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The promise of EU citizenship from an emigration perspective

From transnational to supranational citizenship

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Introduction

- EU citizenship and its promises
- 4 snapshots:
 - TCN's access to Eu citizenship
 - EU citizens as emigrants
 - Brexit and “EU diaspora”
 - EU citizenship's external dimension



TCNs access to EU citizenship

- No EU law on nationality + no harmonised rules on nationality acquisition in the 28 Member States
- Nationality remains an exclusive state competence but states must exercise their powers having due regard to EU law
- Eurostat data on acquisition of nationality in the EU (2017):
 - 825,400 people have acquired nationality of a Member State
 - 82% were nationals of third countries
 - Top nationalities: Moroccan, Albanian, Indians, Turkish, Pakistani
 - Top nationalities of returned TCNs: Albanians, Moroccans, Indians, Pakistani
- Alternative routes to EU citizenship protection → the “Zambrano” jurisprudence
- Political will to develop EU nationality law or standards

EU citizens as emigrants: tensions between inside/outside (1)

- Case C-221/17 *Tjebbes* EU:C:2019:189
 - 4 dual nationals whose applications for Dutch passports were rejected on grounds that they had lost *ex lege* (automatically) Dutch nationality as a result of being resident outside of the Netherlands for longer than 10 years
 - ECJ: in principle automatic loss of state nationality and, consequently loss of EU citizenship is not prohibited, provided that administrative and judicial authorities are in a position to carry out that individual examination of the situation of the person concerned in the light of all the relevant circumstances
- EU citizenship as autonomous source of protection as no exercise of free movement rights is necessary
- EU states retain the power to decide the aims of their nationality legislations → prevention of dual nationality + protection the unity of nationality within the same family are legitimate aims
- State nationality = special relationship of solidarity and good faith between the state and its nationals based on rights and duties + expression of a genuine link between the state and its nationals
- Habitual residence abroad + dual nationality = indication that no genuine link is present
- Proportionality assessment from the perspective of EU citizenship

EU citizens as emigrants: tensions between inside/outside (2)

- Case C- 165/16 *Lounes* EU:C:2017:862
 - Ms Ormazabal a dual Spanish- British national starts in 2013 a relationship with Mr Lounes, an irregularly present Algerian national and later marries him. The UK authorities refuse to grant Mr Lounes a residence permit as the spouse of an EU citizen in light of Ms Ormazabal's naturalisation as British national
 - ECJ: the effectiveness of the rights conferred by Art 21(1) TFEU require that EU citizens who have acquired the nationality of their host state in addition to their original nationality continue to enjoy in the host state the rights of EU citizenship which include a derived right of residence for a TCN spouse
- Dual nationals as EU citizens → Schrodinger's EU citizens (S. Peers): is dual nationality in the absence of the exercise of free movement rights enough to justify the application of EU law?
- Default position based on *McCarthy*: static dual nationals remain caught by national law, not EU law
- The Court approximates the situation of the naturalised citizen to that of EU citizens in the host state, not to that of static national citizens who are not able to rely on the more favourable EU provisions concerning family reunification
- Being an EU mover continues to have effects and leads to protection even some 20 years after the initial exercise of free movement rights, and even if family life is created after the naturalisation has taken place
- *Lounes* = ECJ's response to Brexit and the rights of EU citizens

Brexit and “EU diaspora”: how fundamental is EU citizenship status?

- Union citizens in the UK = “EU diaspora”
- British nationals in the EU27 = immigrants
- Article 20 TFEU – EU citizenship is derivative upon Member State nationality
- Deal/No Deal Brexit: Withdrawal Agreement (2017) and life-long continuation of almost all acquired rights of Union citizens in the UK and British nationals in EU27
- UK position in case of no-deal Brexit: promise to offer EU citizens the same protection of acquired rights regarding residence and employment as provided for under the Withdrawal Agreement
- Commission’s position in case of no-deal Brexit (19 December 2018): generosity by reciprocity but no EU response

EU citizenship's external dimension

- Article 23 TFEU entitles EU citizens in the territory of a third country to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State if unrepresented
- EU Commission: an expression of EU solidarity and one of the practical benefits of being an EU citizen
- Directive 2015/637 to facilitate consular protection for unrepresented citizens of the Union in third countries
 - scope of protection remains within the competence of the Member States and varies across them
- Directive 2019/997 on the EU Emergency Travel Document
 - common format
 - personal scope (Article 7)
- Test case: repatriating EU foreign fighters

Conclusions

- EU citizenship: from transnational to supranational status
- Enjoyment of rights and protection stemming from EU citizenship within + increasingly outside of the EU + increasingly within one's own state of nationality
- Contradictory developments linked to competence issues (*Tjebbes v Lounes*): sovereignty 2.0
- The move towards standardised EU documents: EU taking over state functions
- EU citizenship: migration or citizenship status?