

“The struggles of the Court of Justice of the European Union (CJEU) to interpret the scope and effect of EU citizenship as established by the Treaty on the Functioning of the European Union (TFEU)”

In today's reality, the European Union (EU) citizenship legislation plays a very important role. The Court of Justice of the European Union (CJEU) strives to delimit and interpret not only the scope but also the effect of European Union citizenship, as enshrined in the Treaty on Functioning on the European Union (TFEU). These struggles that it displays are inevitable and can be depicted either as giant or as infinitesimal steps of evolution. The concept of citizenship was first introduced by ancient Greece and the word "polis", which refers to the city state but also to the people, who are members of this society. But how can the field and the consequences of citizenship be properly defined according to the TFEU, what are the procedures and how does the Court affect the citizenship? The term citizenship will be analysed in detail below, with the help of cases and examples.

The general concept of citizenship consists of two basic elements. Firstly, what defines one as a citizen and secondly, how this classification between individuals has been established. As it is already known, citizenship has to do with our nationality, since all of them are citizens of the states to which they are nationals. It does not have to be the state in which the parents of the individuals were born or even the state the individuals themselves were born. However, citizenship, in contrast to nationality, may have different meanings and this depends on the state, which sets different rights and obligations. In essence, there are three terms, which do not show any difference between them and consist of having a citizenship, nationality and being part of a state. Throughout history the term citizenship has been applied depending on whether the individual was a citizen of the state. However, in some countries this was not the case, such as in Ireland and the UK, because the citizenship was acquired either by birth or by some other institutional function. In order to avoid this malfunction, the EU has decided to implement Article 20 of TFEU, which states that any person holding the nationality of a Member State is also considered a citizen of the Union. It has to be mentioned that the EU citizenship is added and cannot replace the national citizenship. Also, according to

Article 20 of the TFEU, the citizens of the European Union, in accordance with the Treaties, enjoy certain rights but are also subject to certain obligations imposed by the Treaties. Initially, every citizen has the right to move and reside freely in a Member State of the Union. Moreover, the citizen may exercise the right to vote, but also to be elected, both in the European Parliament and in the municipal elections of the respective Member State, under national provisions. The citizens then have the right to protection by consular and diplomatic authorities when traveling to a third country. Finally, they have the right of petition to the European Parliament to make a request to the European Ombudsman, in order to communicate with the institutions and advisory bodies, in any language the Treaty is available, for a reply in the same language.

A very important and significant role is also played by Directive 2004/38 / EC, which provides for free movement and residence between members of the European Union, but also to ensure public order, health and safety. In addition to the above, regulations and decisions from the Court of Justice of the European Union (CJEU) are taken into account, in order to overcome any difficulties and problems that may arise.

The CJEU is tasked with reviewing the exercise of power by the EU institutions under the Treaties. This requires the Court of Justice to review whether legislation has been adopted on the basis of proper legislative power or whether it has been exercised beyond the remit of the institution concerned. In addition, the CJEU ensures the observance of the correct interpretation and application of the law in accordance with the Treaties. The scope of EU citizenship has been improved by the court in various ways. First, citizenship is decoupled from economic activity. It then affects the EU citizenship rights of non-citizens, so that EU citizen protection is provided. In addition, there is equality between Member States for the unemployed and free housing and mobility. These are the functions of the CJEU and with the following cases it will be investigated whether they ultimately contribute or make it difficult when it comes to the Court's decisions.

For example, in the case of (C-22/18) *Biffi v Deutscher Leichtathletikverband (DLV)*, Mr Biffi is an Italian national but lives in Germany and runs in DLV amateur races. A change in the rules of the DLV in 2015, rejects from the running contests all the

mobile EU citizens or is allowed only under certain conditions. This prevented them from being eligible in the national competitions, despite fulfilling the other conditions. The CJEU relied on four observations to respond to the reference for a preliminary ruling. It was reported that the EU citizen exercises the right of free movement of Article 18 TFEU, which includes amateur sport. Also, according to Article 21 TFEU, the right of free movement of persons is established, which aims at the gradual adaptation of the person to the host country, therefore the participation in an amateur group contributes to it. The Court also noted that in previous case law, sports organizations must comply with the EU law. Finally, the application of Articles 18 and 21 of the TFEU, concerning the rules of sport, which constitute any restriction on fundamental freedoms, is incompatible with EU Law. According to the above decision, it appears that the CJEU is making great leaps, as the Court did not allow the DLV to proceed with the imposition of the provision mentioned above on *Biffi*, but upheld the fundamental right of free movement of persons, which aims at the easy adaptation of citizens to their new reality, and lastly, the Court claimed that joining an amateur team contributes to this.

Another example is the case of *Commission v Austria* (2012), in which Austria refused to provide travel benefits to students from other EU countries who attended higher education. The CJEU, however, decided that all persons studying in higher education should have the automatic acquisition of the right. Such a decision shows the great strides of the CJEU in tackling the difficulties. Four years later, the same case appeared as in Austria, with the same facts but with a different decision. This case was the *Commission v the Netherlands* (2016). In the case of *Austria*, the students had a reduction in fares for public transport, while in the *Netherlands* some days were free and some were reduced. In addition, funding agencies differed in the two countries. Although there were differences between the decisions, in the same cases, it seems that the CJEU, took steps of development, after deciding what was best for each country in the fairest way. Therefore, in the above cases, it appears that the CJEU is helping to address the difficulties that arise by making huge leaps. Despite the inevitable difficulties and problems that exist regarding EU citizenship from the respective countries, the CJEU tries to resolve and overcome the obstacles in accordance with the provisions of the Treaty, finding the most ideal and correct solution to the issues that arise. In this way, one could argue that the CJEU is

evolving rapidly, providing an immediate solution and upholding the fundamental rights of EU citizens. Thus, it becomes more and more progressive.

To conclude, in this essay the concept of nationality was analysed in detail, how it is presented through the Treaties and the Directive, but also how it is related to the CJEU. The role and scope of CJEU in relation to nationality were then presented. The CJEU's contribution to the difficulties that arise in EU citizenship under the Treaty (TFEU), which are inevitable, has been proven through relevant cases. The conclusion that emerges from the above analysis leads to the decision that the Court makes huge steps and overcomes the difficulties, and despite the objections that countries sometimes raise, it stands by the EU citizens, by enforcing the fundamental rights.

## References:

### **Books**

Craig, P. and de Burca, G. (2020) *EU Law: Text, Cases, and Materials (UK Version)*, 7th edn, Oxford, Oxford University Press.

### **Cases**

*Biffi v Deutscher Leichtathletikverband (DLV)* (C-22/18) [2019] ECLI:EU:C:2019:497

*European Commission v Republic of Austria* (Case C-614/10) [2012]  
ECLI:EU:C:2012:406

*European Commission v Kingdom of the Netherlands* (Case C-233/14) [2016]  
ECLI:EU:C:2016:50

### **Legislation**

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 OJ L 158

### **International instruments**

Treaty on the Functioning of the European Union