ground of public policy or public health.[142]

[139] The Right to Free Movement, European Citizens' House Official Website.
[140] TFEU, p.57.
[141] TFEU, p.66.
[142] The Right to Free Movement, European Citizens' House Official Website.

All the previous and seperated and complex Directives - 64/221/EEC,[143] 68/360/EEC,[144] 72/194/EEC,[145] 73/148/EEC,[146] 75/34/EEC,[147] 75/35/EEC,[148] 90/364/EEC, 90/365/EEC and 93/96/EEC- has been repealed by the Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. The Directive regulates the conditions of right to move and reside freely in summary as:

"Member States will grant the right of residence to nationals of Member States who do not enjoy this right under other provisions of Union law provided that they themselves and the members of their family (spouse, dependent descendants and dependent relatives in the ascending line of the person concerned or his or her spouse) are 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 security system of the host Member State during their period of residence."[149]

"Member States will issue a residence permit the validity of which may be limited to five years on a renewable basis. However, they may, if they deem it to be necessary, require revalidation of the permit at the end of the first two years of residence. Where a member of the family does not hold the nationality of a Member State, he or she will be issued with a residence document of the same validity as that issued to the national on whom he or she depends."[150]

[143] Council Directive of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health, O.J., 056, 4.4.1964, 0850-0857.
[144] Council Directive of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families, O.J., L 257, 19.10.1968.
[145] Council Directive of 18 May 1972 extending to workers exercising the right to remain in the territory of a Member State after having been employed in that State, O.J., L 121, 29.5.1972.
[146] Council Directive of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services, O.J., L 172, 28.6.1973.
[147] Council Directive of 17 December 1974 concerning the right of nationals of a Member State to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity, O.J., L 14, 20.1.1975.
[148] Council Direcitve of 17 December 1974 extending the scope of Directive 64/221/EEC, O.J., L 14/14, 1975.
[149] Directive 2004/38, Article 7, p.93.
[150] Directive 2004/38, Articles 16, p.105-108.

"The spouse and the dependent children of a national of a Member State entitled to the right of residence within the territory of the Member State may take up any employed activity anywhere within the territory of that Member State, even if they are not nationals of a Member State."[151]

"Member States may not derogate from the provisions of the Directive save on the grounds of public policy, public security or public health. The Directive does not affect existing legislation on the acquisition of second homes."[152]

"Not later than three years following the entry into force of the Directive, and then every three years, the Commission will draw up a report on the implementation of this Directive and present it to the Council and the European Parliament."[153]

The Council Directive 2004/38[154] aims to provide citizens, and their family members, that are not EU nationals, with protection when moving and residing around the territory of the European Union. It extends, under certain conditions, family reunification rights to partners and family members and they are given autonomous rights in case of death or departure or termination of family ties (termination of marriage or registered partnership). However, Member States may impose certain restrictions upon the right of free movement and residence when it is justified on grounds of public policy, public security and public health. The right to reside in the other Member States is granted as long as the conditions of the right to reside are met; in addition, after fulfilling the certain conditions, there is a possibility after that time period to be granted a right of permanent residence. Then the EU citizens and their family members have increased protection against expulsion.

[151] Directive 2004/38, Article 17(3), p.108.
[152] Directive 2004/38, Chapter VI, Articles 27-33, p.113-119.
[153] Directive 2004/38, Article 39, p.122.
[154] Council Directive 2004/38.

1.3. Issues, Debates and Cases on Right to Free Movement and Residence in the EU

The ECJ has faced many disputes on the application of the right to free movement and residence, especially because of the dependent regulations of the Member States. In this title, the cases which the Court faced will be studied under two topics as before 2000s and after 2000s to make easy understandable the issue and see the relationship between the rulings of the Court.

1.3.1. Disputes on Article 18 of EC, Judgement of the ECJ untill Begining of 2000s

The right to free movement and residence between the Member States of the EU is the most problematic and disputable subject of the concept of European citizenship. The right to free movement and residence has been one of the most important and core subject of the Union law and continues its evolution by ECJ's jurisprudences on several cases besides that the Articles of Treaties, Council Regulations and Directives.

In the begining, the right to free movement and residence was considered and applied as an economic factor; however, later the Union neded to extend its scope into other areas such as social and political aspects. Due to the Union's aim to establish a *"political Union"* they realized that the only an economic frame in free movement will not be sufficient, especially in a Union which continuingly integrates and enlarges.

One of the debates on the right to free movement and residence is about the question of whether the Article 18 create a new and directly effective right. A ccording to Craig and Burca, this question requires the discussion of status-categories, such as worker, former worker, job-seeker, protected family member, self-employed person, and service recepient.[155] Some other scholars discussed that the limitations –public order, public security, public health -on the right to free movement whether prevents the

[155] Paul Craig and Garainne de Burca, **EU Law: Text, Cases and Materials,** Fourth Edition, Oxford: Oxford University Press, 2008, p.850.

direct effect of the right in Member States.[156] According to the Commission's opinion, the right to free movement and residence for the Union citizens shall be interpreted in a wider context. Contrary to this, the limitations on the right shall be narrowly interpreted. As a result, according to the Commission, the right to free movement and residence is directly grounded by the Treaties; however, while applying this right, some limitations and conditions may occur.[157] The ECJ had precautionary approach to generalization of the right to free movement and residence due to the necessary measures is not taken in frame of the right. The Court ruled in its "*Wijsenbeek"*case[158] that the Article 18 EC does not create a directly effective right, and neither Article 14 nor Article 18 of EC Treaty of EC Treaty precluded a Member State from requiring a person, whether or not a citizen of the European Union, under threat of criminal penalties, to establish his nationality upon his entry into the territory of that Member State by an internal frontier of the Community, provided that the penalties applicable are comparable to those which apply to similar national infringements and are not disproportionate, thus creating an obstacle to the free movement of persons.[159]

In case of "non-workers", the ECJ had an important jurisprudence in 1998: The case of *Maria Martinez Sala v. Freistaat Bayern*[160] which is the the first major case dealing with this aspect of Union citizenship.

Martinez Sala was a Spanish national resident in Germany for 25 years, who had previously worked in Germany but was not presently working and was receiving social assistance there. She applied for a child-raising allowance but was refused on the basis that she did not have German nationality, a residence entitlement, or a residence permit in Germany. The ECJ found that the requirement of a residence permit for receipt of a benefit was discriminatory where a Member State's own nationals were not subject to the same condition. German government argued than even if this was so, the facts of the case did not come within the scope of the Treaty, and therefore the applicant could not rely on Article 6 of the EC Treaty, which prohibits discrimination on grounds

[156] Tezcan, p.37,38.
[157] Saylan, p.87-88..
[158] "*Florus Ariël Wijsenbeek*", Case C-378/97, Judgement of the Court of Justice, 21 September 1999.
[159] Case C-378/97, para.46.
[160] *Maria Martiez Sala v. Freistaat Bayern*, Case C-85/96, Judgement of the Court of 12 May 1998, ECR I-2691.

of nationality only within the scope of application of the Treaty. The ECJ held that a child-raising allowance was within the scope *"ratione materiae"*[161] of the Treaty, and went on to consider the argument concerning EU citizenship.[162]

The ECJ gave its decision emphasizing by Article 8(a) of TEU which provides that "Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect". The Article 8(1) of EC Treaty refers that, every person holding the nationality of a Member State is to be a citizen of the Union. Due to Mrs. Sala is a Member State national, she deemed to be a Union citizen as well. The Court stated that "As a national of a Member State lawfully residing in the territory of another Member State, the appellant in the main proceedings comes within the scope *ratione personae* of the provisions of the Treaty on European citizenship."[163]

In *Sala* case, the ECJ applied the general principle of non-discrimination on grounds of nationality, on the basis of her EU citizenship. It has been said that the ECJ in this case was willing to explode the linkages which had previously been required in order for the principle of non-discrimination to apply.[164] Given that all parties agreed that the German decision was sound from a purely national perspective, but void when considered from a Union perspective, the key question was whether the case was governed by domestic German law or by Union law. Before Maastricht Treaty, this may have been a clear-cut case. Martínez Sala was not a worker or an economically active person, and under such circumstances, Union law simply did not apply.[165] However, the ECJ concluded that the denial of child allowance by German authorities was a breach of Union law; concretely, it led to a discrimination based on nationality against a person who was entitled to equal treatment. After Maastricht Treaty -in particular, after

[161] Jurisdiction Ratione Materiae, otherwise known as subject-matter jurisdiction refers to the court's authority to decide a particular case. It is the jurisdiction over the nature of the case and the type of relief sought; the extent to which a court can rule on the conduct of persons or the status of things.
[162] Case C-85/96, prg.13-19.
[163] Case C-85/96, prg.61.
[164] Craig and Burca, p.859.
[165] Agustin José Menéndez, "European Citizenship After Martinez Sala and Baumbast: Has European Law Become More Human but Less Social?", **Arena Working Paper,** No.11, Arena Center for European Studies, University of Oslo, June 2009, p.16.

European citizenship was established- the relations between a Member State and legally resident nationals of another Member State were governed by EU law, even if the European citizen was economically inactive.[166]

On the other hand, another proof and issue that the ECJ extended the scope of Union citizenship from an 'economic factor' to a European citizenship concept, is the case of students. As it was mentioned above, the issue of students' right to free movement and residence was regulated by the Council Directive 1993/96 on students in 1993, and repealed by the Directive 2004/38 in 2004. According to the Directive, the Member States shall recognize the right of residence to any student who is a national of a Member State and who does not enjoy the right to residence under other provisions of Community law where the student assures the relevant national authority, by means of a declaration or by such alternative means as the student may choose that are at least equivalent, that he or she has sufficient resources to avoid becoming a burden on the social security system of the host Member State during his or her period of residence. The student must also be enrolled at an accredited establishment for the principal purpose of following a vocational training course there and must be covered by sickness insurance in respect of all risks in the host Member State. Realated to this issue, the argument of *Grzelczyk*[167] determines the opinion of the Court on the case of students in scope of Union citizenship.

Grzelczyk was a French national studying in Belgium. In his 4th year of study, he applied to the CPAS (Public Social Assistance Centre for Ottignies-Louvain-la-Neuve) for payment of the minimex, a non-contributory minimum subsistence allowance. The CPAS initially granted this, but withdrew it after the Belgian minister decided that Grzelczyk was not entitled to it since he was not a Belgian national.[168]

The ECJ found in its ruling that Mr. Grzelczyk satisfies the conditions for obtaining minimex.[169] The fact that Mr. Grzelczyk is not of Belgian nationality is the only bar to its being granted to him. It is not therefore in dispute that the case is one of

[166] Menéndez, p.17.
[167] *Rudy Grzelczyk v. CPAS*, Case C-184/99, Judgement of the Court of 20 September 2001, ECR I-6193.
[168] Case C-184/99, prg.10-12.
[169] Craig and Burca, p.863.

discrimination solely on the ground of nationality. Within the sphere of application of the Treaty, such discrimination is, in principle, prohibited by the Article 6, which must be read in conjunction with the provisions of the Treaty concerning Union citizenship in order to determine its sphere of application. Due to Union citizenship is destined to be the fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for.[170] Therefore, as a lawfully resident EU citizen, Grzelczyk was entitled to equal treatment on grounds of nationality under the Article 12 EC, in relation to benefits which fall within the scope of application of the Treaty.

Here the ECJ made its novel move, although it had previously ruled that assistance forr students fell outside the scope of the EC Treaty, the combination of a new EC Treaty title on education and the new provisions on EU citizenship had introduced relevant changes. Despite the fact that the rights in Article 18 EC are subject to limitations and conditions, and that the Students' Residence Directive had imposed relevant conditions of sufficient resources and sickness insurance, there was no provision expressly precluding students from entitlement to social security benefits. The ECJ clearly indicated that the advent of Union citizenship has changed the earlier restriction on the entitlement of students to social welfare and to maintenance grants in a host Member State. Additionally, the ECJ in this case indicates that the concept of citizenship will be expanded.[171]

However, in *"Baumbast"*[172] decision in 2002; the Court had a different approach. Mr. Baumbast was a German national married to a Colombian national with two children. They resided in United Kingdom (UK) from 1990 on, during which time Baumbast worked as an employed person and then as head of his own company. After the company failed he obtained employment in 1993 from German companies based in China and Lesotho. Mrs Baumbast and the two children lived in the UK. They received no social benefits and enjoyed comprehensive medical insurance in Germany where

[170] Case C-184/99, prg.29-31.
[171] Craig and Burca, p.864-865.
[172] *Baumbast and R v. Secretary of State for the Home Depertment*, Case C-413/99, Judgement of the Court of 17 September 2002.

they travelled occasionally for treatment. In 1995 the Home Secretary refused to renew Mr Baumbast's and the family's residence permit and documents.[173] When the case was appealed and came before the ECJ, the Court was asked whether an EU citizen who no longer enjoys a right of residence as a migrant worker in the host Member State can, as a citizen of the EU, enjoy there a right of residence by direct application of Article 18 EC.[174]

The ECJ gave its decision on *Baumbast* by referring that "A citizen of the European Union who no longer enjoys a right of residence as a migrant worker in the host Member State can, as a citizen of the Union, enjoy there a right of residence by direct application of Article 18 EC. The exercise of that right is subject to the limitations and conditions referred to in that provision, but the competent authorities and, where necessary, the national courts must ensure that those limitations and conditions are applied in compliance with the general principles of Community law and, in particular, the principle of proportionality."[175]

The first notable aspect of the case is that it establishes clearly that Article 18 EC confers directly effective right on Union citizens to reside in a host Member Stat, regardless of whether they are employed or self-employed. In *Baumbast*, the ECJ ruled that the 'limitations and conditions' accepted by the Treaty on the right to free movement and residence must be interpreted and applied in a proportionate way. Thus, the new Treaty status of the right to free movement and residence may require a change in the interpretation of the secondary legislation to avoid any disproportionate interference with the Treaty rights; it means that the conditions and limitations set by the State is to be read in the light of the fundamental right to free movement and residence established by the Treaty. According to Craig and Burca, this reasoning recurs often in the Court's case law, and in particular in those cases concerning access to social benefits for Union citizens.[176]

[173] Case C-413/99, paras. 16-27.
[174] Craig and Burca, p.851.
[175] Case C-413/99, para. 97.
[176] Craig and Burca, p.852-853.

Similarly, in the subsequent *"Zhu and Chen"*[177] decision in 2004; the Court had a similar approach with *Baumbast.* Mrs Chen was a Chinese national who came to the UK and moved temporarily to Northern Ireland in order to give birth to her child, Catherine, there with a view to the child obtaining Irish birthright citizenship. Catherine's mother and father were both employed by a company established in China and the mother now lived with Catherine in Wales, UK. Their applications for long-term residence permits were rejected by the Home Secretary who took the view that, although the child was fully dependent on her mother and together they had health insurance as well as sufficient resources to avoid becoming a burden on the State's resources, Catherine was not exercising any EU law rights, and that her mother was not covered by EU law.[178] The Court began by ruling that this was not a wholly internal situation since, even though the child had been born in the UK and had never left the territor, she held the nationality of another State (Ireland). Secondly, the Court rejected the argument that a very young child cannot take advantage of the rights of movement and residence. It then moved on to consider whether she enjoyed rights under Article 18 EC and Direcitve 90/364.[179]

Also the ECJ ruled that due to the child's mother (who is a third country national), Mrs Chen, is a 'dependent relative' and the child was dependent on the mother, the same provisions allow the parent who is that minor's primary carer to reside with the child in the host Member State.[180] Consequently, in this case the Court ruled that the Article 18 does create a new and directly effective right. The case law indicates that the limits which States may legitimately impose on the right of movement and residence of non-economically active persons must be interpreted in the light of their status as citizens and in paritcular must be proportionate.[181] The *Zhu and Chen* confirms the ruling in *Baumbast* that the right to free movement and residence deriving from the Union citizenship under Article 18 EC are autonomous and directly effective, and that the conditions and limitations which a State may impose on these rights must be

[177] *Kunqian Catherine Zhu-Man Lavette Chen v. Secretary of State for the Home Department,* Case C-200/02, Judgement of the Court of 19 October 2004.
[178] Case C-200/02, para. 14.
[179] Craig and Burca, p.853.
[180] Case C-200/02, para.44.
[181]Case C-200/02, prg.32.

interpreted and applied in a proportionate manner which does not unduly restrict their exercise.[182]

By those interpretation and judgement of the ECJ, the question of whether the Article 18 EC creates a directly effective right to free movement and residence has been solved. In summary, the Court ruled that the limitations and conditions set by the Member States shall be interpreted and applied proportionally and the situations of the individuals must be considered while ruling.

Another important point is that the Union citizenship is evolving not only by the Treaty provisions, but also by the case laws which the ECJ rules. As it was mentioned before, the right to free movement was only considered as in economic aspect in the begining; however, after Treaty reforms and rulings by the ECJ, it has gained political and social aspects and involved into the citizenship concept. In this frame, the situation of non-workers, students and family members were considered and took part in Union law in case of citizenship.

THe ECJ had its first serious problem with *Rottmann*[183] case in 2010. The Court faced in this case that the situation of an individual who lost his Member State nationality and also lost his Union citizenship. In Rottmann, the dispute was only a Member State nationality problem; however, by losing Union citizenship status, the case became the problem and subject of EU law due to the fundamental status of EU citizenship[184] was disappeared either.[185]

The reference was made in connection with proceedings between Dr Rottmann and the Freistaat Bayern, concerning the latter's withdrawal of the naturalisation of the applicant in the main proceedings. Accused of occupational fraud in his native Austria in 1995, Dr. Janko Rottmann, an Austrian citizen from birth, and EU citizen since the accession of Austria to the Union in 1995, used his EU citizenship rights to move to

[182] Craig and Burca, p.855.
[183] *Janko Rottmann v. Freistaat Bayern,* Case C-135/08, Judgement of the Court of 2 March 2010.
[184] The fundamental status of EU citizenship is "Every person holding the nationality of a Member State is a citizen of EU."
[185] Francesca Strumia, "Remedying the Inequalities of Economic Citizenship in Europe: Cohesion Policy and the Negative Right to Move", **European Law Journal,** Vol.17, No.6, November 2011, pp.725-743.

Germany, where he successfully naturalised in 1999. He lost his Austrian nationality ex lege from the moment of naturalisation. Dr. Rottmann concealed from the German authorities the fact that he was being prosecuted in Austria and that a national arrest warrant on his name has been issued in that state. Upon receipt of this information, the German authorities withdrew his nationality on the ground that it had been acquired by fraud. To make matters worse, according to Austrian law, Dr. Rottmann does not satisfy the conditions for the recovery of his previous nationality. An interesting situation occurred, when a European citizen as a result of moving from his native Member State to another and naturalising there lost not only his initial and the newly-acquired nationality, but also his EU citizenship, which made the move and subsequent naturalisation possible in the first place. Faced with imminent statelessness, Dr. Rottmann appealed, arguing that the withdrawal of nationality was contrary to international law, which prohibits statelessness and also contrary to EU law, as it entails the loss of EU citizenship.[186]

The main problem in Rottmann case is whether the situation of Dr. Rottmann (withdrawal of nauralisation) is the subject of EU law or a domestic and internal problem. In this frame, according to Advocate-General Poiares Maduro, "This reference for a preliminary ruling raises for the first time the question of the extent of the discretion available to the Member States to determine who their nationals are."[187]

The ECJ referred to Article 15 of Universal Decleration of Human Rights (UDHR)[188] and "The Convention on the Reduction of Statelessness[189]." The Article 7 of the Convention states that *"If the law of a Contracting State permits renunciation of nationality, such renunciation shall not result in loss of nationality unless the person concerned possesses or acquires another nationality."* The Court admitted this Article and stated, by referring *Grzelczyk* and *Baumbast,* that "As the Court has several times stated, citizenship of the nion is intended to be the fundamental status of nationals of the

[186] Dimitry Kochenov, Case C-135/08, Janko Rottmann v. Freistaat Bayern, Judgment of 2 March 2010 (Grand Chamber), **Common Market Law Review,** Vol. 47, 2010, November 3, 2010, p.2.
[187] Opinion of Advocate General Poaires Maduro, Case C-135/08, delivered on 30 September 2009, p.1.
[188] Article 15 of UDHR refers that: *"Everyone has the right to nationality, and no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."*
[189] Text of the **1961 Convention on the Reduction of Statelessness**, adopted by the General Assembly of the United Nations, done at New York on 30 August 1961, http://www.unhcr.org/3bbb286d8.html.(10.05.2014)

Member States,[190] and the Member States must, when exercising their powers in the sphere of nationality, have due to regard to European Union law."[191]

Mr. Maduro found a cross-border element in the case, declaring it admissible, and, in substance, came to the conclusion that the withdrawal of Dr. Rottmann's Germany nationality was not contrary to EU law and that EU law did not require the restoration of his Austrian nationality.[192] The Court dramatically departed from the Advocate-General's timid opinion and made four interrelated points of fundamental significance. According to that, It indicated that it is not necessary to construct any cross-border situation when the status of EU citizenship is at stake; the ECJ is competent to exercise judicial review of nationality decisions of the Member States; the principle of proportionality, which applies in this context; covers both the cases of loss and (re)acquisition of EU citizenship.[193]

The Court in its judgement stated that in keeping with the general principle of international law (UDHR and European Convention on Nationality) that no one is arbitrarily to be deprived of his nationality, and when a State deprives a person of his nationality because of his acts of deception, legally established, that deprivation cnnot be considered to be an arbitrary act.[194] On the other hand, in such case, the situation, the consequences shall be considered in frame of the principle of proportionality in light of EU law, and it is the Member States' duty to exercise the powers in sphere of nationality having due regard to Union law, apply both to the Member State of naturalisation and to the Member State of the original nationality.[195]

In conclusion, the Court did not bring a certainity to the definition of the concept of citizenship, and examied the case in frame of unique solutions. The judges were in favor of giving Dr. Rottmann's Union citizenship. The Court ruled in *Rottmann* that "It is not contrary to EU law for a Member State to withdraw from a citizen of the Union the nationality of that State acquired by naturalisation when that nationality was obtained by deception, on condition that the decision to withdraw observes the principle

[190] Case C-135/08, para.43.
[191] Case C-135/08, para.46.
[192] Kochenov, p.5.
[193] Kochenov, p.6.
[194] Case C-135/08, para.53.
[195] Case C-135/08, para.59-62.

of proportionality."[196] Due to the Court took the issue as a subject of Union law, it made its judgement in light of Union law as well. The Member States must consider Union law on nationality issues, and in case of nautralisation, the case shall be examined in frame of the principle of proportionality, because according to the ECJ, loss of German nationality will effect the loss of Union citizenship as well, so such a penalty will not be proportionate compared to the crime.

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

Following years of Rottman, the recent cases on EU citizenship, in frame of right to free movement and residence are *Zambrano*[197], *Dereci*[198] and *Ymeraga*[199] cases. The Court tried to make clear the concept of Union citizenship and disputes on right to free movement and residence.

1.3.2. Recent Judgements of the ECJ on Right to Free Movement

In its very brief ruling the Court seems to establish a number of additional requirements for Article 20 of TFEU to be relied upon in an internal situation. First, it establishes that the Union citizen concerned must face a potential deprivation of the 'genuine enjoyment of the substance of the rights' conferred by virtue of the status of Union citizenship.[200] The issue of non-workers and students were concerned by

[196] Case 135/08, para.66.
[197] "*Gerardo Ruiz Zambrano v.* Office national de l'emploi (ONEm), Case C-34/09, Judgement of the Court of 8 March 2011.
[198] *Murat Dereci and others v. Bundesministeriumfür Inneres*, Case C-256/11, Judgement of the Court of 15 November 2011.
[199] *Kreshnik Ymeraga and Others v Ministre du Travail, de l'Emploi et de l'Immigration,* Case C-87/12, Judgement of the Court of 8 May 2013.
[200] Anja Wiesbrock, EUDO Observatory on Citizenship, University of Maastricht, EUDO-citizenship Official Website.

Baumbast, Sala and *Grzelczyk* cases; however in 2011 the Court faced a different internal situation: In its *Zambrano* the ECJ issued a significant ruling regarding the interpretation and scope of the concept of European Union Citizenship. In an eagerly anticipated judgment, the Court held that Article 20 TFEU confers a right of residence and employment upon the parents of a minor European Union citizen who has never left the member state of his/her nationality[201], and clarifies the implications of the fundamental status of citizenship of the Union of young children in relation to the rights of their third-country national parents.

Mr and Mrs Zambrano, of Colombian nationality, had applied to benefit from refugee status in Belgium. The Belgian authorities refused them this status, but did not have them sent back to Colombia on account of the civil war in that country. From 2001, Mr and Mrs Zambrano were then registered as resident in Belgium and Mr Zambrano worked there for a certain time, even though he did not hold a work permit. In 2003 and 2005, Mr and Mrs Zambrano had two children which acquired Belgian nationality in accordance with the Belgian legislation applicable at that time. The competent authorities refused to accede to Mr and Mrs Zambrano's application to regularise their situation and to take up residence as ascendants of Belgian nationals. Mr Zambrano was also refused the right to unemployment benefit, on the grounds that the periods of work he had carried out without a work permit could not validly be taken into account to complete the minimum qualifying period to obtain this benefit.[202]

The Court referring to its previous judgement on *Baumbast, Zhu and Chen* and *Grzelcyk* and stated that "As the Court has stated several times, citizenship of the Union is intended to be the fundamental status of nationals of the Member States,[203] and Article 20 TFEU precludes national measures which have the effect of depriving citizens of the Union of the genuine enjoyment of the substance of the rights conferred by virtue of their status as citizens of the Union."[204]

[201] Wiesbrock, EUDO-citizenship.eu.
[202] Case C-34/09, paras. 14-23.
[203] Case C-34/09, para.41.
[204] Case C-34/09, para.42.

The questions for the Court were whether this factual situation gave rise to a right to work and/or a right to reside for the parents in order to protect the rights of the children. The Court has answered these questions in the affirmative, in paragraph 45 the ECJ stated as follows:

> *"The answer to the questions referred is that Article 20 TFEU is to be interpreted as meaning that it precludes a Member State from refusing a third country national upon whom his minor children, who are European Union citizens, are dependent, a right of residence in the Member State of residence and nationality of those children, and from refusing to grant a work permit to that third country national, in so far as such decisions deprive those children of the genuine enjoyment of the substance of the rights attaching to the status of European Union citizen."*[205]

In accordance with the reference to Union citizens in the Court's statement above, there was no conflict on right to free movement between other Member States. In *Chen*, the child was living in the UK, but was an Irish national and had independent means of support not involving the parent working in the UK. However, in *Zambrano,* the principle was extended that a British child who lives in Britain and with no independence means of support. Moreover, the Court relies heavily on the fact that in order to enjoy their rights as Union citizens, the Zambrano children are dependent on their parent's right of residence and employment. Therefore, the Court took this situation into consideration and extended the scope of rights of Union citizens.

A most significat outcome of the case is the fact that the reach of Article 20 TFEU extends to cases where the Citizens' Directive 2004/38 is not applicable. Although the primary law generally has priority over secondary legislation, this was far from evident, due to the Article 20 TFEU explicitly subjects the exercise of the rights derived from that article to the conditions and limits defined by the Treaties and secondary legislation. In *Zambrano,* the Court avoids the restrictions inherent in Directive 2004/38/EC, which applies only to Union citizens who move and reside in a

[205] Case C-34/09, para.45.

Member States other than that of which they are national and their family members, by relying on Article 20 TFEU instead.[206]

Currently in 2011, the ECJ brought an important and different interpretation from which it made in *Zambrano.* In the case *Dereci*[207] there is a refusal which is based on the citizen's failure to exercise the right to freedom of movement, and possible difference in treatment compared with Union citizens who have exercised their right to freedom of movement based on Article 13[208] of Decision No 1/80 of the AssociationCouncil[209], EEC-Turkey Association, Article 41[210] of the Additional Protocol[211] , and "Standstill clauses".[212]

The case of Dereci concerned five families where third country nationals wished to join family members in Austria, all of whom were Austrian citizens but had never exercised free movement rights under EU law. The main issue in the case was the extent to which the case of "Zambrano" applied to their situations.[213]

Mr. Dereci is a Turkish national who entered Austria illegally and married an Austrian citizen. He and his wife had three children, all of whom are Austrian citizens and minors. Mr. Dereci is currently resident with his family in Austria. He has had his applications for residence permit rejected by the Austrian Bundesministerium für Inneres, which refused to apply provisions under Directive 2004/38/EC for family members of EU citizens on the grounds that the Union citizen concerned has not exercised right of free movement. Mr. Dereci has in addition been subject to expulsion orders and individual removal orders.[214]

---

[206] Wiesbrock, EUDO-citizenship.eu.
[207] *Murat Dereci and others v. Bundesministeriumfür Inneres*, Case C-256/11, Judgement of the Court in 15 November 2011.
[208] The Article refers that *"The Member States of the Community and Turkey may not introduce new restrictions on the conditions of access to employment applicable to workers and members of their families legally resident and employed in their respective territories."*
[209] Decision No 1/80 of the Association Council of 19 September 1980 on the Development of the Association.
[210] Article 41(1) of the Additional Protocol provides that *"The Contracting Parties shall refrain from introducing between themselves any new restrictions on the freedom of establishment and the freedom to provide services."*
[211] Additional Protocol on Establishing an Association Between the European Economic Community and Turkey, signed in Brussels, 23 November 1970, O.J., C113/28, 24.12.1973.
[212] "Standstill Clause" provides that the contracting parties shall refrain from introducing between themselves any new restrictions on the freedom of establishment and the freedom to provide services. It does not provide for the freedom to provide services itself, but it requires the Council of Association to take the necessary steps to remove obstacles to that freedom.
[213] Ian Mc Donald QC, Garden Court Chambers and Garden Court North Chambers, 17th November 2011.
[214] Anja Lansbergen, Case Summary and Comment: Case C-256/11, EUDO-citizenship Official Website, p.2.

The ECJ stated that the applications were rejected by Austrian authorities based on the grouds that there is the existence of procedural defects in the application, which are; failure to comply with the obligation to remain abroad whilst awaiting the decision on the application on account of either irregular entry into Austria or regular entry followed by an extended stay beyond that which was originally permitted; lack of sufficient resources; or a breach of public policy.[215]

However, the National Court asked to the ECJ by referring that is the Article 20 of TFEU to be interpreted as precluding a Member State from refusing to grant to a national of a third country, whose spouse and minor children are Union citizens, residence in the Member State which his/her spouse and children are the nationals of that State, even in the case where those Union citizens are not dependent on the national of a non-EU country for their subsistence.[216]

The ECJ, in its reply, stated that the applicants are all non-EU nationals who are applied for the right of residence, whose family members are Union citizens and who have not exercised their right right to free movement within the Member State territories.[217] Also, the Court stated that the Direcitve 2003/86/EC,[218] which determines the conditions for the exercise of the right to family reunification by third country nationals residing lawfully in the territory of the Member States, should be analysed in order to answer the question, and whether the Directives 2003/86 and 2004/38 are applicable to the applicants in main proceedings. The Article 3(3) of the Directive 2003/86 states that "this Directive shall not apply to members of the family of a Union citizen." Therefore, the Court ruled that the Direcitve 2003/86 is not applicable to the applicants in main proceedings. On the other hand, the Court repeated that Mr. Dereci as spouses of a Union citizen, fall within the definition of 'family member' in point 2 of Article 2 of Directive 2004/38.[219] However, the Court ruled that the Directive 2004/38 does not apply in situations such as those at issue in the main proceeding.[220] The ECJ based its ruling on the ground that "a Union citizen, who has never exercised his right of

[215] Case C-256/11, para.28.
[216] Case C-256/11, para.35/a.
[217] Case C-256/11, paras.44.
[218] Council Directive 2003/86/EC 22 September 2003 on the right to family reunification , O.J., L 251/12, 3.10.2003.
[219] Directive 2004/38, p.88.
[220] Case C-256/11, prg.52.

free movement and has always resided in a Member State of which he is a national, is not covered by the concept of 'beneficiary' for the purposes of Article 3(1) of Directive 2004/38[221], so that that Directive is not applicable to him.[222] Indeed, not all third country nationals derive rights of entry into and residence in a Member State from Directive 2004/38, but only those who are family members, within the meaning of point 2 of Article 2 of that directive, of a Union citizen who has exercised his right of freedom of movement by becoming established in a Member State other than the Member State of which he is a national."[223] Lastly, the Court emphasized that Mr. Dereci is not covered by the concept 'beneficiary' for the purposes of Article 3(1) of Directive 2004/38, and due to Mr. Dereci is third country national who apply for the right of residence in order to join their European Union citizen family members who have never exercised their right to free movement and who have always resided in the Member State of which they are nationals, so that neither Direcitve 2003/68 nor Directive 2004/38 are applicable to him and his family members.[224]

Consequntly, the ECJ refused the application of Mr. Dereci and stated that " the case in main proceeding must be interpreted as meaning that the enactment of new legislation more restrictive that the previous legislation, which, for its part, relaxed earlier legislation concerning the conditions for the exercise of the freedom of establishment of Turkish nationals at the time of the entry into force of that protocol in the Member State concerned must be considered to be a 'new restriction' within the meaning of that provision."[225]

According to Ian McDonald;[226] in esence, a long list of member states, including the UK, submitted that the principles laid down in "Ruiz Zambrano" apply to very exceptional situations substantially different from those in Zambrano, claiming that none of the Union citizens in the current case were at risk of having to leave the territory of the EU and thus of being denied the genuine enjoyment of the substance of

[221] Article 3(1) of Direcitve 2004/38 refers that "This Directive shall apply to all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members as defined in point 2 of Article 2 who accompany or join them."
[222] Case C-256/11, para.54.
[223] Case C-256/11, para.56.
[224] Case C-256/11, paras. 57-58.
[225] Cae C-256/11, para.102.
[226] Ian McDonald is a barrister in Garden Court Chambers and Garden Court North Chambers, UK.

the rights conferred by virtue of their status as citizens of the Union. Similarly, according to the Commission, neither was there a barrier to the exercise of their free movement rights under EU law.[227]

Dereci has brought a new perspective to not only to the Union citizenship concept, but also in fame of protection of human rights. The jurisdiction of the ECJ is also important in case of Turkey-EU assocaite law, and brings not only legal, but also social and cultural effects to Turkey-EU relations.

Lastly, *Ymerga*[228] case is important to undestand whether *Zambrano* establishes a precedent in Union law.

The applicants in the main proceedings are all from Kosovo. In 1999, Mr Kreshnik Ymeraga arrived in Luxembourg at the age of 15 to live with his uncle, a Luxembourg national, who became his legal guardian. Although Mr Kreshnik Ymeraga's application for asylum was rejected by the Luxembourg authorities, his situation was regularised in 2001 and, thereafter, he went on to study and found regular employment. Between 2006 and 2008, Mr and Mrs Ymeraga and Mr Kreshnik Ymeraga's two brothers arrived in turn in Luxembourg. They were all adults when they arrived, except for Mr Labinot Ymeraga, who was three weeks from attaining the age of majority. On the day they arrived, they all applied for international protection in accordance with the law on the right of asylum and complementary forms of protection.[229]

Their application for international protection having been rejected by the Luxembourg authorities, Mr and Mrs Ymeraga and Mr Kreshnik Ymeraga's two brothers applied, on 8 May 2008, for residence authorisations on grounds of family reunification with Mr Kreshnik Ymeraga.[230]

Meanwhile, on 16 March 2009, Mr Kreshnik Ymeraga acquired Luxembourg nationality. On 14 August 2009, Mr and Mrs Ymeraga applied to the Minister for a

[227] McDonald, Garden Court North Chambers Official Website.
[228] *Kreshnik Ymeraga and Others v Ministre du Travail, de l'Emploi et de l'Immigration,* Case C-87/12, Judgement of the Court of 8 May 2013.
[229] Case C-87/12, paras.11-12.
[230] Case C-87/12, para.13.

residence permit as family members of a citizen of the Union. On 17 May 2010, Mr and Mrs Ymeraga renewed their application to the Minister of 14 August 2009 and also sought a residence permit or, in the alternative, a residence authorisation, for Mr Kreshnik Ymeraga's two brothers. By three decisions of 12 July 2010, the Minister rejected those applications. The action for annulment those decisions was also dismissed by judgment of the Administrative Court of 6 July 2011.[231]

The Court rejected the application based on the reason that although Mr. Ymeraga had made a financial contribution to the expenses of his family members who had remained in Kosovo, his parents could not be regarded as his 'dependants' for the purposes of the Law on freedom of movement. As regards his two brothers, since Mr. Kreshnik Ymeraga had left Kosovo in 1999, it could not be claimed that they were 'members of the household' for the purposes of that law, despite the financial assistance established for the period from 19 March 2006 to 20 February 2007,[232] and also rejected as unfounded the alleged breach of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms[233], on the ground that the refusal to grant residence to Mr. Ymeraga's parents and two brothers could not prevent them from continuing their family life with him as it had been after Mr. Ymeraga had left Kosovo and before they arrived in Luxembourg.[234]

The legal conflict on *Ymeraga* case is whether, on the basis of Article 20 TFEU and, potentially, certain provisions of the Charter a right to family reunification in Luxembourg may be conferred on the family members of Mr Kreshnik Ymeraga.[235]

Except this question of the referring Court, the ECJ emphasized that the Charter makes no difference in this regard. The case concerned a Luxembourg citizen of Kosovan descent who was joined in Luxembourg by members of his family, who are

[231] Case C-87/12, paras.14-16.
[232] Case C-87/12, para.17.
[233] Article 8 of the Convention states that *"Everyone has the right to respect for his private and family life, his home and his correspondence; and there shall be no interference by a public authority eith the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, of the country, fort he prevention of disorder or crime, fort he protection of health or morals, or for the protection of the rights and freedoms of others."*
[234] Case C-87/12, para.18.
[235] Case C-87/12, para.21.

third country nationals. The Court reiterated that Directive 2004/38 as well as Union citizenship only provisions of the Treaty confer rights to family members of a Union citizen only if the latter reside in a Member State other than that of which they are nationals. The Court held that "any rights conferred upon third country nationals by the Treaty provisions on Union citizenship are not autonomous rights of those nationals but rights derived from the exercise of freedom of movement by a Union citizen".[236] The Court held that on the question of referring court on family reunification, held that according to its Article 51(1)[237], the Charter applies to Member States only when they are implementing Union law. As Mr. Ymeraga has not exercised his right of movement, his situation and that of his familya re not governed by Union law, and the Charter remains inapplicable.[238] The Court emphasized, however, that "such a finding does not prejudge the question whether, on the basis of an examination in the light of the provisions of the Convention, to which all Member States are parties, to the third country nationals in the main proceedings may not be refused a right of residence."[239]

Consequently, based on those grounds, the ECJ ruled that *"Article 20 TFEU must be interpreted as not precluding a Member State from refusing to allow a third-country national to reside in its territory, where that third-country national wishes to reside with a family member who is a European Union citizen residing in the Member State of which he holds the nationality and has never exercised his right of freedom of movement as a Union citizen, provided such refusal does not lead, for the Union citizen concerned, to the denial of the genuine enjoyment of the substance of the rights conferred by virtue of his status as a Union citizen."*[240]

The Court had it s ruling by acting from two basic point: First one is, whether a Union citizen forfeit his rights conferred upon Treaty provisions in case of the right of residence is not conferred to the family members of a Union citizen who are third

[236] Case C-87/12, para.35.
[237] The Article 51(1) of the Charter states that "*The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers."*
[238] Friel Weiss and Clemens Kaupa, **European Union Internal Market Law,** Cambridge: Cambridge University Press, 2014, p.107.
[239] Case C-87/12, para.44.
[240] Case C-87/12, para.46.

country nationals. Second one is whether the free movement was exercised. The ECJ ruled that such refusal of Luxembourg authorities does not lead, for the Union citizen concerned, to the denial of the genuine enjoyment of the substance of the rights conferred by virtue of his status as a Union citizen.[241] On the other hand, the ECJ, as well as in *Dereci*, emphasized that Kreshnik Ymeraga did not exercise right to free movement; therefore, he cannot be regarded as a beneficiary of Directive 2004/38 and Article 20 TFEU.[242] An important point of *Ymeraga* is the ECJ did not have any reference to *Zambrano.* The ECJ is seemed like wish to cover their judgement in *Zambrano.* However, it is affirmative that the conflict was interpreted in perspective of human rights. The ECJ stated that Mr. Ymeraga may apply to the European Court of Human Rights (ECHR). [243]

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

Since 1993, the Court of Justice has pushed the margins of Union citizenship gradually outwards, concluding that the right to reside in the Member States guaranteed by Article 21 TFEU (Article 18 EC) is directly effective and is therefore enforceable by individual citizens in the national courts against the public authorities of the Member States. Member States may place only proportionate restrictions upon EU citizens' right of residence, even with respect to those persons who are not economically active. The range of coverage provided the principle of non-discrimination, which was historically linked to the applicant carrying out some form of economic activity in another Member State, even if this only involved being a tourist, has been extended so that the applicant need no longer show an economic concern. Now, this range has been extended so that the applicant need no longer show an economic concern. The equal treatment rights of

[241] Case C-87/12, para.45.
[242] Case C-87/12, para.42.
[243] Gerçek Şahin YÜCEL, "Avrupa Birliği Adalet Divanı'nın Avrupa Birliği Vatandaşlığı ile İlgili Son Yaklaşımları", **Marmara Avrupa Araştırmaları Dergisi,** Vol.21, No.2, 2013, p.51.

students moving within the single market have been substantially increased. Professor Dora Kostakopoulou has argued that European citizenship has not been the purely symbolic institution which many initially expected it to be.[244] Instead, it has evolved, in the hands of the ECJ in particular, in very significant ways beyond the confines of a concept of market citizenship to become both a more political and a more institutionalized figure.[245]

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

2. Right to Vote and Stand for Election in EP and Municipal Elections

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

[244] Dora Kostakopoulou, "Ideas, Norms and European Citizenship: Explaining Institutional Change", **The Modern Law Review,** Vol.68, No.2, March 2005, Wiley Online Library, p.233.
[245] Jo Shaw, "EU Citizenship and Political Rights in an Evolving European Union", **Fordham Law Review,** Vol.75, No.5, 2007, p.2551.

State, in other words they also have to be in EU citizen status. Thus, a fully equal treatment between the Union citizens is aimed to provide in case of EP and municipal elections. However, this right is not in general, this right is only pertain to the EP and municipal elections.[246]

Due to the right to vote and stand for election is considered as directly related with the states' sovereignty power; granting people a right to participation to their political life who are not their national is an important step, which also means to approve people to contribute a formation of a nation state's sovereignty which they do not have any citizenship bond. Therefore, the context of the right to participate in political life and statues of foreigners are determined by states' own national legal regulations.[247]

The Article 8b of Maastricht Treaty and Article 19 of the TEC refer the right to vote in EP and stand for municipal elections, which was consolidated in TFEU as Article 22. The Article 22 of the TFEU again clarifies and explains the context of right to vote and stand for election. However, it would be better to explain this right under two seperate titles of "municipal elections" and "European Parliament".

2.1. Right to Vote and to Stand as a Candidate at Municipal Elections

The Article 8b of the Maastricht Treaty has resolved the right to vote and stand for election by a explicit provision. According to this provision, the EU citizens have the right to vote and stand for election in member state which they reside as well as the nationals of that member state, and without considering their nationality.

Truthfully, the issue of the participation of EU citizens to the municipal elections in the member states which they reside had been proposed since 1985. The "Report from the ad hoc Committee on a People's Europe" of Adonnino Committee in

[246] Tezcan, p.56.
[247] Gözde Kaya, "Avrupa Vatandaşlığı", Yayınlanmış Yüksek Lisans Tezi, Dokuz Eylül Üniversitesi Sosyal Bilimler Enstitüsü, 2003, p.91.

1985 Milan Summit,[248] and the call of EP to the member states on this issue may be shown as examples. The Commission's proposals in 1988[249] and 1989[250] were continued the process as well. By those reports, the EP demanded to rapid the process and a directive was prepared.

Meetings of the Council on this proposal of the Commission were suspended due to the IGC which met before Maastricht Treaty; and by Maastricht Treaty, new rules were set on the issue. At last, in frame of the Council of Europe, a comprehensive convention on active participation of foreigners in public life in local level was opened for the States' signature in 1992.[251] In the Preamble of the Convention refers that the Articles have been regarded by;

> "-Considering that the residence of foreigners on the national territory is now a permanent feature of European societies;
>
> -Considering that foreign residents generally have the same duties as citizens at local level;
>
> -Aware of the active participation of foreign residents in the life of the local community and the development of its prosperity, and convinced of the need to improve their integration into the local community, especially by enhancing the possibilities for them to participate in local public affairs."

Article 2 of the Convention explains the definition of foreigners as; "the term "foreign residents" means persons who are not nationals of the State and who are lawfully resident on its territory." Thus, it was clarified that the persons who are in context of the right to vote and stand for election.

---

[248] **Report from the ad hoc Committee on a People's Europe,** Bulletin of the EC 3-1985, Commission of the European Communities.
[249] **Commission Proposal for a Council Directive on Voting Rights for Community Nationals in Local Elections in Their Member State of Residence,** COM(88) 371 final, O.J., C246, 22.09.1988.
[250] **Amended Proposal for a Council Directive on Voting Rights for Community Nationals in Local Elections in Their Member State of Residence,** COM(89) 524 final, O.J., C 290, 18.11.1989.
[251] Convention on the Participation of Foreigners in Public Life at Local Level, Council of Europe, Strasbourg, 5.11.1992.

On the other hand, the Article 6 under Chapter C -Right to Vote in Local Authority Elections - granted to every foreign resident the right to vote and to stand for election in local authority elections, provided that he fulfils the same legal requirements as apply to nationals and furthermore has been a lawful and habitual resident in the State concerned for the five years preceding the elections.[252] The conditions and context of the right to vote and stand for election was defined before Maastricht Treaty by this Convention and the Article 6, the foreigners of a Member State – who are habitually resident in other Member State but not the national - were granted to participation in political life in that Member State as well as the nationals of that State.

In 1994, the Council Directive 94/80/EC was accepted, which "laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals."[253] In Article 3, subparagraph (b) of the Directive refers that "any person who, on the reference date is not a national of the Member State of residence, but in any event 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 stand as a candidate in municipal elections in the Member State of residence in accordance with this Directive."[254] Thus, the conditions of the right to vote and to stand in municipal elections were stated again, which the persons do mot have to be the citizen of the Member State which they reside, but hold the nationality of a Member State, means hold the EU citizenship.

The important point of the Directive 94/80 is that the Commission shall submit a report to the EP and the Council on the appliccation of this Directive and Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1996, and they shall immediately inform the Commission thereof.[255] This is important, because there are debates on the conditions of application of the right to vote and to stand for election shall be set whether by regulations or directives. If the conditions were set by

[252] Convention on the Participation of Foreigners in Public Life at Local Level.
[253] **Council Directive 94/80/EC of 19 December 1994**, O.J., L 368, 31.12.1994, p.38.
[254] Directive 94/80/EC, p.40.
[255] Directive 94/80/EC, p. 42.

regulations, it would be more effective in case of transposition of the rules into the Member States' national laws, because regulations *shall have general application, and it shall be binding in its entirety and directly applicable in all Member States.* they do not need to be mediated into national law by means of implementing measures. However, directives are needed to be transposed into national law, because according to the Article 249 TEC, *a directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.* Moreover, the right to vote and stand for election would be applied more uniform and homogenous in all Member States, and the time drains which the transposition periods caused would be averted. However, due to considering several special conditions of the election laws of Member States, Directives were preferred to regulate the conditions.[256]

The Directive 94/80 was amended by the Council Directive 96/30/EC[257] of 13 May 1996. Due to the new integration of Union by the full memberships of Austria, Sweden and Finland; those new members were added into the context of the right to vote and stand for municipal elections and Directive 94/80.

In order to take part in elections, citizens must apply to be entered in the electoral roll of the Member State of residence as an expression of their interest in voting. The Member States must make the necessary arrangements to enable them to be entered on the electoral roll in due time before polling day. Community nationals must provide the same supporting documents as national voters. In Member States where voting is compulsory, Community voters entered on the electoral roll are also covered by this obligation.[258]

There is nothing in the Directive to prevent persons voting or standing as a candidate both in their Member State of residence and in their home Member State. However, Member States may provide that the holding of elected municipal office in the Member State of residence is incompatible with the holding of offices in other

[256] Tezcan, 59.
[257] **Council Directive 96/30/EC of 13 May 1996,** O.J., L 122, 22.05.1996, p.14.
[258] Tezcan, p.62.

Member States which are equivalent to those which give rise to incompatibility in the Member State of residence.[259]

On the other hand, there are some restrictions that the Directive refers. Member States may refuse Community citizens the right to stand as a candidate if they:

- have lost the right to stand as a candidate under the law of their Member State of origin as a result of an individual decision under civil or criminal law;
- cannot produce a declaration as referred to in Article 9 of the Directive (nationality and residence declaration, declaration of non-deprivation of the right to stand as a candidate and, in certain cases, an attestation from the competent administrative authorities, production of an identity document, etc.).[260]

According to the Directive 94/80, due to in some Member States there were not a rule which grants the right to contribution of foreigners into the municipal elections, they are obliged to the harmonization and transferring this right into their constitutions. However, the Federal Constitutional Court of Germany evaluated this obligation before the Directive's formation. In 1990, in *Shcleswig-Holstein* and *Hamburg* Provinces, the Court decided that the granting right to vote in municipal elections is conflicting with constitution. The Court implied that the German Republic people provide the legitimacy of the sovereignty power; State cannot be abstracted from public as the owner and subject of the sovereignty; and the relation with public is only possible with citizenship bond. In frame of the Court's interpretation, the right to vote is only granted to German citizens in federal and provincial level; therefore, granting right to vote to non-German people is coflicting with the German Constitution. The Court also ruled that the municipal elections indirectly exercise the sovereignty power, so the democratic legitimacy can be provided only by the German citizens. On the other hand, the Court also decided that a constitutional change is required for granting right to vote in municipal elections to the Union citizens, so to exercise the rule of Maastricht Treaty,

[259] **Participating in municipal elections: the right to vote and to stand as a candidate**. europa.eu
[260] **Participating in municipal elections: the right to vote and to stand as a candidate,** europa.eu.

the Court made constitutional changes and provide the regulation on right to vote in municipal elections for the Union citizens.[261]

Similarly with Germany, France granted the right to vote in municipal elections to the only French nationals, and contribution of non-French Union citizens to the municipal elections was conflicting with French Constitution. In frame of Maastricht Treaty, France made constitutional changes to grant the right to vote to the Union citizens; however, only the Union citizens whose residence is in France can benefit from this right. The Constitutional Council of France made changings in this competence area of legislative body with *Maastricht-II* decision, and stipulated that the legislative body shall make regulations appropriately with the Directive 94/80.[262]

2.2. The Right to Vote and to Stand in European Parliamentary Elections

The EP elections has been an issue of political debates and conflicts since 1970s; as a result, a uniform electoral system cannot be set which is applied in all Member States. During the Paris Summit in 1974, it was decided to hold the "direct elections" later 1974 or after 1979. By the compromise in Brussels in 20 September 1976, the Coucil Decision[263] its Article 7 refers:

"Pending the entry into force of a uniform electoral procedure and subject to the other provisions of this Act, the electoral procedure shall be governed in each Member State by its national provisions." Thus, the right to elect was left to the Member States' national law area.

On the other hand, Article 8 of the Decision expressed that no one may vote more than once in any election of representatives to the Assembly.[264]

---

[261] Füsun Arsava, "Birlik Hukuku ve Anayasa Arasındaki İlişki", **Ankara Avrupa Çalışmaları Dergisi,** Vol.4, No.1 (Fall 2004), p.117.
[262] Arsava (Birlik Hukuku), p.118.
[263] **Decision amending 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,** O.J., L 33/15, 09.02.1993.
[264] **Council Decision** 76/787, O.J., p.6.

On the other hand, according to the Annex of the Council Decision 78/787 in 1976, the direct elections of EP was issued, and it was uniformed that the election period and being a candidate from just one Member State. Also according to the Article 190 TEC (new 223 TFEU) the number of seats of each Member State was determined, and in case of an EU integration, the number of seats would change correspondingly with the representation of Member States.[265] By the added paragraph of Article 137 of Amsterdam Treaty, it was resolved with a final judgement that the number of seats in EP shall not exceed seven hundred.[266] On the other hand, by the Nice Treaty in 26 February 2001, the number of members in EP was increased to 732 for the EU with 27 Member States.[267]

Following the Accession Treaties of 2004 and 2007 the number was extended to 736, a number that according to the Accession Treaty 2005 was not to be exceeded. However, the Treaty of Lisbon has extended this number to 750 (Article 14(2) TEU).[268] According to the Lisbon Treaty, Article 9(a) is added to the TEU; its paragraph 2 refers: "The European Parliament shall be composed of representatives of the Union's citizens. They shall not exceed seven hundred and fifty in number, plus the President. Representation of citizens shall be degressively proportional, with a minimum threshold of six members per Member State. No Member State shall be allocated more than ninety-six seats."[269]

The detailed arrangements for the exercise of the right to vote and state as a candidate in elections to the EP for citizens of the Union residing in a Member State of which they are not nationals was laid down by the Council Directive 93/109/EC of 6 December 1993.[270] It does not affect the rights of an EU country's nationals at elections to the EP in their own country, whether or not those nationals reside in that country.

---

[265] Tezcan, p.64.
[266] **Treaty of Amsterdam,** p.42.
[267] **Treaty of Nice,** p.19.
[268] Michael Elkins, "An analysis of the changes made to the European Parliament", **Law of the European Union module,** University of Wales-Newport, The New Researcher, Vol.4, 2011, pp. 30-34.
[269] Tr**eaty of Lisbon,** O.J., C 306, 17.12.2007, p.17.
[270] **Council Directive 93/109/EC,** O.J., L 329/34, 30.12.1993.

The directive defines the requirements a national of another EU country must satisfy to vote or to stand as a candidate in his/her country of residence. Namely, such a person must:

- be a citizen of the Union;
- be resident in the EU country in which she proposes to vote or to stand as a candidate;
- satisfy the same conditions as a national of that EU country who wishes to vote or to stand as a candidate (the principle of equality between national and non-national voters).[271]

It is ultimately a matter for each EU country to determine which persons are its nationals. EU citizens may exercise their right to vote and to stand as a candidate either in the EU country of residence or in their home country. No one may vote more than once or stand as a candidate in more than one EU country. To prevent double voting and double candidacy, EU countries must exchange information on citizens registered to vote or to stand as a candidate.[272] Moreover, the Directive stated that; a voter is to be entered on the electoral roll of his country of residence only if he so requests in advance. A voter who opts for the right to vote in his/her country of residence undertakes not to exercise this right in his/her country of origin. In EU countries where nationals are required to vote, non-national voters who ask to be entered on the electoral roll are subject to the same obligation (Article 8); in order to have his name entered on the electoral roll, a non-national voter must produce the same documents as a national voter. In addition, he must provide further information in the form of a formal statement (Article 9); a candidate must not have been deprived of his voting rights in the country of residence nor in the country of origin. When he submits an application to stand as a candidate, an EU citizen must provide proof supplied by the country of origin that he is entitled to stand as a candidate there. (Article 10)

[271] **Council Directive 93/109/EC,** Articles 3 and 4.
[272] Voting rights and eligibility in European Parliament elections, europa.eu.

According to Jo Shaw, to shed some light upon the nature of "right to vote" it can be considered the issues raised in *Gibraltar*[273]and *Aruba*[274] cases.[275]

Gibraltar is a British overseas territory and often referred to as a "Crown colony". It is self-governing in all matters except for foreign policy and defence which are responsibilities of the British Crown.[276] In *Gibraltar*, the question is whether Commonwealth citizens rrsident in Gibraltar should be able to vote in EP elections, given that they were enfranchised under a paralel extension ok UK's Standard suffrage rules which give Commonwealth citizens who are legally resident the right to vote and stand in all elections in the UK. This situation arose after the UK included Gibraltar in its electoral territory as a result of a case brought before the ECHR in the 1990s, regarding the right to vote in EP elections by UK citizens in Gibraltar, and the status of the EP as a legislature vis a vis Gibraltar. The case was brought by Spain under Article 227 EC[277], which argued that the right to vote in European Parliament elections must be confined to Union citizens.[278] Spanish government claimed that, in accordance with the Community law, the right to vote and stand as a candidate in EP elections belongs to citizens of the EU alone, so the UK is in breach of Community law since it conferred the right to vote on citizens of its oversea territories who are not nationals of a Member State. However, Gibraltar is part of EU by virtue of Article 299(4) EC[279] which is as an "European territory for whose external relations a Member State responsible." Due to Gibraltar is part of the UK, it is also part of the EU and Union law, all Union legislations adopted by UK since its membership in 1973 have been applicable to Gibraltar. The UK argued that Commonwealth citizens who do not require, or who have, leave to enter and remain in the UK, are subject to residence there, entitled to cote

[273]*Kingdom of Spain v. United Kingdom of Great Britain and Northern Ireland*, Case C-145/04, Judgement of the Court of 12.09.2006, O.J., C 281, 18.11.2006.
[274] *Eman and Sevinger v. College van burgemeester en wethouders van Den Haag*, Case C-300/04, Judgement of the Court of 12.09.2006.
[275] Jo Shaw, "The Political Representation of Europe's Citizens: Developments Court of Justice of the European Communities", **European Constitutional Law Review,** Vol.4, No.1, February 2008, p.169 (pp.162-186).
[276] Malin Karvonen, "The Gibraltar Case: A Critical test of rules concerning EU citizens and franchise in elections to the European Parliament", Master Thesis, University of Lund, Faculty of Law, 2005, p.49.
[277] Article 227 EC states that *"A Member State which considers that another Member State has failed to fulfil an obligation under this Treaty may bring the matter before the Court of Justice.";* J.H.H. Weiler and Martina Kocjan, "*The Law of the European Union, The Community Syatem of Judicial Remedies: Articles 226,227,228*"**,** NYU School of Law, 2004/2005, p.2.
[278] Shaw (The Political Representation of Europe's Citizens), p.169.
[279] The Article 299(4) EC states that *"The provisions of this Treaty shall apply to the European territories for whose external relations a Member State is responsible."*

in UK Parliamentary elections; the law provided that "Qualified Commonwealth Citizens (QCC) in the UK have right to vote in EP elections, and thus many QCCs have taken part in those elections since 1978.[280]

The ECJ chose to deal with *Gibraltar* in connection with *Aruba* case, which is a reference for a preliminary ruling by the decision of the Court of 13 July 2004.

The Dutch citizens that have the right to vote in European Parliamentary elections are those that have been residing in Holland for at least ten years, something that Mike Eman and Benny Sevinger, the appellants in the main proceedings before the Dutch courts, found discriminatory. Mr Eman and mr Sevinger are Dutch citizens, Aruba political leaders and they live in Oranjestad in Aruba, which is just off the coast of Venezuela. They were refused to register as voters for the elections to the EP in June 2004.[281]

In *Aruba*, the issue came before the Court of Justice by way of a reference for a preliminary ruling under Article 234 EC[282] from the Dutch Raad van State, in a case brought by two Netherlands nationals resident in Aruba, who objected to a decision of the municipal authorities of The Hague refusing to place their names on the electoral register for EP elections in the Netherlands.[283] Aruba is also part of the Netherlands, but it is a self-governing overseas territory (OCT), so it is not part of the EU under Article 299 EC. Due to Aruba is a OCT, very limited aspects of Union law apply there, either directly or indirectly by virtue of Dutch law, or in some cases voluntarily because the Aruban legislature has chosen to align itself with EU law. The applicants Eman and Sevinger argued that they are citizens of the EU, as the citizens of the Kingdom of Netherlands benefiting from a single national citizenship for the Kingdom of Netherlands. However, so long as they were residing in Aruba under Dutch law they are denied the right to vote in EP elections. They can vote only if they move to reside in the

[280] Case C-145/04, para.38.
[281] Karvonen, p.65.
[282] Article 234 EC regulates the conditions that the ECJ has jurisdiction to give preliminary rulings. It states that *"Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon."*
[283] Shaw (The Political Representation of Europe's Citizens), p.169.

Netherlands, or if they move to live in a third country. Their rights were based on general Dutch external voting arrangements, which make no distinction to respect of nationals of the Netherlands who reside in third countries whether they previously resided in the Netherlands, Aruba, or other non-EU territories of the Netherlands.[284]

According to the appellants, the OCT status does not lead to a restriction of the right to citizenship. The concept of nationality is unitary, Dutch nationals born in Aruba are EU citizens. The appellants argue that the EC Treaty has a personal, not a territorial, scope, and therefore a Dutch citizen born and living in Aruba should have the same rights in Aruba and in the Netherlands as he or she would have abroad. At present, Aruba nationals are excluded from voting to the Dutch first and second chamber.[285]

The Dutch government claimed that Dutch nationals who live abroad have the right to vote, and admits that Aruba nationals who go to other Member States can invoke the right to vote in EP elections in the other Member States. The appellants pointed out that the EP legislation effects also Aruba, because EC law intertwines with the Dutch legislation whivh has consequences for Aruba, and Aruba takes part in implementing EC policy. Therefore, the residents is Aruba should be entitled the right to vote in the EP.[286]

In *Gibraltar,* the ECJ noted contrary to the arguments of Spain by confirming that Article 19(2) EC[287] is confined to applying the principle of non-discrimination on grounds of nationality to the exercise of that right.[288] However, the Court also stated that "a person who is not a citizen of the Union, such as a QCC resident in Gibraltar, from being entitled to the right to vote and stand for election. However, it must be ascertained whether there is, as the Kingdom of Spain submits, a clear link between citizenship of the Union and the right to vote and stand for election which requires that that right be always limited to citizens of the Union."[289] The Court repeated its

[284] Shaw (The Political Representation of Europe's Citizens), p.173.
[285] Karvonen, p.66.
[286] Karvonen, p.66.
[287] The Aricle 19(2) EC states that "*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."*
[288] Case C-145/04, para.66.
[289] Case C-145/04, para.70.

important phrase in *Grzelczyk*, which citizenship of Union is destined to be the fundamental status of the nationals of Member States, but that statement does not necessarily mean that the rights recognised by the Treaty are limited to citizens of the Union.[290]

In conclusion, the ECJ confirmed that it was 'within the competence of each Member State in comliance with Community Law' to define the persons entitled to vote and stand in EP elections[291] and support its decision by referring to the "constitutional traditions" of the UK, which include the extension of rights to vote in all UK elections to Commonwealth citizens.[292] Consequently, the ECJ dismissed the action in *Gibraltar*, ordered Spain to pay the costs.[293]

On the other hand, in *Aruba*, the ECJ expressly confirmed tha as nationals 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[294] may rely on the rights conferred on citizens of the Union.[295] However, the ECJ also confirmed that as the Treaty contains no rules expressly stating who are to be entitled to vote and stand as a candidate for the EP, it remains a matter, in the current state of Community law, for the competence of the Member States.[296] There is no unconditional right on the part of nationals of the Member States to vote for the EP. In particular, the Member States may choose the criterion of residence to determine who votes. In this context, it cited case law of the Court of Human Rights concluding that 'the obligation to reside within national territory to be able to vote is a requirement which is not, in itself, unreasonable or arbitrary.'[297] However, the exercise of national competence must occur in compliance with Community law. This led the Court to consider whether an OCT was in the same situation, with regard to Community law, as

[290] Case C-145/04, para.74.
[291] Case C-145/04, para.78.
[292] Case C-145/04, para.79.
[293] Case C-145/04, para.98.
[294] The Article 299(3) EC states that *"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. This Treaty shall not apply to those overseas countries and territories having special relations with the United Kingdom of Great Britain and Northern Ireland which are not included in the aforementioned list."*
[295] Case C-300/04, para.29.
[296] Case C-300/04, para.45.
[297] Case C-300/04, para.54.

Gibraltar. It concluded that, unlike the case of *Gibraltar*, the European Parliament cannot be regarded as a legislature with regard to the OCTs.[298]

The ECJ supported the applicants by conforming that the principle of equal treatment or non-discrimination is a general principle of the Community law, requires that comparable situations must not be treated differently.[299] Also, the Court stated that *"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."*[300]

In fact, the latter group can vote in EP elections), whereas the former cannot. However, this 'connection' rationale breaks down when it becomes apparent that the Netherlands nationals residing in Aruba gain the right to vote if they leave Aruba for a third country, since they are then covered by the same general Netherlands external voting legislation. The Court concluded that the Netherlands was under an obligation to provide an objective justification for its difference in treatment, and that given this irrational- ity in the legislative scheme, it had failed to do so.[301]

While *Gibraltar* is probably the more immediately politically sensitive of the two cases, that does not of itself make this the more significant one. It is, of course, important to note that the Court explicitly recognises the electoral particularities of one Member State as being a 'constitutional tradition' which deserves respect, and it should also be noted that the Court projects a broadly inclusive notion of the electoral franchise for the EP, throughout its judgment. On the other hand, it is arguable that the *Aruba* may be the more significant of the two cases. From this case, it can be argued that the combination of the organisation of European-wide elections to the EP, albeit thus far on

[298] Shaw (The Political Representation of Europe's Citizens), p.182.
[299] Case C-300/04, para.57.
[300] Case C-300/04, para.58.
[301] Shaw (The Political Representation of Europe's Citizens), p.182-183.

a segmented national basis, with the creation of a Europe-wide personal status of 'citizen of the Union' can result in quite substantial intrusions into the national electoral sovereignty of the member states.[302]

While *Gibraltar* and *Aruba* appear as examples of right ot vote to the EP for the citizens of the countries of non-EU territories, Treaties still give important competences to the Member States on regulating their conditions on right ot vote and stand as a candidate in the EP elections. The EU country of residence may refuse, if it so wishes, to enter voters who are disqualified from voting in their country of origin. The legal remedies available to nationals must also be available to non-nationals who are refused entry on the electoral roll or whose application to stand as a candidate is rejected. (Article 11)[303]

On the other hand, as the Directive 93/109/EC stated in Article 14, some restrictions were set such as;

"in a given Member State, the proportion of citizens of the Union of voting age who reside in it but are not nationals of it exceeds 20% of the total number of citizens of the Union residing there who are of voting age, that Member State may restrict the right to vote to Community voters who have resided in that Member Statefor a minimum period, which may not exceed five years; and restrict the right to vote and stand as a candidate to Community nationals entitled to stand as candidates who have resided in that Member State for a minimum period, which may not exceed 10 years."

Apart from that Directive, the Commission Reports also regulsted the conditions of right to vote and stand as a candidate in elections for the EP. The last Commission report was adopted on 27 October 2010.[304] The last elections for the EP was in 2009, and in May 2014, the next elections will be held. The Commission report is based on 2009 elections, and it refers that the Lisbon Treaty introduced a modification with

[302] Shaw (The Political Representation of Europe's Citizens), p.184.
[303] **Council Directive 93/109/EC,** p.36-37.
[304] **Report from the Commission on the election of Members of the European Parliament (1976 Act as amended by Decision 2002/772/EC, Euratom) and on the participation of European Union citizens in elections for the European Parliament in the Member State of residence (Directive 93/109/EC),** COM(2010) 605 final, 27.10.2010.

regard to the definition of the composition of the EP. Hereafter, it is stipulated that it shall be composed of "representatives of the Union's citizens" instead of "representatives of the peoples of the States brought together in the Community."[305]

The report aims at assessing the enforcement of EU citizens' electoral rights in the 2009 European Parliament elections. Firstly, it assesses the level of awareness about the elections and the associated rights, the measures taken by the Member States and by the EU institutions in this respect and the actual participation in the elections. Secondly, it looks into how the Member States have transposed and implemented EU law in this field. Finally, the report outlines the measures to be taken to improve participation and guarantee enforcement of Union citizens' electoral rights.[306] The report also stated that according to the statistics of *Eurobarometer*, increasing numbers of EU citizens of voting age live in Member States other than the one they hold the nationality of, and it can be concluded that the political rights of EU citizens are of increasing significance, in parallel with the growing use of the right of free movement and residence.

As a follow-up to the 2009 European Parliament elections, this report evaluates how EU citizens' electoral rights were enforced by looking at:

- citizens' awareness of the elections and the associated rights, and level of participation;
- non-national EU citizens' awareness and participation in their countries of residence and EU countries' action to encourage this participation;
- the transposition and implementation by EU countries of EU law in this field.

In general, the Member States have correctly transposed and implemented Directive 93/109/EC. Nevertheless, a few countries impose conditions on non-national Union citizens, thereby creating obstacles to the exercise of their right to vote and to stand as a candidate in their countries of residence; in certain cases contrary to the Directive. A number of Member States must also take further measures to ensure that they comply with the obligation to provide sufficient information to citizens on the

[305] Article 189 of TEC.
[306] COM (2010) 605 final, p.3.

exercising of their rights. The mechanism provided by the Directive for preventing double voting and double candidacy continues to be deficient. The Commission is considering the replacement of its pending proposal to amend the directive to better address this problem.[307]

2.3. Critics on Right to Vote and Stand for Election in EP and Municipal Elections

The Union citizens shall enjoy the right to vote and stand for election in the Member State which they reside but not the national of that State. However, this right to vote for citizens who resides in another Member State has already existed before in some EU countries; for example, in Ireland, other Member State nationals have already had the right to vote. The Netherlands also had a similar implementation, so the right to cote and stand for election which stipulated in frame of EU citizenship is not first in Union history, at that point, it is a right which has already partially existed and the Union extend and enrinched it.

On the other hand, the right to vote and to stand for election was restricted in application. The most important restiction is that the Council determines the conditions and conformity of the right by unanimity. According to Tezcan, the EP was given only the consultative role and this is not an acceptable situation for the EP on right to vote and stand for election. In this frame, the EP should have given at least the role to opine avis conforme.[308]

Moreover, the right to vote and stand for election in Union-wide is stipulated as a tool or a compensation mechanism to meet the democracy deficit in Union rather than a citizenship right. Another point is that, the scope of the right to vote and stand for election is limited by EP and municipal elections. The Union citizens are not allowed to contribute the election of decision bodies of local administrations. According to the Council Directive 94/80, "Member States may provide that only their own nationals

[307] Voting rights and eligibility in EP, europa.eu.
[308] Tezcan, p.67.

may hold the office of elected head, deputy or member of the governing college of the executive of a basic local government unit if elected to hold Office for the duration of his mandate."[309] If the basic aim of the rigt to vote and stand for election is providing the integration of Union citizens with the social life of the Member State which they reside but not the national of it; the Union citizens should have contributed to the national elections of the State of residence. [310]

Furthermore, the Union citizens are not allowed to establish a political party independent form a Member State. During the IGC before the Amsterdam Treaty, this proposals on establishing a political party independent from a Member State and contributing the local administration elections were made;[311] however, those were not reached a solution and still stand as a limitation on right to vote and stand for election.

The right to vote and stand for election is one of the important rights which are granted to the Union citizens, even it is limited and regarding limited people. In this perspective, this right is is a tool for providing a tight integration, and an aim for a more democtaric Union; then, as well as the right to free movement and residence, the right to vote and stand for election is also at the crossing point of Union law and national laws; therefore, it has effects on national laws. As a result, the right to vote and stand for election created important developments and changings on some Member States' Constitutions, who granted this right only to its nationals.

3. Right to Diplomatic and Consular Protection

The right to diplomatic and consular protction is another important right which is conferred to Union citizens. It gives protection to the citizens in a non-EU country by consultate or national agency of any other Member State. In this topic, the right to diplomatic and consular protection will be studied under two topics. Fist of all, the right will be mentioned in general terms, and after that the legal arrangements on the right to diplomatic and consular protection will be explained, which the Union law has considered.

[309] **Council Directive 94/80,** Article 5(3).
[310] Tezcan, p.68.
[311] Tezcan, p.135.

3.1. In General

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

Diplomatic protection consists of the invocation by a State, through diplomatic action or other means of peaceful settlement, of the responsibility of another State for an injury caused by an internationally wrongful act of that State to a natural or legal person that is a national of the former State with a view to the implementation of such responsibility.[312]

The State uses its power on diplomatic protection by its diplomatic officials in the recieving State, and in case of without a consensus, the sending (home) State may resort to the international judicial remedies against the other State. The rule of "exhaust internal remedies" was set to prevent the meddle in domestic affairs of the State in question while the home State is applying the diplomatic protection procedures.[313]

In practice, the individuals of a State who resides another country may benefit from the diplomatic protection which is provided by a third State. This protection is not in general; however, may be given the third State the authority to provide required protection. On the other hand, according to the Article 6 of "Vienna Convention on Diplomatic Relations"[314] in 18 April 1961; *"two or more States may accredit the same person as head of mission to another State, unless objection is offered by the receiving State."* Likewise, according to the Article 8 of the "Vienna Convention on Consular Relations"[315] in 24 April 1963, it was stated that upon appropriate notification to the

[312] **Draft Articles on Diplomatic Protection,** Report of International Law Commission, Supplement No: 10(A/61/10), United Nations, 2006.
[313] Aybay, p.22.
[314] Vienna Convention on Diplomatic Relations, United Nations Treaty Series, Vol.500, p.95, Vienna, 18 April 1961.
[315] Vienna Convention on Consular Protection, United Nations International Law Commission, Vienna, 24 April, 1963.

receiving State, a consular post of the sending State may, unless the receiving State objects, exercise consular functions in the receiving State on behalf of a third State.[316]

In this perspective, the right to diplomatic and consular protection for EU citizens which was granted by Maastricht Treaty is of capital importance, because all of the EU Member States together have embassies only in USA, China, Russia, Japan and Switzerland. In other countries except those at least one or more Member State do not have a representative office. Therefore, citizens of one of these countries may have obstacles and risk when they go there in any reason. The importance of the right to diplomatic protection would be understood better by considering all these circumstances.[317]

3.2.Legal Arrangements on Right to Diplomatic and Consular Protection

The right to diplomatic and consular protection was issued in Maastricht Treaty. The Article 8(c) of the Treaty states that "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. Moreover, family members of unrepresented citizens who themselves are not citizens of the Union are entitled to consular protection under the same conditions as the family members of nationals of the assisting Member State who themselves are not nationals. Before 31 December 1993, Member States shall establish the necessary rules among themselves and start the international negotiations required to secure this protection"[318], so to benefit from this right, a Union citizen shall be in a third state's territory and that his own State shall not have diplomatic representation in that third state. In this frame, another important point is that the individual will be entitled to protection on the same conditions as the nationals of the State which provides the protection; that way, a full equality has been tried to be provided between the Union citizens.[319]

[316] Tezcan, p.70.
[317] Tezcan, p.69-70.
[318] The Maastricht Treaty, eurotreaties..com.
[319] Tezcan, p.69.

The actual implementation of Article 8c of Maastricht Treaty is one of the prerequisites for configuring the Union citizenship as an effective legal status and not just as a concept of a political nature. A new fundamental status which provides the legal basis for granting to the Union citizens specific rights and obligations, in addition to those deriving from national citizenship envisaged.[320]

The first regulations on right to diplomatic and consular protection for Union citizens was accepted in May 1993 and entered into force four months later. The preparations were continued after that date, and in 19 December 1995 two important decisions were accepted by the representatives of Member States. First one is the Council Decision 95/553 on regarding protection for citizens of the EU by diplomatic and consular representations.[321] The second decision is on the application conditions which would be accepted by the consular officers.[322]

In accordance with Article 1 of the Decision 95/553, every citizen of the Union is entitled to the consular protection of any Member State's diplomatic or consular representation if, in the place in which he is located, his own Member State or another State representing it on a permanent basis has no accessible permanent representation, or accessible Honorary Consul competent for such matters. On the other hand, the Article 2 states that the diplomatic and consular representations approached shall respond to the request for protection by the person concerned provided that it is established that the latter is a national of a Member State of the Union by his producing a passport or identity card, and in the event of loss or theft of those documents, any other proof of nationality may be accepted. Diplomatic and consular representations which give protection shall treat a person seeking help as if he were a national of the Member State which they represent. Besides, the Decision also determined that the protection shall comprise; assistance in cases of death; assistance in cases of serious accident or serious illness; assistance in cases of arrest or detention; assistance to victims of violent crime; the relief and repatriation of distressed citizens of the Union.

[320] Consular and Diplomatic Protection Legal Framework in the EU Member States, CARE Project (Citizens Consular Assistance Regulation in Europe), University of Vienna, December 2010, p.23.
[321] O.J., L 314, 28.12.1995.
[322] This Decision is not published in Official Journal.

The Council Decision 95/553 shapes the general conditions of the right to diplomatic and consular protection. However, this Decision has not entered into force due to all the Member States have not notified the General Secretariat of the Council that the procedures required by their legal systems for the Decision to apply have been completed, which is an obligation that Article 8 of the Decision stipulated. However, it was instructed to the Member State diplomatic representation offices to apply the Decision as much as possible.[323] The Decision, published in 1995 in the Official Journal, entered into force on 3 May 2002 after a long process of ratification by the 15 Member States. It is to be reviewed five years after its entry into force, i.e. in 2007.[324]

In this frame, another important Decision 96/409/CFSP of 25 June 1996 on the establishment of an emergency travel document.[325] In accordance with the Annex II of the Decision 96/409 the "emergency travel document" is a uniform format and it may be issued for a single journey to the applicant's Member State of origin, country of permanent residence or, exceptionally, anpther destination. On the other hand, the conditions to take an emergency travel document were set by the Decision, which are: the recipient must be a national of a Member State whose passport or travel document has been lost, stolen or destroyed or is temporarily unavailable; he/she is in the territory of a country where the person's Member State of origin has no accessible diplomatic or consular representation with the capacity to issue a travel document or, where that State is not otherwise represented; clearance from the authorities of the person's Member State of origin has been obtained.[326]

Before the Decision 96/409, the Union had envisaged the emergency travel document in its "Commission Report on the Citizenship of the Union"[327] in 21 December 1993. In accordance with the Part E of the Report it was stated that "agreement was reached on a common format Emergency Travel Document to be issued by EC Missions in order to permit a single journey to the home State, country of

[323] Tezcan, p.72.
[324] Diplomatic and Consular Protection, europa.eu.
[325] Decision 96/409/CFSP, O.J., L 168, 06.07.1996.
[326] Decision 96/409, p.9.
[327] COM(93) 702 final.

permanent residence or, exceptionally, the destination of the applicant. This is due to be adopted shortly by a Decision of the Council."[328]

On the basis of those two Council Decisions, it is clear that the principle of non-discrimination relevant for the feature of the right to consular and diplomatic protection; prohibits the Member State providing assistance to the citizens of another Member State to treat them differently from its own nationals, as long as the Union citizen requesting consular or diplomatic protection is unrepresented in the third country.[329]

Following the entry into force of the Lisbon Treaty in 1 December 2009, this protection is conferred by Articles 20 and 23 of the Treaty on the Functioning of the EU.[330] This right is also enshrined in Article 46 of the Charter of Fundamental Rights of the EU.[331] The Article 46 states that "Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she 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 Member State."

Article 23 of TFEU states that "every citizen of the Union shall be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State" From a textual analysis of this norm, it apperas clear that the EU unconditionally guarantee this protection of Union citizens by using the manatory word "shall" rather than the suggestive word "should". On the other hand, bothe TFEU and Charter emphasized that the EU citizens are entitled to this right "*on the same conditions as the nationals"*which shows that the EU prohibits any discrimination between foreign individuals and nationals in the enjoyment of such right, and highlights that the EU law recognizes all the individual rights.[332] The insertion of this right in the Charter seems to recognize its nature as an essential individual right. Although the Charter was not a binding legal instrument until the entry into force of the Lisbon Treaty and thus the rights that are sanctioned in it could not be similarly

[328] COM(93) 702 final, p.7.
[329] CARE Project, p.26.
[330] Citizenship provisions TEU/TFEU post Lisbon.2009, eudo-citizenship.eu.
[331] Charter of Fundamental Rights of the European Union, O.J., C 364, 18.12.2000, p.19.
[332] Patrizia Vigni, "Diplomatic and Consular Protection in EU Law: Misleading Combination or Creative Solution?", **EUI Working Papers,** European University Institute, Department of Law, Florence, 2010/11, p.2.

considered binding for EU Member States, one cannot deny that the Charter has always been an authoritative interpretative instrument to accept the right to diplomatic and consular protection is a proper individual right.[333]

Lisbon Treaty brought three new important amendments in the area of diplomatic and consular protection of EU citizens in third countries.

First, in the TEU, the principle of Union citizenship was included in the new Title II, devoted to "Provisions on democratic principles". Then there are two complete new chapters: Chapter 1, which devoted to "General provisions on the Union's external action"; and Chapter 2, which devoted to "Specific provisions on the Common Foreign and Security Policy" with relevance for enhancing the implementation of the provisions of the Articles 20(2c) and 23 TFEU. Secondly, the TFEU clsrifies that whether the right to consular and diplomatic protection is or is not an individual right which the Union citizens can invoke directly before the national courts. Before the TFEU, this statement was not clear in previous Treatiesand the Article 20 of TFEU eliminates the previous confusion. Furthermore, important innovations are introduced on the "administrative cooperation" as a "matter of common interest". Thirdly, the legal value of the Charter of Fundamental Rights is defined: Article 6 of the TEU, replacing the previous Article with the same number, states that; *"The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, adopted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties"*. [334]

On the other hand, the Commission has also made, several arrangements by launching its Reports and Green Papers on the issue of right to diplomatic and consular protection. In 2006 the European Commission launched public consultations by publishing a Green Paper[335] on diplomatic and consular protection of Union citizens in third countries. In this document, the Commission sets out ideas to be considered for strengthening this Union right, pointing out that European citizens are not fully aware of

[333] Vigni, p.3.
[334] CARE Project, p.29-30.
[335] COM(2006)712 final, 28.11.2006.

this right which anyhow results far from being fully implemented by the Member States. With the publication of the Green Paper, the Commission launched a wide public consultation on this issue. The response to the Green Paper revealed a significant interest in this matter. A public hearing was held in 29 May 2007. Civil society, other European institutions and individual respondents argued for more impetus to be given to the Article 23 of TFEU as a tangible expression of Union citizenship.[336] In the Action Plan 2007-2009 on "Effective consular protection in third countries: the contribution of the European Union"[337] the Commission stated that "It emerged during the public consultation that the extent of consular protection varies between Member States. Discrepancies may deprive Article 20 of TEC (now Article 23 of TFEU) of its full effect. The Commission will examine the Member States' legislations and practises on consular protection and assess the extent and nature of these discrepancies."

On 23 March 2011 the Commission published a *"Communication on consular protection"*[338] which takes stock of the Action Plan 2007-2009 and presents future measures for the coming years.

On 14 December 2011 the Commission proposed a *"Directive on consular protection"*[339] for EU citizens whose embassy/consulate is not represented in a third country. This legislative proposal outlines the cooperation and coordination measures necessary to facilitate consular protection for the benefit of the citizen and the consular authorities.

Accordance with the scope of the right to diplomatic and consular protection dealt with by the Article 23 of TFEU, the Member States are only willing to transfer administrative and operative functions to other Union countries, such as consular assistance. When sensitive issues such as political relationships with their nationals or third countries, are at stake Member States still wish exclusively to govern such relationships. This intention is particularly clear as to the issue of the recognition of the

[336] CARE Project, p.7.
[337] COM(2007)767 final.
[338] **Proposal for a Council Directive on consular protection for citizens of the Union abroad,** COM(2011) 0881 final, 2011/0432 (CNS)
[339] **Communication from the Commission to the European Parliament and the Council Consular Protection for EU Citizens in Third Countries: State of play and way forward,** COM(2011) 0149 final.

right to exercise diplomatic protection of entities other than the States of nationality. Thus far, neither EU nor international law has made great steps forward. An evolution of the current regime of diplomatic and consular protection which was established by Article 23 TFEU seems to be necessary. In fact, the limited scope and residual character of this regime has so far prevented the status of EU citizen from being consoliated in a legal position, recognized both in the EU and international legal order, thus, has impeded individuals in their enjoyment of the effective protection of their rights as EU citizens within the territory of the EU as well in third states.[340]

4. Right to Petition the European Parliament and to Apply to the Ombudsman

The right to petition the EP and apply to the Ombudsman is a right beyond being one of the rights granted to Union citizens, it may be evaluated as the guardian and protector of other rights as well.[341] On the other hand, both right to petition the EP and apply to the Ombudsman has been granted to not only the Union citizens who are the national of the Member State, but also to all natural and legal persons who reside in a Member State.[342]

In principle, in accordance with the Annual Report of the Ombudsman in 1995[343], while having a dispute, it is up to Union citizen's choice to apply whether to right to petition or apply to the Ombudsman, he/she shall decide which way of application is appropriate for his/her situation. Also in the Report, it was clearly stated that "the right to petition the European Parliament and the faculty to address complaints to the European Ombudsman are complementary, in that they both respond to the same need, and aim at setting up as comprehensive, simple and effective a system as possible for European citizens and residents to find extra-judicial redress and assistance in the European system. The text correctly observes that, 'in cases where the mandate of the Ombudsman is too narrow, the European Parliament (in practice the Committee on

[340] Vigni, p.28.
[341] Saylan, p.131.
[342] Closa, p.1165.
[343] **Report on the Annual Activity Report (1995) of the Omudsman of the European Union**, C4-0257/96, 30 May 1996, EP Official Website.

Petitions) often has the power to act' ".[344] In this perspective it would be better to explain the right to petition the EP and right to apply to the Ombudsman under two seperate topics.

4.1.Right to Petition the European Parliament

The right to petition tthe EP was included to the Founder Treaty literature by Maastricht Treaty. The right to petition the EP is not a new right set by Maastricht, the origin of the right to petition can be found in a EP resolution of 1977[345], which refers that the right to petition the EP shall be granted to all Union citizens.[346] In 1989, the EU Institutions declared a Bulletin[347] which all other EU Institutions recognized the EP's competence on accepting and examining the petitions.[348] In addition, in accordance with the Commission Report on the Citizenship of the Union in 1993,[349] it was stated that *"Consideration by the European Parliament of petitions presented by citizens individually or collectively is a well-established practice, reflected particularly in the establishment of a parliamentary Committee on Petitions on 1 January 1987."*[350]

By Maastricht Treaty, the right to petition the EP had become a right which is directly arising from Treaty. In accordance with the Commission Report on Citizenship of the Union, the recognition of the right to petition in the Treaty make citizens better aware of this channel and lead to an increase in the number of petitions.[351]

In case of Treaties, the right to petition the EP was firstly issued in Aricle 8(d) of Maastricht, which was repealed in Article 24 of TFEU. The Article 24 of TFEU refers that *"Every citizen of the Union shall have the right to petition the European Parliament. Every citizen of the Union may write to any of the institutions or bodies in*

[344] Annual Report of the Ombudsman (1995), Chp.III, para.7.
[345] **Resolution on the granting of special rights to be citizens of the European Community in implementation of the decision of the Paris Summit of December 1974**, O.J., C 299/26, 12.12.1977.
[346] Resolution of EP, para. 3(c), p.27.
[347] **Bulletin of the European Communities,** No.4, Vol.22, 1989.
[348] Bull. EC 4-1989, para. 1.2.3, p.10.
[349] COM(93) 702, final.
[350] COM(93) 702, final, p.7.
[351] COM(93) 702 final, p.8.

one of the languages mentioned in Article 55(1) of TEU and have an answer in the same language."[352]

Although the Article 24 TFEU seems that the right to petition to the EP and apply to Ombudsman a right which was given only to Union citizens, in accordance with Article 227[353] and 228[354] TFEU shows that this right is also given to every natural and legal person who reside in territories of a Member State. Therefore, the view of Article 24 refer which only the Union citizens can enjoy the right to petition to the EP and apply to Ombudsman loses its validity; however, it is questionable why Article 24 TFEU states such an expression. The answer could be that the Article 24 TFEU is in "Citizenship" part of the Treaty, for this reason it may be close to the concern to feature "Union citizenship" in Article.[355]

In accordance with the Article 194 TEC –which was repealed by Article 227 TFEU-, every natural and legal person residing in a Member State have the right to petition to the EP individually or in association with other citizens or persons on a matter which comes within the Union's fields of activity and which effects him directly. The important point in here is that while the Treaty has the expression of 'Community's fields of activity', the EP Resolution in 1977 used the term of 'Union's field of activity'. In this frame, the EP extends its area of competence by its reolution which was limited by the Founder Treaties, because Union's fields of activity includes Justice and Home Affairs, and Common Foreign and Security Policy as well. It means that the EP accepts all petitions about the index of Treaties and secondary law.[356] On the other hand, the petitions about Union enlargement or activities of an institution of Union are also evaluated. For example, complaints such as environment, taxation, free movement of

[352] The languages in question are Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltes, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish.

[353] The Article 227 TFEU states that *"Any citizen of the Union, and any natural or legal person re- siding 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 Union's fields of activity and which affects him, her or it directly."*

[354] The Article 228 TFEU states that *"A European Ombudsman elected by the European Parliament shall be empowered to receive complaints from any citizen of the Union or any natural or legal per- son residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Union institutions, bodies, offices or agencies, with the exception of the Court of Justice and acting in its judicial role. He or she shall examine such complaints and report on them."*

[355] Tezcan, p.75.

[356] Tezcan, p.76.

persons and services, agriculture, public health and customs are taken into consideration; however, petitions relating the issues such as national social security problems and decisions of national courts are not evaluated by the EP.[357] It is not clear that this difference is how much appropriate to the Founder Treaty, but it is obvious that this extention of area of competence is in favor of individuals who write petition to the EP.[358]

Another important point in Article 24 TFEU is that the issue shall effect the person directly who write petition to the EP. However, netiher the Treaty nor the Resolution of the EP includes details on which conditions the person will be counted as directly effected from the issue. However, due to the right to petition to the EP is a factor which contributes democratic improvement of the EU, the EP should not have close interpretation on this issue.[359]

The evaluation of petitions to the EP are subject of a procedure. The "Petition Committee" who are entitled to examine and evaluate the petitions sent to the EP, firstly examine whether the petitions are acceptable or not. Therefore, the Committee examines that whether the petition is the subject of 'Union's fields of activity', and directly related with the petitioner. If those conditios are not met, the petition is rejected, and the decision is declared to the petitioner with its reason of rejection. The petitioner is informed by each process, situation, all initiatives of Petition Committee and the consequences of those initiatives. Besides, the decision on petition is always reasoned. On the other hand, there is no obligation on the decision will be the way that the petitioner desires. In this frame, in some cases, there may problems on duration of examining and bringing to an end the petitions. At this point, there is not a certain rule, and the duration is dependent to solve the problem related with the petition.[360]

[357] Tezcan, p.77.
[358] Kaya, p.127.
[359] Saylan, p.136.
[360] Tezcan, pp.86-87.

4.2.Right to Apply to the European Ombudsman

The European Ombudsman investigates the complaints of Union citizens responds the issues on the cases of maladministration of EU institutions, agencies, or offices who broke the law, or violated human rights. The subjects which the Ombudsman investigates are, such as discrimination, unfairness, abuse of power, lack of or refusal of an information, and incorrect procedures. The Ombudsman's office is independent and does not take any orders from any government or organization. It launches investigations after receiving a complaint or on its own initiative.[361]

The Ombudsman as an accountability forum in a looser and less strictly proceduralised sense than the judiciary. It cannot only require that the actor in question procedure all relevant information as explicitly requested but also provides an opportunity for debate and deliberation snd reasoned conclusion bu the Ombudsman in the final analysis in his reccomendations. The Ombudsman promotes the principles of transparency, participation and explanation, and combines the instruments of parliamentary scrutiny and judicial control in an original way.[362]

The right to apply to the Ombudsman had already existed in European legal sysytem before Maastricht Treaty, as well as the right to petition the EP. Thus, many European countires such as Sweden, Denmark, Norway and Finland, had their own Ombudsman institution as a democratic and legal tradition in sine 19th century. During 20th century, not only the developed countries, but also developing countries started to have their own Ombudsman to strenghten the State of law and democratic movement.[363]

In report of *Adonnino Committee* in 1985, the right to Ombudsman was included the symbols of EU citizenship together with flag and national hymn. During the IGC in 1991, by the proposal of Luxembourg government, it was decided to establish an "European Ombudsman" which is responsible to investigate the claims on

[361]European Ombudsman, europa.eu.
[362] Deirdre CURTIN, "Holding (Quasi-)Autonomous EU Administrative Actors to Public Account", **European Law Journal,** Vol.13, No.4, July 2007, pp.523-541, p.538.
[363] Tamer ISIR, "Ombudsmanlık Kurumu ve Türkiye'deki Uygulanabilirlik Sorunu Üzerine Bir İnceleme", **AYİM Dergisi,** Vol.1, No.17, Ankara, 2002, p.122.

maladministration[364] of Union institutions or bodies. After that, at the first time by Maastricht Treaty, it was issued in a constitutional institution level in Community law.[365]

The right to apply to the Ombudsman was issued in Article 8(d), in same article with right to petition the EP; and it was consolidated by Article 24 TFEU. Article 24 TFEU refers that *"Every citizen of the Union may apply to the Obudsman established in accordance with Article 228*[366]*."* The Article 228 explains the structure and duties of the Ombudsman, which are; a European Ombudsman elected by the European Parliament shall be 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 Union institutions, bodies, offices or agencies, with the exception of the Court of Justice and acting in its judicial role. He or she shall examine such complaints and report on them 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 EP, except where the alleged facts are or have been the subject of legal proceedings. The Ombudsman shall forward a report to the European Parliament and the institution, body, office, or agency concerned. The person lodging the complaint shall be informed of the outcome of such inquiries. The Ombudsman shall submit an annual report to the European Parliament on the outcome of his inquiries.[367]

The Ombudsman may be dismissed by the Court 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.[368]

---

[364] In accordance with the Annual Report of the Ombudsman in 1997, the term of "Maladministration" was explained as, if a Community institution or body fails to act in accordance with the Treaties and with the Community acts that are binding upon it, or it fails to observe the rules and principles of law established by the ECJ and Court of First Instance. (The European Ombudsman Annual Report for 1997, Strasbourg, 20.04.1998, Official Website of the European Ombudsman).
[365] Saylan, p.138.
[366] Article 228 TFEU issued the details of the duties and organizational structure of the Ombudsman.
[367] TFEU, Article 228(1).
[368] TFEU, Article 228(2).

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 government, institution, body, office or agency. The Ombudsman may not, during his term of office, engage in any other occupation, whether gainful or not.[369]

In accordance with those articles, it was made clear that the Ombudsman is independent from any government or organization in its duties, it prepares reports with its own initiative; its responsibility is to report the EP on the outcome of its inquiries. However, if the Ombudsman no longer fulfils the conditions required on its duties, it may be dismissed by the ECJ. By the Article 228 TFEU, as well as the right to petition the EP, the right to apply to the Ombudsman on maladministration of the activities of Union institutions or bodies has been granted to not only the Union citizens, but also to all real and legal persons who reside or have its registered office in a Member State. However, issues on actions of judicial roles of the ECJ and Court of First Instance was exluded from the scope of Article 228 TFEU.[370]

The person who apply to the Ombudsman shall clearly imply his identity information, and apply against for which institution's maladministration and for which reason. The complaint can be submitted in any of one of the Union languages. Except those; the person should submit within two years of becoming aware of the facts on which the complaint is based; after having first contacted the EU institution concerned to try to resolve the matter; and the issue of complaint was not been subject of a case before or during the application.[371]

In accordance with subparagraph 3 of Article 228 TFEU, the Ombudsman shall be completely independent in the performance of its duties, and it shall neither seek nor take instructions from any government, institution, body, office or agency. The Ombudsman also may not, during its term of office, engage in any other occupation, whether gainful or not. Thus, the Ombudsman works in favor of Union citizens. In this

[369] TFEU, Article 228(3).
[370] Saylan, p.140.
[371] **Problems with the EU? Who can help you?,** European Ombudsman Official Website, p.6.

frame, one of the most important guarantee of the independency of the Ombudsman is that it is appointed by the EP.[372]

4.3.Differences Between Article 227 and 228 TFEU

The Articles 227 and 228 of TFEU have two different scope. In accordance with Article 227 TFEU, the petition to the EP may comes within the Union's fields of activity, on condition that the activity directly effects him, her or it. Due to this statement has a wider concept, it enables the EP to control the authorities of the Member States. However, in accordance with Article 228 TFEU, the complaints made to the Ombudsman shall be the subjects of maladministrations in activities of Union institutions, bodies, offices or agencies, so it has a limited approach and scope.[373] Moreover, the judicial activities of the ECJ and the Court of First Instance are excluded from the scope of the Article 228.[374]

Another important difference between the right to petition to the EP and apply to the Ombudsman is about the collective application. At this point, the Article 227 TFEU enables to collective application, which refers that "any citizen of the Union shall have the to address, individually or in association wtih other citizensor persons, a petition to the EP". However, in frame of right to apply to the Ombudsman, it is given priority to the individual application and collective application is not stipulated.[375]

Although there are legal differences between the right to petition the EP and right to apply to the Ombudsman, in practice, there is a strict cooperation between the Committee of Petitions of the EP and the Ombudsman. In frame of this cooperation, the Committee of Petitions sends the petitions on maladministration of activities of Union institutions or bodies to the Ombudsman to evaluate them as a complaint, by the consent of petitioner. Similarly, by the consent of the applicant, the Ombudsman sends the applications to the EP, which may be evaluated as a complaint.[376]

[372] Kaya, p.134.
[373] Saylan, p.144.
[374] Tezcan, p.81.
[375] Tezcan, p.82.
[376] Tezcan, p.84.

The main problem at right to petition the EP and apply to the Ombudsman is on that although to all efforts of Union institutions, the Union citizens have insufficient information as well as other rights. As a result of this situation, many complaints can be made to the Ombudsman on the issues which it does not have any competence. Finally, the European Ombudsman held many conferences in 1996 and 1997 to inform the lawyers who are professional in Union law, whose duty is to inform the citizens on their rights to petition the EP and apply to the Ombudsman.[377]

III. SUMMARY OF THE RIGHTS OF EUROPEAN CITIZENS

The European Integration moves with more intensive and comprehensive steps in institutional, social and political relations, and these steps determines the future enlargement plans and concept. the Union citizens are in center of this process as the most important actors. Their contribution to this process seems as a necessity for a democratic and balanced Europe.[378] To provide the contribution of citizens to the process, they should be aware of their rights and implementations of the Member States.

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

Those rights conferred to the Union citizens provides a harmonization between the Member States and their nationals. The rights are in favor of citizens and gives many advantages to them. However, in practice, several conflicts and queations have arisen between Member State legislations. Member States have very different traditions

[377] Tezcan, 85.
[378] **Europe for Citizens Programme,** European Commission Official Website.

and legislations regarding citizenship, and until we have harmonisation in this area this kind of conflicts will continue to come up. Inflexible clinging to the principle that the rights and duties attached to the concepts of nationality and citizenship are completely left to the free will of each state will simply not do.[379]

While right to free movement and residence mostly seemes as an economic based right to the Union citizens, other rights mostly have political aspects. In the begining, the EU was established based on economic concerns and aims, so the rights conferred to the citizens were also thought by economic activities. Other rights except right to free movement were conferred too, but they were not active as much as right to free movement, in practice. The reason behind, the Union focused on improving and developing its internal market before 1980s. According to *Kochenov,* "Should the system start noticing human beings, and paying serious attention to their situation, the coherence of a presentation of people as merely one of the means of production weakens quite naturally."[380] Therefore, political rights has been conferred to the Union citizens, and their impact has increased since they have started being active and the citizens became aware of their political rights.

While the provisions included in Part II TFEU establish economic freedoms alongside non-economic rights and also contain general references to 'other' rights contained in the Treaties, plentiful non-economic elements allow for a clear separation between the logic of Part II and the other Parts of the TFEU focusing on the economic freedoms. The distinct nature of the concept is also confirmed by the Preamble and Article 3 EU, which refers to EU citizenship in the context of building an area of freedom, security and justice for the citizens, rather than the internal market.[381]

However, the main problems arise between the Member States are mostly about right to free movement and residence, which is closer to the economic concerns of the Member States rather than other rights, the market ideology ups again. According to Kochenov, citizenship and the market are in conflict with each other, producing

[379] Karvonen, p.72.
[380] Dimitry Kochenov, *"The Citizenship Paradigm",* **University of Groningen Faculty of Law Research Paper Series,** No.08, June 2013, p.25.
[381] Kochenov, (The Citizenship Paradigm), p.26-27.

particularly strange outcomes and ruining the coherence and the very workability of the European project. The Court's jurisdictional deployment of EU citizenship is seen in Eman and Sevinger, Rottmann, Zambrano, Dereci, and other cases. To cut a long story short – it is meticulously analyzed in the literature anyway – suffices it to say that the Court builds jurisdiction for the supranational legal order based on the need to protect the status of EU citizenship and the rights stemming therefrom. In this context one should not be misled by the outcomes: even in the cases where the test does not bring the Court – for one reason or another – to satisfactory results enabling it to take the side of the claimant, the very deployment of the new EU citizenship- based jurisdiction test is of fundamental importance, notwithstanding all the problems it potentially brings about in the context when lawyers are too used to the internal market ideology to instantly comprehend the logic of EU citizenship as an alternative tool of EU integration.[382]

The ECJ has had many confilicts and faces many questions on the implementation of the rights by Member States. Both politically and economically, many of the EU Member States find themselves in increasing difficulties. The activism of the Court of Justice EU citizenship has in recent years become something of a leader– or driver of integration processes, e.g. in areas where case law has resulted in significant protections against deportation for the third country national family members of EU citizens. Although the Courts activism has developed the concept of EU citizenship in some interesting ways since the late 1990s (such as the case of *Martínez Sala*, which first established the space within which the concept of citizenship could evolve independently of existing constraints of the free movement rights established by the Treaties and subsequent legislation) in practice the Court cannot and should not usurp the role of the Member States as the masters of the Treaties in this and other areas, for to do otherwise would be to risk its entire legitimacy. There are, therefore, normative boundaries to the concept of EU citizenship, although recent case law has meant that it is not entirely clear where these are located.[383]

[382] Kochenov, (The Citizenship Paradigm), p.38.
[383] Jo Shaw, "EU Citizenship and the Edges of Europe", **CITSEE Working Paper,** No.2012/19, University of Edinburgh, 29.6.2012, p.6.

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

CONCLUSION

The idea of establishing the EU had been set since 14th century as different shapes. During the historical process, there were attempts to built such an Union by force; however, after two world wars and conflicts over the continent, states have started to plan a peaceful union based on equality and tolerance. However, all those proposals were limited to provide a tight cooperation between the states, but without intervention to national sovereignties.

However, the old national structures had been fallen politically and economically, so radical approaches were necessary to reshape the Europe. The first steps of those radical approaches were brought by the idea of establishing the European Communities, so the legal and political grounds of the EU was started to establish.

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

The discussions on Union citizenship in political and legal areas has been started in 1970s. Since the states have realized that the integration process of Europe is dependent to the Europeans who own the values and protect the process of Europe, efforts on establishing a common European identity and citizenship has become rapid, and in 1980s some exclusive rights only for the Community citizens have been started to consider.

The statue of individuals and the citizenship was not taken into consideration in the begining. In other words, the concept of citizenship was not included into Union's legal order while it was establishing. The statue of Union citizenship had evolved

slowly in years. During the period between 1957-1990, Community had an economic character and structure, and therefore, only some economic based rights were conferred to the citizens for the aim of exercising the economic activities freely. However, in years, by the important jurisprudences of the ECJ, the perspective of those rights has increased and became more important in case of EU policies. Besides, until Maastricht Treaty, the concept of citizenship had not been included into the Founder Treaty, so into Union legal order. The entry into force of Maastricht Treaty in 1993 is the milestone of the developments of the concept of Union citizenship. The concept of citizenship was included into the Founder Treaty for the first time by Maastricht Treaty. Thus, a direct legal bond was established bewteen the Union and Member State citizens, and the rights which the Union confers to Member State nationals have gained a concrete character.

The rights which are conferred by the Union to its citizens are; right to free movement and residence, right to vote and stand for election in EP and municipal elections, right to diplomatic and consular protection, and right to petition to EP and apply to the Ombudsman. The concept of European citizenship was included into EU law by Maastricht Treaty, and protected in Charter of Fundamental Rights and EU Constitution with its sui generis character.

All of those developments confers Member State nationals right to have a vioce in Union's supranational structure and its policies. Thus, it is aimed to support and adoption of European integration process by the individuals. However, individulas have not sufficient inforation and awareness about their rights, so the EU Institutions should give intensive effort to raise the awareness of individuals. Paralelly, the Member States are obliged to apply the legal regulations of citizens' rights effectively, without any reserve and within a cooperation.

The concept of Union citizenship has a sui generis character in a supranational structure, and different from other classic citizenship definitions and implementations. Maastricht Treaty did not establish a citizenship statue which is exist in federal systems. Therefore, some scholars think that Union citizenship is a secondary statue and has only a symbolic value. However, the important point in here that the EU has not complete its political integration yet. Such a developing structure, it is understandable that the

content of Union citizenship has not completely determined yet, and it continues its development process by amnedments on Treaties, and jurisprudence of the ECJ. As the political integration of Union develops, the content of the concept of citizenship will also be increase its effectiveness and and become more binding. As a result, the evolution of both tht EU and Union citizenship, as a direct result of this, are totally dependent to the common will of Member States and and European communities as a whole. To use this common will for the aim to establish a closer Union will provide to strenghten and make concrete the concept of Union citizenship by conferred rights and democratic contribution. Thus, the integration will be achieved between not only Member States, bu also the communities.

Union citizenship has become a reality and essential element of the EU legal order. The statue of Union citizenship conferred rights and obligations to the citizens which have effects to their daily lives. To increase the effectiveness of those rights, it is neceesary to raise the awareness of individuals on EU and the rights arising from being a citizen of it. In other words, by establishing a dialogue with citizens, the acuity of the citizens of those subjects can be increased too. In this frame, the effort of European Commission especially on right to free movement is the most important element of Union citizenship. On the other hand, the national authorities are obliged to act their administrative and legal roles of their function areas. However, the states should apply those functions effectively and wtihout any reserve, so the citizens will not be negatively effected from those actions.

Another important point in frame of implementing citizens' rights is the cooperation issue. In this concept, a triple cooperation is necessary which the Comission is one side, and the other two or more Member States in question in the other side. Thus, the Member States in question can reached a common solution for the problem or conflict with the contribution of the Commission as the objective party. States have to comply with their obligations and work in cooperation with Union institutions to solve the disputes.

The individual-Union relationship has a different approach than individual-state relations, and Union citizenship should evaluate in a different perspective than

nation-state citizenship; the unique or in other words, sui generis character of individual-EU relationship is based on this difference. In other words, the concept of citizenship gains a different meaning and perspective in frame of the EU. However, some elements of Union citizenship are inspired by the concept of Member States' citizenships. The most typical example of this situation is that the right to vote and stand as a candidate in EP elections as one of the core right of Union citizens. The right to vote and stand as a candidate in EP elections is conferred to all Union citizens without requiring the place of residence as a condition. All Union citizens have the right to vote and stand as a candidate in EP elections wherever they reside within the EU terrirories, the only obligation is that they shall hold the nationality of a Member State.

As it was mentioned above, the citizenship statue for Member State nationals was included in Treaty. However, there are problems on the rights conferred by the Treaty; for example, there are still limitations on right to free movement and residence, such as areas of public security, public healty and public order. The ECJ has faced many cases on disputes netween the individuals and national authorities or Union institutions. On the other hand, the Council brought some limitations on right to vote and stand for election in EP and municipal elections. Developments on right to diplomatic and consular protection progress very slowly.

Especially, the right to free movement has the most complex and problematic part of the rights conferred to Union citizens, because it covers a very wide policy areas and Member States conflict with the individuals and Union institutions. The right to free movement and residence has many aspects, such as family members of a Union citizen, non-workers, students, job-seekers and limitations of public security, public health and public order. Therefore, the ECJ needs to clarify the content of the implementation of the right case by case, due to the content and subject of cases differs to interpret the law on citizenship in Treaties and secondary law. Today, the ECJ still tries to clarify and regulate the implementation of the right to free movement and residence for citizens in cases which come before the Court.

Other rights of Union citizens, such as right to vote and stand for election in EP and municipal elections, right to diplomatic and consular protection, right to petition the

EP and apply to the Ombudsman are more political rights for Union citizens. The right to vote and stand for election in EP and municipal elections aims to rise the contribution of citizens to the political life in Union and provide the equality between the citizens in that political life. On the other hand, right to diplomatic and consular protection aims to provide the equality between the citizens too, and make the citizens feel safer both within the EU and outside the Union. Besides, right to petition to the EP and apply to the Ombudsman provides citizens to submit their complaints on the implementations of Union institutions, organizations, offices or agencies. All of those rights provides the rising the awareness of Union citizens about their rights, and contribution of them to the implementation of the provisions as the priorily effected actors.

The limits of Union citizenship is dependent to its formalization in Treaty and progressive interpretation of some of the rights of citizenship by the ECJ. Due to the Member States are reluctant to enforce the rights which have been created, the active contribution and awareness of the individuals have been tried to increased on the implementation of those rights.

The concept of Union citizenship requires concrete legal and practical measures to take, and these measures are connected with a deeper political, institutional and democratic change and developments within the EU. However, Union citizenship has important dimensions on non-discrimination and equality, which are included in Charter of Fundamental Rights, thus the fundamental rights have become an important and essential value and principle of the EU citizenship.

Furthermore, Union citizenship has the potential of a wider meaning. The concept of Union citizenship can be defined and evolved not only by Treaty provisions, but also with the jurisprudence of the and the contribution of the individuals and the EU as a whole. To sum up, it is important to look at the former and current provisions of citizenship to understand how the concept of citizenship has been evolved and the current situation of Union citizens in frame of their rights. Consequently, the future of the EU and individuals-EU relations are beyond the subject of ctitizenship, and the concept of European citizenship is evolving paralelly with the integration process of the Union.

BIBLIOGRAPHY

Books

- SWEDBERG, Richard and Ola AGEVALL. **The Max Weber Dictionary: Key Words and Central Concepts,** Stanford University Press,2005.
- SHAW, Malcolm N. **International Law,** 5. Edition, Cambridge: Cambridge University Press, 2005.
- AYBAY, Rona. **Vatandaşlık Hukuku.** 5. Basım, İstanbul: İstanbul Bilgi Üniversitesi Yayınları, 2004.
- PAZARCI, Hüseyin. **Uluslararası Hukuk,** 2. Edition, Ankara: Turhan Kitabevi, 2004.
- VONK, Olivier W. **Dual Nationality in the European Union: A Study on Changing Norms in Public and Private International Law and in the Municipal Laws of Four EU Member States,** The Netherlands: Martinus Nijhoff Publishers, 2012.
- HOBSBAWM, E. J. **Nations and Nationalism since 1780-Programme, Myth, Reality,** 2. Edition, United Kingdom: Cambridge University Press, 1992.
- TURNER, Bryan S. and Engin F. ISİN (Eds.), **Handbook of Citizenship Studies,** London: SAGE Publications Ltd., 2002.
- NOMER, Ergin. **Vatandaşlık Hukuku,** 8. Edition, Istanbul: Filiz Kitabevi, 1989.
- BERKİ, Osman Fazıl. **Devletler Hususi Hukuku, Tâbiiyet ve Yabancılar Hukuku,** Ankara: Güzel Sanatlar Matbaası, 1963.
- DEHOUSSE, Renaud (Ed.), **Europe After Maastricht An Ever Closer Union?** in (126-148), München: Law Books in Europe, 1994.

- TEZCAN, Ercüment. **Avrupa Birliği Hukukunda Birey.** 1. Basım, İstanbul: İletişim Yayınları, 2002.

- GÜNUĞUR, Haluk. **Avrupa Birliği ve Hukuk Düzeni.** Ankara: EKO Avrupa Yayınları, 2006.

- GÜNUĞUR, Haluk. **Treaties Establishing the European Union.** Ankara: EKO Avrupa Yayınları, 2005.

- OKMAN, M. Tayfun. **Avrupa Birliği Anayasası'nın Temelleri,** Ankara: Atılım Yayınları, 2005.

- WIENER, Antje. **European Citizenship Practice-Building Institutions of a Non-State,** USA: Westview Press, 1998.

- CHALMERS, Damian and Adam TOMKINS. **European Union Public Law: Text and Materials.** Cambridge: Cambridge University Press, 2007.

- ROCHE, Maurice. "Citizenship and Exclusion: Reconstructing the European Union" Maurice Roche and Rik Van Berkel (Eds.). in **European Citizenship and Social Exclusion,** England: Ashgate Publishing Ltd., 1997.

- O'KEEFFE, Twomey (Ed.). **Legal Issues of the Maastricht Treaty.** United Kingdom: Wiley Chancery Law, 1994.

- TEKİNALP, Gülören and Ünal TEKİNALP (Eds.). **Avrupa Birliği Hukuku,** İstanbul: Beta Yayınları, 1997.

- LAURSEN, Finn and Sophie VANHOONACKER (Eds.). **The Ratification of the Maastricht Treaty: Issues, Debates and Future Implications.** Maastricht-The Netherlands: European Institute of Public Administration, Martinus Nijhoff Publishers, 1994.

- GUILD, Elspeth, Steve PEERS and Jonathan TOMKIN. **The EU Citizenship Directive,** United Kingdom: Oxford University Press, 2014.

- CRAIG, Paul and Grainne DE BURCA. **EU Law: Text, Cases and Materials,** Fourth Edition, Oxford: Oxford University Press, 2008.

- WEISS, Friedl and Clemens KAUPA. **European Union Internal Market Law,** Cambridge: Cambridge University Press, 2014.

- BARNARD, Catherine. **The Substantive Law of the EU: The Four Freedoms.** 2. Edition, Oxford: Oxford University Press, 2007.

Articles/Papers

- BESSON, Samantha and André UTZINGER. "Introduction: Future Challenges of European Citizenship-Facing a Wide-Open Pandora's Box", **European Law Journal,** Vol.13, No.5, 2007, pp. 573-590.

- FONTAINE, Pascal. "Citizen's Europe", Brussels, COM.Ec. 1993.

- MAAS, Willem. "The Evolution of EU Citizenship", **Memo for Princeton Workshop on the State of the European Union,** Vol.8, 2005.

- SHAW, Jo. "European Citizenship: The IGC and Beyond", **European Integration online Papers (EIoP),** Vol.1, No.003, 1997.

- SHAW, Jo. "EU Citizenship and the Edges of Europe", **CITSEE Working Paper,** No.2012/19, University of Edinburgh, 29.6.2012.

- DOUGAN, Michael. *"What Are We To Make Of The Citizens' Initiative?",* **Common Market Law Review.** Vol.48, No.6, December 2011, pp.1807-1848.

- BONDE, Jens-Peter. **From EU Constitution to Lisbon Treaty,** Foundation for EU Democracy, and the EU Democrats in cooperation with Group for Independence and Democracy in the European Parliament, 2009.

- ARSAVA, Füsun. "Avrupa Birliği Temel Haklar Şartı", **Ankara Avrupa Çalışmaları Dergisi,** Vol.3, No.1, 2003, pp.1-17.

- CLOSA, Carlos. "The Concept of Citizenship in the Treaty on European Union". **Common Market law Review,** Vol.29, No.6, 1992, pp.1137-1169.

- ARSAVA, Füsun. "Birlik Hukuku ve Anayasa Arasındaki İlişki", **Ankara Avrupa Çalışmaları Dergisi,** Vol.4, No.1, Fall 2004.

- VIGNI, Patrizia. "Diplomatic and Consular Protection in EU Law: Misleading Combination or Creative Solution?", **EUI Working Papers,** European University Institute, Department of Law, Florence, 2010/11.

- ROOTS, Lehte. "European Union Citizenship or Status of Long-Term Resident: A Dilemma for Third Country Nationals in Estonia", **Baltic Journal of European Studies,** Talinn University of Technology, Vol.2, No.1(11).

- MENENDEZ, Agustin José. "European Citizenship After Martinez Sala and Baumbast: Has European Law Become More Human but Less Social?", **Arena Working Paper,** No.11, Arena Center for European Studies, University of Oslo, June 2009.

- STRUMIA, Francesca. "Remedying the Inequalities of Economic Citizenship in Europe: Cohesion Policy and the Negative Right to Move", **European Law Journal,** Vol.17, No.6, November 2011, pp.725-743.

- KOCHENOV, Dimitry. Case C-135/08, Janko Rottmann v. Freistaat Bayern, Judgment of 2 March 2010 (Grand Chamber), **Common Market Law Review,** Vol. 47, 2010, November 3, 2010, pp.1831-1846

- KOCHENOV, Dimitry. *"The Citizenship Paradigm",* **University of Groningen Faculty of Law Research Paper Series,** No.8, June 2013.

- WIESBROCK, Anja. EUDO Observatory on Citizenship, University of Maastricht.

- Mc DONALD, Ian QC, "Dereci (European Citizenship) Garden Court Chambers and Garden Court North Chambers Official Website, 17th November 2011.

- ŞAHİN YÜCEL, Gerçek. "Avrupa Birliği Adalet Divanı'nın Avrupa Birliği Vatandaşlığı ile İlgili Son Yaklaşımları", **Marmara Avrupa Araştırmaları Dergisi,** Vol.21, No.2, 2013, pp.37-54.

- KOSTAKOPOULOU, Dora. "Ideas, Norms and European Citizenship: Explaining Institutional Change", **The Modern Law Review,** Vol.68, No.2, March 2005, Wiley Online Library, pp.233-267.

- SHAW, Jo. "EU Citizenship and Political Rights in an Evolving European Union", **Fordham Law Review,** Vol.75, No.5, 2007, pp.2549-2578.

- ELKINS, Michael. "An analysis of the changes made to the European Parliament", **Law of the European Union module,** University of Wales-Newport, The New Researcher, Vol.4, 2011, pp. 30-34.

- SHAW, Jo. "The Political Representation of Europe's Citizens: Developments Court of Justice of the European Communities", **European Constitutional Law Review,** Vol.4, No.1, February 2008, pp.162-186.

- Consular and Diplomatic Protection Legal Framework in the EU Member States, CARE Project (Citizens Consular Assistance Regulation in Europe), University of Vienna, December 2010.
- CURTIN, Deirdre. "Holding (Quasi-)Autonomous EU Administrative Actors to Public Account", **European Law Journal,** Vol.13, No.4, July 2007, pp.523-541.
- ISIR, Tamer. "Ombudsmanlık Kurumu ve Türkiye'deki Uygulanabilirlik Sorunu Üzerine Bir İnceleme", **AYİM Dergisi,** Vol.1, No.17, Ankara, 2002.
- KARVONEN, Malin. "The Gibraltar Case: A Critical test of rules concerning EU citizens and franchise in elections to the European Parliament", Master Thesis, University of Lund, Faculty of Law, 2005.

Cases

- Case C-413/99 *Baumbast and R v Secretary of State for Home Department* [2002] ECR I- 07091.
- Case C-85/96 *Maria Martinez Sala v Freistaat Bayern* [1998] ECR I-02691.
- Case C-256/11 *Murat Dereci and Others v Bundesministerium für Inneres*[2011] ECR *I-11315.*
- Case C-184/99 *Rudy Grzelczyk v CPAS* [2001] ECR I-06193.
- Case C-135/08 *Janko Rottman v Freistaat Bayern* [2010] ECR I-01449.
- Case C-34/09 *Gerardo Ruiz Zambrano v Office national de l'emploi (ONEm)*[2011] ECR I-01177.
- Case 6-64, *Flaminio Costa v. E.N.E.L.*, ECR 00585, 1964.
- Nottebohm (Liechenstein v. Guatemala) (ICJ April 6, 1955).
- V. J. M. Raulin v Minister van Onderwijs en Wetenschappen, Case C-357/89 (1992), ECR I-1027.
- *Kreshnik Ymeraga and Others v Ministre du Travail, de l'Emploi et de l'Immigration,* Case C-87/12, Judgement of the Court of 8 May 2013.
- "*Florus Ariël Wijsenbeek*", Case C-378/97, Judgement of the Court of Justice, 21 September 1999.

Reports and Treaties

- *Council of Europe, Explanatory Report of European Convention on Nationality,* http://conventions.coe.int/Treaty/en/Reports/Html/166.

- *The Maastricht Treaty-Provisions Amending The Treaty Establishing The European Economic Community With A View To Establishing The European Community,* Maastricht, 7 February 1992, www.euro**treaties**.com/**maastricht**ec.pdf.

- **Declaration on European Identity,** Bulletin of the European Communities, December 1973, No:12.

- **Report on European Union,** Bulletin of the European Communities, Supplement 1/76.

- **Resolution of the Representatives of the Governments of the Member States of the European Communities, meeting within the Council of 23 June 1981, Official Journal, C 241, 19.09.1981.**

- Treaty Establishing the European Union, O.J., C 77/33, 14 February 1984.

- *"Martin Report",* EP Official Website (EP Doc A3-270/90

- **Report from the Commission on the Citizenship of the Union,** Commission of the European Communities, COM(93) 702, Brussels, 21.12.1993.

- **A People's Europe,** Reports from the ad hoc Committee, Bulletin of the European Communities, Supplement 7/85.

- **The Spanish Memorandum on European Citizenship,** Towards a European Citizenship, Council Document, SN 3940/90 of 24 September 1990.

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

- **Report from the Commission on the Citizenship of the Union,** Commission of the European Communities, Brussels, 21 December 1993.

- Birmingham Declaration-a Community close to its citizens, Bulletin of the EC, No.10/1992.

- **Report of the High-Level Group on the Free Movement of Persons,** Rapporteur Mrs. Simone Veil, Bulletin of the EU 3-1997, Union Citizenship.

- **Action Plan for the Single Market,** CSE(97)1 final, 4 June 1997.

- **Treaty of Amsterdam, Amending the Treaty on European Union, The Treaties Establishing the European Communities and Certain Related Acts,** O.J., C 340, 10 November 1997.

- **Charter of Fundamental Rights of the European Union,** O.J., C 364/01, 18 December 2000.

- **Establishing a Constitution for Europe,** 16 December 2004, O.J. C 310.

- **Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community,** O.J., 17 December 2007, C 306, Vol.50, 2007.

- **Consolidated Version of the Treaty on the Functioning of the European Union,** O.J., C 115, 9 May 2008.

- **Green Paper on a European Citizens' Initiative,** Commission of the European Communities, COM(2009) 622 final, Brussels, 11.11.2009.

Directives, Decisions and Opinions

- Council Directive 1990/364 of 28 June 1990 on the right of residence, O.J., L 180/26, 13.7.1990.
- Council Directive 1990/365 of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity, O.J., L 180, 13.7.1990.
- Council Directive 1993/96 of 29 October 1993 on the right of residence for students, O.J., L 317, 18.12.1993.
- Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004, O.J., L 158, 30.4.2004.
- Council Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health, O.J., 056, 4.4.1964, 0850-0857.
- 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, O.J., L 257, 19.10.1968.
- Council Directive 72/194/EEC of 18 May 1972 extending to workers exercising the right to remain in the territory of a Member State after having been employed in that State, O.J., L 121, 29.5.1972.
- Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services, O.J., L 172, 28.6.1973.
- Council Directive 75/34/EEC of 17 December 1974 concerning the right of nationals of a Member State to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity, O.J., L 14, 20.1.1975.
- Council Direcitve 75/35/EEC of 17 December 1974 extending the scope of Directive 64/221/EEC, O.J., L 14/14, 1975.
- Opinion of Advocate General Poaires Maduro, Case C-135/08, delivered on 30 September 2009.

- Decision No 1/80 of the Association Council of 19 September 1980 on the Development of the Association.
- Council Directive 2003/86/EC 22 September 2003 on the right to family reunification , O.J., L 251/12, 3.10.2003.
- Council Directive 94/80/EC of 19 December 1994, O.J., L 368, 31.12.1994.
- Directive 96/30/EC of 13 May 1996, O.J., L 122, 22.05.1996.
- **Decision amending 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,** O.J., L 33/15, 09.02.1993.
- Council Directive 93/109/EC, O.J., L 329/34, 30.12.1993.
- Decision 96/409/CFSP, O.J., L 168, 06.07.1996.

Websites

- http://www.un.org/en/documents/udhr/index.shtml#a15
- http://rhetoricalcurrency.wordpress.com
- www.euro**treaties**.com/**maastricht**ec.pdf
- www.eurotreaties.com/**amsterdamtreaty**.pdf
- www.uni-mannheim.de/edz/pdf/tin/hlpen.pdf,
- http://europa.eu. (Summaries of EU Legislation)
- http://www.consilium.europa.eu/documents/treaty-of-lisbon?lang=tr.
- http://www.robert-schuman.eu/en/understanding-the-lisbon-treaty.
- http://www.migrationsrecht.net/european-immigration-migration-law/644-ecj-union-citizens-move-and-reside-freely-c-40803-directive-90364eec.html
- http://www.citizenhouse.eu/index.php?option=com_content&view=article&id=59&Itemid=137&lang=en.
- http://curia.europa.eu/juris/document/document.jsf?text=&docid=44718&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1016866.
- http://eudo-citizenship.eu/citizenship-news/449-the-zambrano-case-relying-on-union-citizenship-rights-in-internal-situations
- www.gcnchambers.co.uk (Garden Court North Chambers Official Website)
- http://conventions.coe.int/Treaty/en/Treaties/Html/144.htm

- https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-3&chapter=3&lang=en
- *legal.un.org/ilc/.../**conventions**/9_2_**1963**.pdf.*
- Academia.edu.
- Archive of European Integration, University of Pittsbugh Official Website.
- Eur-Lex Official Website of Access to European Union Law.
- European Parliament Official Website
- European Council Official Website
- European Commission Official Website
- Council of Europe Officisl Website
- Official Website of European Court of Justice
- Official Journal of the European Union
- European Ombudsman Official Website.