



Editorial

The texts published in this edition of UNIO – *EU Law Journal*, although it is not a special issue, address the subject of market relations and fundamental rights through the lens of EU citizenship. Some of the contributions in this number involve a normative dimension, which attempt to sketch possible solutions to the problems of (apparent) fragmentation that the Union is facing and to highlight the surviving cohesion forces. Born as a market citizenship, EU citizenship has been shaping the process of integration itself as the “the fundamental status of nationals of the Member States”. Unquestionably linked to the protection of fundamental rights, EU citizenship has always been focused on bringing the legal status of Member State nationals closer, providing the legal basis for the eradication of legal lacunae in protection, contributing to the further development of the integration process.

However, recent case law of the CJEU is raising some perplexity when compared to past rulings, which compose the jurisprudential *acquis* in matters of citizenship and fundamental rights – mainly in what concerns citizens that move in the Union seeking jobs and the maintenance of the status of migrant worker. The first article in this edition conducts an analysis of the CJEU’s jurisprudence in matters of EU citizenship and social rights, identifying a tendency to limit the scope of social citizenship to the so-called “dynamic citizens”, on grounds of questionable fears of “social tourism”. The authors of this piece highlight the risk of putting into question both the purpose and the nature of EU citizenship, by transforming it from a fundamental status to an elite status.

Next, we present a work on the right to collective action – recognized as a fundamental right both at national and EU level – in cross border contexts. The case law of a few national constitutional courts, such as the Portuguese and the Italian courts, especially the one addressing the protection of social rights in a scenario of economic crisis and austerity measures, are analysed. The need to introduce changes in the Union’s Private International law instruments, relevant in the context of collective action matters is highlighted as important, in order to ensure effective protection of fundamental rights.

There is also a paper on the state of the art of the integration policies of migrants in a lawful situation, with particular focus being made on the vertical distribution of competences between the EU and Member States regarding such issues. Having in mind the relevant EU directives, the author shows the way in which

the CJEU has tried to balance the need to give Member States freedom to exercise their discretionary powers, while ensuring they do not use those powers to derogate from some of the mandatory rules and regulations of the EU legal order. The conclusion drawn from this disquisition is that there is, *inter alia*, a need to institute a more coherent integration policy, both at national and EU level.

The following set of papers reveal the measure by which the operative dimension of EU citizenship has passed (and still does), by the application of the internal market's freedoms and structural principles. Economic freedoms and its accomplishments no longer debate solely with the guarantee of economic and patrimonial rights. They no longer focus exclusively on overcoming discriminations on grounds of nationality. They have been, for quite a long time, the privileged instruments towards the realisation of EU citizenship status. Furthermore, they are also instruments that facilitate the assimilation of fundamental rights deeper within the corpus juris of the EU legal order. In this sense, the problems related to data protection and its free movement – as well as their transfer and reuse – are analysed in light of the *Schrems* Case C-362/14.

On the other hand, the fundamental question – in terms of free movement of people and of the definition of the concept of citizenship – of professional recognition and equivalence is the main subject of another paper. In the same vein, the next article addresses (i) the questions raised by the way in which a Member State's courts (in this case, Portuguese courts) deal with Intellectual Propriety, and (ii) the concepts of public communication or communication “for the public” of artistic works (having in mind Directive 2001/29). The following paper deals with cross border health care and medical services, another important aspect connected with the expansion of the free movement of people.

The next paper takes an institutional-oriented approach. It examines issues pertaining to the protection of national identity or constitutional identity, which has become a bone of contention between the CJEU and the national courts of EU Member States, in the EFTA system. With the EFTA Court having successfully transposed (to varying degrees) fundamental EU law principles into the sui generis EEA system, the article considers whether or not it might repeat the process with national identity and, if so, the extent to which it might be successful.

Two papers close this edition, in our non-peer-review section. The first is by Judge Ana Celeste Carvalho – Portuguese National Contact Point in the European Asylum Support Office (EASO) – on the protection of the rights of refugees and asylum seekers. In the text entitled “*European asylum law – reality and challenges in the context of immigration*,” the author aims to question the suitability and effectiveness of the European policy on asylum and some of its regimes, framing the right to asylum in the exclusion rules laid down in the Directive 2011/95, in the light of the case law of the CJEU.

The second text, by Alessandra Silveira and Claudia McKenny Engström, is the recovery of a historical memory. The text entitled “*The emerging culture of EU citizenship as ‘citizenship of rights’ and the legal nature of the EU polity*” was developed following Alessandra Silveira's presentation at the international conference “*Shattering Iberia - cultural responses to an ongoing crisis*” organized by UC Berkeley Department of Spanish and Portuguese, University of California on March, 5, 2014. It appeared as a result of a reflection on the theme highlighted in Claudia McKenny Engström's Masters thesis, directed by Alessandra Silveira, on July, 1, 2014. Various academic troubles

have made the text stay unpublished for over two years, put it is now brought to light, so that the authors and readers may reconsider, with due distance and having in mind the developments since then, *i*) in what measure the crisis shows a crucial disjunction between the expectations of EU citizens and the institutional forms of political integration available to them, and *ii*) whether the development of EU citizenship as “citizenship of rights” could perform some role in this scenario, putting it into perspective in order to grasp its effects on the legal nature of the EU polity.

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