

# UN-NESTING THE «MATRIOSKA» DOLL: PROBLEMS AND PARADOXES AT THE INTERSECTION BETWEEN CITIZENSHIP, MIGRATION AND HUMAN RIGHTS

## ABRIENDO LA MUÑECA MATRIOSKA: PROBLEMAS Y PARADOJAS DE LA INTERSECCIÓN ENTRE CIUDADANÍA, MIGRACIÓN Y DERECHOS HUMANOS

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SUMMARY: I. INTRODUCTION: UNPACKING THE LAW FOR MIGRANTS. II. THE “CITIZENSHIP” STATUS AND THE PARADOX OF “FORTRESS EUROPE”. III. FRAGMENTATION OF RIGHTS: AD PERSONAM STATUS AND MATERIAL ENTITLEMENTS. IV. FROM ZAMBRANO TO ALOKPA PASSING THROUGH CHEN: TO WHAT EXTENT DOES EU CITIZENSHIP LEGISLATION IMPACT ON TCN RESIDENCE RIGHTS?. CONCLUSIONS.

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## I. INTRODUCTION: UNPACKING THE LAW FOR MIGRANTS

Migration, citizenship and human rights are key items of European and domestic agendas. Whilst it is recognised that migrants make important contributions to the economy and society, migration is a highly politicised issue, and the question of who has the right to enter and settle in Europe, and under what conditions, is a widely debated topic. Much of the discussion in recent years has focused on the need to limit the influx of migrants coming from outside the EU, the so-called Third Country Nationals (TCNs). Concerns pertain to the way in which increasingly restrictive domestic migration policies impact on migrants' rights, conflicting with the EU's commitment to strengthen the protection of fundamental rights.<sup>2</sup>

This paper reflects on the problems and paradoxes of citizenship and migration and lies at the intersection between three areas of law: the free movement provisions for EU citizens, the area of freedom, security and justice, and the underpinning area of fundamental rights which permeates all of them.

The analogy of the *matrioska doll set*, i.e. wooden nesting doll set composed of a doll inside a doll inside another one, and so on, is particularly relevant to evaluate the paradoxes of citizenship, migration and human rights in Europe. Despite harmonising rules and case law, nested entitlements for citizens and TCNs are still the rule within the EU as linked to the concepts of citizenship and “denizenship”.<sup>3</sup> Citizenship is an exclusive concept that is related to the belonging of an individual to a specific state, or, in the case of Union citizenship, to the EU. Consequently, EU nationals enjoy equal treatment to nationals. The question of whether non-EU citizens, can enjoy the same rights as citizens on the basis of their residence in the host state is still the object of much debate. Denizenship is in fact used to describe the status of immigrants who enjoy a set of rights approaching that of EU nationals. Long-term residing TCNs are the sole category of non-EU citizens enjoying such “quasi-equality”.<sup>4</sup> The tension lies in the fact that, whilst human rights are conceived to confer rights to individuals irrespective of their nationality, citizenship is a “discriminatory” concept as it privileges one range of individuals over another. Thus, the conceptual implications of a complete equality between the two categories would undermine the distinction between Union citizenship entitlements and fundamental rights.

The rules regulating legal residence for individuals within the European territory are not available, in a systematised manner, in a single chapter of the EU Treaties, the Charter or secondary legislation. Thus, the legal framework applicable

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<sup>2</sup> MORANO-FOADI, S. and ANDREADAKIS, S. The convergence of the European Legal System in the treatment of Third Country Nationals in Europe: the CJEU and ECtHR jurisprudence, *European Journal of International Law* (2011), Vol. 22 No. 4, 1071 – 1088.

<sup>3</sup> SEE HAMMAR, T. (1990) *Democracy and the Nation State*, Aldershot, Avebury.

<sup>4</sup> ACOSTA ARCARAZO, D & GEDDES, A 2013, ‘The Development, Application and Implications of an EU Rule of Law in the Area of Migration Policy’. *Journal of Common Market Studies*, Vol. 51, pp. 179-193.

to legally-residing people within the EU lies at the intersection of many areas of law, and is conditioned to a number of parameters. These variables trigger different degrees of protection within the EU legal system and depend on the following criteria:

1. The personal status of the individual concerned, whether he or she is a Union national or not. For ease of reference, this is named the “*citizenship*” status. Then, depending on whether the individual is an EU national or a TCN, a further level of fragmentation is present with cascading consequences depending on the economic status of the EU citizen or the TCN’s category of entry or the length of residence in the host country, here named the “*ad personam*” status;

2. The second condition represents the “*material entitlements*” component. It determines the extent to which legally-residing individuals, can access social goods such as employment, education, housing or welfare benefits available to nationals in the host country.

3. All the parameters are subject to the presumption that the person is in a mobility context and thus the “*territoriality clause*” applies. However, static individuals, i.e. EU citizens who have not exercised their mobility, or children born to TCN parents in an EU Member State, might trigger the application of EU law beyond the exception of “purely internal situation”.<sup>5</sup>

Embarking in legal research dealing with migrants within the EU necessitates the above-described mapping exercise, which constitutes the first level of complexity of the study. A further problematic categorisation emerges when reflecting on the fundamental rights quest. Equality, in particular, presents a challenge within the European context for the achievement of social cohesion. Any differential unreasonable, disproportionate or unjustified treatment between a host state’s nationals, EU citizens and legally-residing TCNs, should be prohibited within the Union.<sup>6</sup> Thus, in the absence of a standardised platform of social rights, national law should guarantee equivalent access to social goods to people residing in the territory of the host state, irrespective of their EU citizenship or TCN status.

However, the fragmentation of statuses for TCNs determines a patchy access to social rights. Such fragmentation, which has in part been addressed through recent legislative developments in the area of freedom, security and justice, still presents a vulnerable regime. Questions on its effectiveness need to be answered. Some Member States’ flexible arrangements in relation to EU asylum and immigration measures constitute a threat to consistency across Europe. The UK and Irish position,<sup>7</sup> whereby these countries are allowed to “opt in” on a case-by-case basis, and the Danish “opting out” from the whole area of freedom, security and justice, question the solidarity and cohesiveness of EU law in this field. Then, even when

<sup>5</sup> Case C-34/0 Ruiz Zambrano v Office national de l’emploi (ONEm) [2011] ECR I-1177.

<sup>6</sup> S. MORANO-FOADI and M. MALENA (2012) Integration for Third Country Nationals in the European Union: The Equality Challenge, Edward Elgar p. 16 ff.

<sup>7</sup> See Protocols to the Treaty of Amsterdam at [www.eurotreaties.com/amsterdamprotocols.pdf](http://www.eurotreaties.com/amsterdamprotocols.pdf) accessed on 24<sup>th</sup> March 2014.

Member States are bound to transpose European legislation, as in the case of recent measures,<sup>8</sup> they might not have yet implemented them, and when they have, social welfare entitlements vary hugely across the EU<sup>9</sup>.

## II. THE “CITIZENSHIP” STATUS AND THE PARADOX OF “FORTRESS EUROPE”

The “citizenship” status is based on whether the individual belongs to the Union or not. Article 20(1) TFEU provides that “...*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.*” Thus, the holding of a nationality of any EU Member State would automatically confer EU citizenship status.

*Then, Article 21(1) TFEU states: “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.”*

In the Grzelczyk case, the CJEU has described the status of EU citizenship as:

*“...destined to be the fundamental status of nationals of the member states, enabling those among such nationals who find themselves in the same situation to enjoy the same treatment in law within the area of application *ratione materiae* of the EC Treaty irrespective of their nationality, subject to such exceptions as are expressly provided for...”*<sup>10</sup>

The Court has continuously emphasised the importance of EU nationality for ‘Union Citizenship’ and, for its core legal component (that is, the right to freely move and reside): the intra-Union dimension. This has also been recently extended to TCNs as linked to their EU children.<sup>11</sup> The effect of EU citizenship has been felt most dramatically in the field of social rights. In a number of significant cases<sup>12</sup> the

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<sup>8</sup> Most recent asylum measures see Common European Asylum System at [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm) accessed on 7th April 2014.

<sup>9</sup> ADLER-NISSEN, R. (2011) Opting Out of an Ever Closer Union: The Integration Doxa And the Management of Sovereignty, *West European Politics*, 34:5, 1092-1113.

<sup>10</sup> Case C-184/99 Rudy Grzelczyk v Centre public d’aide sociale d’Ottignies-Louvain-la-Neuve [2001] ECR-I 619 [31].

<sup>11</sup> See the recent Case C-34/0 Ruiz Zambrano v Office national de l’emploi (ONEm) [2011] ECR I-1177.

<sup>12</sup> Case C-85/96 Maria Martinez Sala v Freistaat Bayern [1998] ECR-I 2691; Case C-184/99 Rudy Grzelczyk v Centre public d’aide sociale d’Ottignies-Louvain-la-Neuve [2001] ECR-I 6193; Case C-456/02 *Trojani* v CPAS [2004] ECR I-7573; Case C-209/03 *Bidar. v. London Borough of Ealing and Secretary of State, Föster v. Hoofddirectie van de Informatie Beheer Group* [2008] ECR-I 8507.

CJEU granted lawful residence and social entitlements to EU citizens on an equal basis as nationals. These have included subsistence allowances (case *Grzelczyk*<sup>13</sup>), allowances facilitating access to the employment market (case *D’Hoop*<sup>14</sup>) and tax breaks (case *Pusa*<sup>15</sup>).

Although the CJEU has been granting social rights to Union citizens on an equal basis as nationals, concerns were raised by Member States, for individuals “shopping around”, i.e. searching for the most convenient benefits’ system in Europe, before exercising their mobility, the so called welfare tourism phenomenon. These tensions were reflected in Directive 2004/38/EC,<sup>16</sup> known as the Citizenship Directive, which has made access to social rights contingent to the grant of residence by the host state.

This Directive consolidates and replaces most of the legislation governing the rights of movement and residence of all categories of persons under the title of citizenship. Its aim is to facilitate the exercise of rights by reducing administrative formalities, provide a better definition of the status of family members, and limit the scope for refusing entry or terminating the right of residence. However, the right to residence in the host state is not unlimited. In all cases, the EU citizen must have certain resources or be qualified i.e. carry out certain forms of activity to acquire the status of resident: be a worker or member of a worker’s family, be a student or retired, or have independent means to avoid becoming a burden for the host state. There are three forms of residence in another Member State, and their preconditions are set out in the Directive: residence for three months or less; residence for more than three months; permanent residence for five years and more. In general, the provisions of the directive appear to be more restrictive than the CJEU decisions, requiring fixed criteria that have often been widely interpreted by the Court. The CJEU’s approach is more flexible in applying Article 20 TFEU when dealing with the so called “grey areas”, i.e. situations involving EU citizens resident in a Member State different from the one of their own nationality and who are not within one of the qualified categories.<sup>17</sup>

<sup>13</sup> Case C-184/99 Rudy Grzelczyk cit footnote 9.

<sup>14</sup> Case C-224/98, Marie-Nathalie D’Hoop v. Office national de l’emploi, [2002] ECR I-6191.

<sup>15</sup> Case C-224/02 Heikki Antero Pusa v Osuuspankkien Keskinäinen Vakuutusyhtiö [2004] ECR I-5763.

<sup>16</sup> Directive 2004/38 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 158/77, 30.4.2004.

<sup>17</sup> See case law footnote 11.

### III. FRAGMENTATION OF RIGHTS: AD PERSONAM STATUS AND MATERIAL ENTITLEMENTS

In general terms, EU citizens enjoy an equality of rights with nationals, as Article 18 TFEU sets out the general prohibition of discrimination on grounds of nationality.<sup>18</sup> However, even within this privileged group of citizens, some pre-conditions apply, creating a hierarchy of entitlements depending on the “economic status” or the “length of residency” of the EU citizen in the host country. Then, the CJEU<sup>19</sup> has tried to limit the effect of the “inactive” citizen, protecting the “fundamental status of Union citizenship”; access to welfare benefits is available on the condition that the applicant does not become a burden for the host state.

Thus, provided the person in question is a Union citizen, it is relevant to understand whether he/she is a “static” or “dynamic” citizen, i.e. whether he/she has exercised his/her intra-Union mobility. For a “dynamic” citizen, economic status is a determining factor; failing which, the extent of his/her legal protection depends on his/her “length of residency”. The “static” citizen cannot trigger the application of EU law, unless there is a shift that makes the situation “not purely internal”.

Then, whilst EU citizens are subject to the “economic or residency tests”, legally-residing TCNs enjoy fragmented rights depending on whether they are high or low skilled, or meet integration conditions. Social entitlements for legally residing TCNs depend on their entry status or their residence permit. Asylum seekers and beneficiaries of international protection, economic migrants, long-term residents and family members are all subject to immigration control rules, which do not apply to EU nationals and their family members.

There are considerable differences between the European countries<sup>20</sup> concerning procedural and substantive protection and access to rights for asylum seekers, as well as entitlements in the case of beneficiaries of subsidiary protection. This still occurs despite the recent recast of the Qualification Directive<sup>21</sup> does no longer address “minimum standards”, but rather provides for common rules towards the recognition and content of international protection on the basis of higher stan-

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<sup>18</sup> Article 18 TFEU “Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt rules designed to prohibit such discrimination”.

<sup>19</sup> See case law footnote 11.

<sup>20</sup> See Garlick, M. Chapter 4 “Inequality for asylum-seekers and people entitled to protection in the European Union” in S. Morano-Foadi and M. Malena (2012) Op cit. footnote 2.

<sup>21</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, OJ L 337, 20/12/2011, p. 9–26.

dards and in line with the Tampere conclusions<sup>22</sup> and the Stockholm programme.<sup>23</sup> Then, the recent EU “Asylum Package”, including the recast Asylum Procedures Directive,<sup>24</sup> the Reception Directive<sup>25</sup> and Dublin II Regulation<sup>26</sup>, along with the Qualification Directive,<sup>27</sup> has been adopted. It contains an innovative provision on refugee integration (Art. 34 of the amended Qualification Directive, 2011/95/EU) and has required Member States to ensure access to integration programmes for beneficiaries of international protection.

However, Denmark, the UK and Ireland have not taken part in the recasting of the Qualification Directive. By contrast, the UK and Ireland have notified their wish to take part in the adoption and application of the Dublin II Regulation. Other Member States have not yet transposed the new European provisions into their national systems. Thus, it will be interesting to evaluate the impact of these changes in the future.

In relation to economic migrants, in spite of EU harmonization, Member States use their discretion whenever possible, imposing labour market tests, waiting periods, or even strict quotas on low skilled and unskilled workers.<sup>28</sup> In addition to the discretion left to Member States at the admission stage, highly-qualified TCNs, once admitted, have privileges compared with other migrant workers whose status is regulated under the Single Permit Directive.<sup>29</sup> However, EU legislation on labour market access for TCNs still favours EU citizens, who have unlimited access to employment and self-employment throughout the Union. By contrast, TCNs only have conditional rights in this field.

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<sup>22</sup> Tampere Presidency Conclusion, European Council, 15-16 October 1999, SN 200/99, Brussels.

<sup>23</sup> The Stockholm Programme – An open and secure Europe serving and protecting citizens, Official Journal, C 115 of 4.5.2010.

<sup>24</sup> Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection OJ L 180, 29/06/2013, p. 60–95.

<sup>25</sup> Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection OJ L 180, 29/06/2013, p. 96–116).

<sup>26</sup> Regulation 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) OJ L 180, 29/06/2013, p. 31–57.

<sup>27</sup> See footnote 20.

<sup>28</sup> JESSE, M. Chapter 8 “Third-Country Nationals, Integration and Access to Employment and Occupation under EU Law”, in S. Morano-Foadi and M. Malena, Op. cit. footnote 2 at p. 145

<sup>29</sup> Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, OJ L 343, 23/12/2011, p. 1-9.

The UK follows a separate regime in relation to economic migration. In 2008, the Point Based System (PBS) was introduced.<sup>30</sup> This system provides entry requirements in accordance to different tiers.<sup>31</sup> The effect of the PBS is not to manage migration but to reduce it, control numbers and admit only those who could be productive for the country.<sup>32</sup> This system was introduced in a time of sharp recession, a higher unemployment rate and heightened concerns around immigration and security. The factors controlling the system are, for example, the qualifications of entrants, the length of stay and the means by which they are supported.

The existing EU legal framework presents some inconsistency in the treatment of TCN family members, especially in relation to family reunification matters under the Family Reunification Directive.<sup>33</sup> Although TCNs' spouses and family members of European Economic Area (EEA) nationals might experience difficulties, particularly in securing residence-related social rights, family members of TCNs are in a worse position. Member States are often abusing the use of integration requirements, not least language testing and economic integration requirements.<sup>34</sup>

Although the Single Permit Directive<sup>35</sup> and the proposal for the adoption of a coherent EU Code<sup>36</sup> in this field have attempted to guarantee equal access to social goods and entitlements, long-term residents<sup>37</sup> are the most privileged category of TCNs, but still face restrictions when moving within the EU.

In general, the “equality challenge” remains a critical issue, affecting mainly TCNs who are not related to EU citizens.

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<sup>30</sup> For the Point Based System (PBS) see <https://www.gov.uk>

<sup>31</sup> Tier 1: Highly skilled individuals contributing to growth and productivity; Tier 2: Skilled workers with a job offer to fill gaps in UK labour force; Tier 3: Limited numbers of low skilled workers needed to fill specific temporary labour shortages; Tier 4: Students; Tier 5: Youth mobility and temporary workers: people allowed to work in the UK for a limited period of time to satisfy primarily non-economic objectives.

<sup>32</sup> CLAYTON, G. (2012) ‘Textbook on Immigration and Asylum Law’ 5th edition Oxford: OUP.

<sup>33</sup> Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification OJ L 251, 03/10/2003, p. 12–18. For a commentary on this topic see Puttick, K. and Carlitz, C. Chapter 14 “Inequalities of Family Members of EEA and non-EEA Nationals: ‘Integration’ and Barriers to Family Reunification in the Post-Lisbon Era” at p. 271.

<sup>34</sup> See in particular Carlitz, C. Chapter 15 “Language skills as a requirement for family reunification of spouses in Germany – respecting respect for family life?” at p. and Chapter 16 De Vries, K. “The Dutch Act on Integration Abroad: a case of racial or ethnic discrimination?” in S. Morano-Foadi and M. Malena (2012) Op. cit. footnote 2 at p. 303

<sup>35</sup> See footnote 28.

<sup>36</sup> PEERS, S. ‘An EU Immigration Code: towards a common immigration policy’ (2012), *European Journal of Migration and Law* 14, 33–61.

<sup>37</sup> ACOSTA ARCARAZO, D. Chapter 12 “Long-term residents’ integration in Spain at a crossroads: Rights-based approach or downhill towards restrictiveness?” in S. Morano-Foadi and M. Malena (2012) Op. cit. footnote 2 at p. 231.



#### IV. FROM ZAMBRANO TO ALOKPA PASSING THROUGH CHEN: TO WHAT EXTENT DOES EU CITIZENSHIP LEGISLATION IMPACT TCN RESIDENCE RIGHTS?

Fundamental freedoms such as free movement of people do not extend to third country nationals.<sup>38</sup> Secondary legislation (Directive 2004/38 and Regulation 492/2011) has recognised “derived rights” to TCNs if they belong to a Union citizen’s family. Consequently the CJEU has ensured their protection as a legal reflex of citizens’ rights. Thus, TCNs family members or EU citizens trigger the application of EU free movement and citizenship provisions, producing “spill over” effects on immigration law; this particular category of TCN enjoys a derived protection under fundamental freedom.

The other categories of TCNs not attracting the protection of EU citizenship provisions are covered by the Charter of Fundamental Rights and European Convention of Human Rights (ECHR). However, there is not a general right for TCNs to enter the Union territory. Asylum seekers constitute an exception to this rule, as they can invoke the ECHR to have their claims examined domestically (i.e. Member States must authorise entry to their territory). Thus, the Charter is applicable to all TCNs in an attempt to ensure equality, integration and social cohesion, but they cannot rely upon human rights, including the right to privacy and family rights, to have their transnational mobility guaranteed.<sup>39</sup>

The question of whether residence rights can be extended to TCNs via the route of EU citizenship has been under scrutiny for a great deal of time. In particular, rights have been extended to TCN parents via children holding EU citizenship, even in situation where intra-Union mobility was not exercised.

The CJEU has relied on Article 20 TFEU to derive residence for TCN parents from their children’s citizenship rights even before the entry into force of the Citizenship Directive and the Treaty of Lisbon. The case of *Chen*<sup>40</sup> illustrates the Court’s approach. The decision involved a Chinese mother who gave birth to her second child, Catherine, in Belfast and then moved to Cardiff. Catherine acquired Irish nationality, as she was born in the island (*jus soli*), in accordance with section 6(3) of the Irish Nationality and Citizenship Act 2001.<sup>41</sup> Her dad was working

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<sup>38</sup> GUID, E. and PEERS, S. (2013) Out of the Ghetto? In Peers and Rogers (eds) *EU Immigration and Asylum: Text and Commentary* (Martinus Nijhoff) p. 81; D Thym (2013) *EU Migration policy and its Constitutional Rationale: A Cosmopolitan outlook*, *Common Market Law Review* p 718.

<sup>39</sup> THYM, D. (2013) *Op. cit.* footnote 37 at p. 719

<sup>40</sup> Case C-200/02, *Chen Kunqian Catherine Zhu and Man Lavette Chen v. Secretary of State for the Home Department* [2004] ECR I-9925. For a comment on the case see Carlier JY Annotation of Case C-200/02 (2005) 42 *Common Market Law Review*, 1121.

<sup>41</sup> Section 6(3) of the Irish Nationality and Citizenship Act 2001 stated “a person born in the island of Ireland is an Irish citizen from birth if he or she is not entitled to citizenship of any other country”. Following an amendment to the Constitution in 2004 the constitutional entitlement to citizenship of those born in the island of Ireland where neither parent is an Irish citizen or entitled to be

in China but part of his business was carried out in the UK. She had independent means of support and sickness insurance.

The CJEU addressed the question of the free movement and citizenship rights of a child born to Chinese parents in Northern Ireland. It concluded that Article 20 TFEU and the then Council Directive 90/364/EEC conferred on a young minor, who was a national of a Member State (MS) and covered by appropriate sickness insurance and sufficient resources, the right to reside for an indefinite period in that State, and the right of a parent who was that minor's primary carer to reside with the child in the host MS.

Recently the CJEU in the seminal decision of the Zambrano case,<sup>42</sup> relied upon Article 20 TFEU to grant a "derived right" of residence to TCNs on the basis of their children's citizenship rights. Article 20 TFEU was considered as a source of residence rights independent from Directive 2004/38, thus it extended rights to TCNs who were not the beneficiaries of the Directive. The innovative element introduced by Zambrano was the extension of the principle to a child who never exercised intra-Union mobility and with no independent means of support.

The Court stated that Article 3(1) of the directive, which ask MSs to facilitate access "*to any other family members, who are dependents or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen*" could not apply to this case. Zambrano and his family were not '*Union citizens who move to or reside in a Member State other than that of which they are a national*'.<sup>43</sup>

This decision in fact, involved a family (Mr Zambrano, his wife and child) who arrived in Belgium on a visa and immediately applied for asylum, on the basis that they had faced persecution in Colombia. The application was denied but the appeal lasted 12 years. In the meantime Mr Zambrano found employment and had two more children who by virtue of Belgian law became Belgian citizens, which is the corollary of EU citizenship.

The difficulty here was that the children had remained in the member state of which they were nationals. There was a total absence of a cross-border element, which would have made the claim a 'wholly internal' situation. On this occasion, the CJEU introduced the test of '*genuine enjoyment of the substance*' of citizenship rights (known as the Zambrano test) stating:

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so, was removed. The Act has then been amended and came into effect on 1 January 2005. It introduced a residence requirement to be satisfied by certain non-national parents before children could acquire Irish citizenship. See J. Handoll Report on Ireland available at [www2.law.ed.ac.uk/citmodes/files/irelandreport.pdf](http://www2.law.ed.ac.uk/citmodes/files/irelandreport.pdf)

<sup>42</sup> Case C-34/0 Ruiz Zambrano v Office national de l'emploi (ONEm) [2011] ECR I-1177.

<sup>43</sup> Zambrano [39].

*“Article 20 TFEU precludes a MS from refusing a TCN upon whom his minor children, who are EU citizens, are dependent, a right of residence and from refusing to grant a work permit to him, in so far as such decisions deprive those children of the genuine enjoyment of the substance of EU citizen rights”.*<sup>44</sup>

This test worked in favour of Mr Zambrano. However, the CJEU has so far been very cautious in the application of Zambrano’s test; in following cases the test was applied but has not always guaranteed protection to TCNs.

The following pages focus on three other relevant cases which were decided after Zambrano: McCarthy, Dereci and Alokpa.<sup>45</sup>

The McCarthy decision<sup>46</sup> involved a British/Irish national (Mrs McCarthy) who was born in the UK and always lived there. Following her marriage to a TCN she applied for an Irish passport for the first time. Once she obtained it, as an Irish national, she asked for a residence permit to base her residence in the United Kingdom on rights associated with European citizenship. Consequently, her husband applied for a residence document as a Union citizen’s spouse. Both applications were refused. Mrs McCarthy had never exercised her right to move and reside in Member States other than the United Kingdom and was on benefits. The test of ‘genuine enjoyment of the substance’ of citizenship rights was applied to the facts of the case. The Court concluded that Article 21 TFEU did not apply in this case. Mrs McCarthy was not deprived of the genuine enjoyment of Union citizen rights, or the exercise of her right to move and reside freely within the territory of the Member States.<sup>47</sup>

The CJEU holds that a person who has never moved between Member States and is not a “qualified person” (i.e. a worker, self-employed, family member of a citizen, student and so on) cannot benefit from the right to move and reside freely covered by the Citizens’ Directive. The Court in its reasoning emphasised that the right of free movement and residence in the Citizens’ Directive is a unitary right, not two different rights, as it seemed to suggest in Zambrano in relation to Article 20 TFEU. The Court, in line with Zambrano’s judgement held that the Directive could not apply. However, when considering the Treaty provisions the Court fo-

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<sup>44</sup> Zambrano [46].

<sup>45</sup> Case C-34/09 Gerardo Ruiz Zambrano v Office national de l’emploi (ONEM) March 2011 (Zambrano); Case C-434/09 McCarthy [2011] ECR I-3375; Case C-256/11 Dereci and Others [2011] ECR I-11315; Case C-86/12 Alokpa and Others [2013] ECR I-0000.

<sup>46</sup> C-434/09 McCarthy Ibid . For a comment on the case see H. Wray Note on McCarthy at <http://eudo-citizenship.eu/citizenship-news/479-family-life-and-eu-citizenship-a-commentary-on-mccarthy-c-43409-5-may-2011> ; Morano-Foadi, S. Internal mobility & Union citizenship: the sole triggers for the non-EU spouses’ acquisition of residence rights at: <http://www.diritticomparati.it/2011/05/internal-mobility-union-citizenship-the-sole-triggers-for-the-non-eu-spouses-acquisition-of-residenc.html#sthash.bdkFpUd6.dpuf>

<sup>47</sup> McCarthy [49].

cused its analysis on Article 21 TFEU, whilst in Zambrano it specifically addressed Article 20 TFEU.

After Zambrano and its revolution of Article 20, as reduced by McCarthy, followed the Dereci case,<sup>48</sup> The much awaited case was supposed to provide answers on the extent to which Article 20 TFEU could be used. The case involved five joint applications: three consisted of TCNs married to Austrian citizens who always lived in Austria, so had not exercised their free movement rights within the EEA; and the last two comprised TCN adults who were seeking either to join or remain with one of their parents, also, Austrian nationals, who had not lived anywhere else but Austria.

The Austrian Authority refused residence permits and denied the application of Directive 2004/38 concerning EU citizens' family members, as the Union citizens had not exercised their free movement right. Four of them were also subject to expulsion and individual removal orders.

Consistently with Zambrano and McCarthy, the CJEU first found that Directive 2004/38 did not apply to any of the situations, as the Austrian nationals had always resided in Austria.<sup>49</sup>

When it addressed Article 20 TFEU, the CJEU reiterated the Zambrano principle and stated that Union citizens, who have never exercised free movement rights, cannot for that reason alone be assimilated to a "purely internal situation".<sup>50</sup> This is because citizenship of the Union is intended to be the fundamental status of nationals of Member States<sup>51</sup> and thus they may rely on rights pertaining to that status, including those exercised against their Member States.<sup>52</sup>

In re-asserting the "genuine enjoyment" test (Zambrano test), the Court stressed its limitations. As held in Zambrano, Article 20 TFEU precludes national measures which have the effect of depriving Union citizens of the "genuine enjoyment of the substance" of the rights conferred by virtue of that status.<sup>53</sup> The criterion relating to the denial of the genuine enjoyment of the substance of such rights refers to situations in which the Union citizen has, in fact, to leave not only the territory of the Member State of which he is a national, but also the territory of the Union as a whole. However the Court did not define this "criterion" further, other than to set out that it "*is specific in character in as much as it relates to situations in which, (...) a right of residence may not, exceptionally, be refused to a third country na-*

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<sup>48</sup> Case C-256/11 Dereci and Others footnote no 44. For a commentary on the case see A. Lansbergen, Case Summary and Comment: Case C-256/11, Dereci and others v Bundesministerium für Inneres, at <http://eudo-citizenship.eu/docs/Dereci%20Case%20Summary%20and%20Comment.pdf>

<sup>49</sup> Dereci [52] & [58].

<sup>50</sup> Dereci [60] and [61].

<sup>51</sup> Dereci [62] and Zambrano [41].

<sup>52</sup> Dereci [63] & McCarthy [48].

<sup>53</sup> Dereci [64].

tional, (...) as the effectiveness of Union citizenship enjoyed by the Union citizen would otherwise be undermined”.<sup>54</sup>

The Court added that “*the mere fact that it might appear desirable to a Union citizen, for economic reasons or in order to keep his family together in the territory of the Union, (or for his third country national family member to join him in the territory of the Union), is not sufficient to support the view that the Union citizen will be forced to leave the Union territory if such a right is not granted*”.<sup>55</sup> The above is without prejudice to the right to the protection of family life, (either under Article 8 ECHR or Article 7 of the Charter of Fundamental Rights of the European Union) which may mean that a right of residence cannot be refused in any event.<sup>56</sup>

Thus, the Court’s answer is that “*Article 20 does not preclude a Member State from refusing to allow a third country national family member of a Union citizen, who has never exercised free movement rights to reside on its territory, as long as such a 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. Whether it leads to such a denial is a matter for the referring court to assess*”.<sup>57</sup>

The most recent CJEU judgment on the topic is the case of *Alokpa*,<sup>58</sup> which was decided on 10 October 2013. This decision represents another failed attempt to rely upon Article 20 TFEU.

The case concerns a Togolese national (Mrs *Alokpa*) who applied to the Luxembourg authorities for international protection under the right of asylum and complementary forms of protection. That application was rejected by those authorities and their decision was confirmed by the Luxembourg courts. Subsequently, Mrs *Alokpa* applied to those authorities for discretionary leave to remain. Although, initially, that application was rejected, it was reconsidered and such discretionary leave was granted to Mrs *Alokpa* until 31 December 2008, as a result of the fact that she had given birth to twins on 17 August 2008, in Luxembourg, and that the babies required care due to their premature birth.

Mrs *Alokpa*’s children were recognised by their French father, thus the children gained French citizenship and consequently acquired Union citizenship. She had been offered a job, which her lack of residence and work permits prevented her from commencing.

In the meantime, an application for extension of her discretionary leave to remain made by Mrs *Alokpa* was rejected by the Luxembourg authorities, who, how-

<sup>54</sup> Dereci [66] and [67].

<sup>55</sup> Dereci [68].

<sup>56</sup> Dereci [69].

<sup>57</sup> Dereci [74].

<sup>58</sup> Case C-86/12 *Alokpa* footnote 44. Before this decision there was also another Case C-40/11 *Iida* [2012] ECR I-0000.

ever, granted Mrs Alokpa a suspension of removal valid until 5 June 2010, which was not subsequently extended.

On 6 May 2010, Mrs Alokpa applied for a residence permit in accordance with free movement stating that she was unable to settle with her children in France, or reside with their father on the ground that she had no relations with him and that her children required follow-up medical treatment in Luxembourg as a result of their premature birth. Her application was rejected on 14 October 2010. Mrs Alokpa brought an action for annulment of the decision of the Minister, which was dismissed, then she brought an appeal against that judgment and the administrative court decided to stay the proceedings and to refer two questions to the CJEU.

Even though, formally, the referring court has limited its questions to the interpretation of Article 20 TFEU, the CJEU provided the referring court with all the elements of interpretation of European Union law, interpreting both Articles 20 TFEU and 21 TFEU, Directive 2004/38 and previous case law.

The CJEU recalled that any rights conferred on TCNs by the Treaty provisions on Union citizenship are “not autonomous rights” of those nationals but rights derived from the exercise of Union citizen’s freedom of movement.

The purpose and justification of those “derived rights”, in particular rights of entry and residence of Union citizen’s family members, are based on the fact that a refusal to allow them would be such as “*to interfere with freedom of movement by discouraging that citizen from exercising his/her rights of entry into and residence in the host Member State*”.<sup>59</sup>

There are situations that, although governed by national law such as legislation on the right of entry and stay of TCNs and outside the scope and of provisions of secondary legislation, have an *intrinsic connection with the Union citizen’s freedom of movement*, preventing the right of entry and residence being refused, in order not to interfere with that freedom.<sup>60</sup>

Mrs Alokpa could not be regarded as a beneficiary of Directive 2004/38 within the meaning of Article 3(1), as stated by Court’s case-law,<sup>61</sup> as her two sons were the holders of the right of residence and they were effectively dependant on her. Thus, she could not rely on being a relative in the ascending line and dependant on them, within the meaning of Directive 2004/38.

However, in the context of a Union citizen born in the host Member State and not having exercised the right to free movement, the Court held that the expression to “*have sufficient resources in a provision similar to Article 7(1)(b) of Directive 2004/38 must be interpreted as meaning that it suffices that such resources are available to the Union citizens, and that that provision lays down no requirement*

<sup>59</sup> See, Alokpa [22] and Case C-87/12 Ymeraga and Ymeraga-Tafarshiku [2013] ECR I-0000, [35] and the case-law cited.

<sup>60</sup> See Ymeraga and Ymeraga-Tafarshiku, [37].

<sup>61</sup> Case C-40/11 Iida [2012] ECR I-0000, [55].

*whatsoever as to their origin, since they could be provided, inter alia, by a national of a non-Member State, the parent of the citizens who are minor children”.*<sup>62</sup>

Consequently, to refuse the carer of a EU minor child, whether a national of a Member State or a TCN, to reside with that child in a host Member State would deprive the child’s right of residence of any useful effect, since enjoyment by a young child of a right of residence necessarily implies that the child is entitled to be accompanied by his/her primary carer and accordingly that the carer must be in a position to reside with the child in the host Member State for the duration of such residence.<sup>63</sup>

Thus, while Article 21 TFEU and Directive 2004/38 grant a right to reside in the host Member State to a minor child who is a national of another Member State and satisfies the conditions of Article 7(1)(b) of that directive, the same provisions allow a parent who is that minor’s primary carer to reside with the child in the host Member State.<sup>64</sup>

The CJEU asked the referring court to ascertain whether Mrs Alokpa’s children satisfy the conditions set out in Article 7(1) of Directive 2004/38 and have, therefore, the right to reside in a host Member State on the basis of Article 21 TFEU. In particular, the national court was asked to determine whether those children have, on their own or through their mother, sufficient resources and comprehensive sickness insurance cover, within the meaning of Article 7(1)(b) of Directive 2004/38. Failing this, the Court affirmed that Article 21 TFEU should be interpreted as meaning that it does not preclude Mrs Alokpa from being refused a right of residence in Luxembourg.

In relation to Article 20 TFEU, the Court has held that “*there are very specific situations in which, despite the fact that the secondary law on the right of residence of third-country nationals does not apply and the Union citizen concerned has not made use of his freedom of movement, a right of residence cannot, exceptionally, without undermining the effectiveness of the Union citizenship that citizen enjoys, be refused to a TCN who is a family member of his if, as a consequence of refusal, that citizen would be obliged in practice to leave the territory of the European Union altogether, thus denying him the genuine enjoyment of the substance of the rights conferred by virtue of the status of citizen of the European Union*”.<sup>65</sup>

As stated by Advocate-General Mengozzi in his Opinion, Mrs Alokpa, the mother and sole carer of those children since their birth, could have the benefit of a derived right to reside in France.<sup>66</sup> Thus, although the CJEU considered in prin-

<sup>62</sup> See, to that effect, concerning European Union law instruments pre-dating that directive, Case C-200/02 Zhu and Chen [2004] ECR I-9925, [28] and [30].

<sup>63</sup> See Zhu and Chen, paragraph 45, and Iida [69].

<sup>64</sup> See, to that effect, Zhu and Chen, [46] and [47].

<sup>65</sup> See Alokpa [32] reporting Iida [71], and Ymeraga and Ymeraga-Tafarshiku, [36].

<sup>66</sup> Opinion of the AG Mengozzi on the Case C-86/12 Adzo Domenyo Alokpa Jarel Moudoulou delivered on 21 March 2013 at paras [55] and [56].

ciple, that the refusal by the Luxembourg authorities to grant Mrs Alokpa a right of residence could not result in her children being obliged to leave the territory of the European Union altogether, it left the decision to the referring court. It was for the national court to determine whether, in the light of the facts, a right of residence might “*nevertheless be granted to her, exceptionally – if the effectiveness of the Union citizenship that her children enjoy is not to be undermined – in light of the fact that, as a consequence of such a refusal, those children would find themselves obliged in practice to leave the territory of the European Union altogether, thus denying them the genuine enjoyment of the substance of the rights conferred by virtue of that status*”.<sup>67</sup>

In conclusion, the CJEU reiterated the Zambrano test but concluded that “*Articles 20 TFEU and 21 TFEU must be interpreted as meaning that they do not preclude a Member State from refusing to allow a third-country national to reside in its territory, where that third-country national has sole responsibility for her minor children who are citizens of the European Union, and who have resided with her in that Member State since their birth, without possessing the nationality of that Member State and making use of their right to freedom of movement, in so far as those Union citizens do not satisfy the conditions set out in Directive 2004/38 or such a refusal does not deprive those citizens of effective enjoyment of the substance of the rights conferred by virtue of the status of European Union citizenship, a matter which is to be determined by the referring court*”.<sup>68</sup>

This case raises two main concerns. The first anomaly is that the Union national has to be exercising Treaty rights in order to share with his/her family members the right of residence in a member state, which is not the country of his or her nationality. The exercise of Treaty rights means pursuing an economic activity or being a self-sufficient person (i.e. having comprehensive medical insurance and sufficient funds to avoid becoming a burden on the system). Thus, the child, who is unlikely to be economically active, has to be self-sufficient to engage Treaty rights, which means that his/her carer needs to be financially independent. It is indeed very difficult in the Alokpa case, as the mother has no work permit and therefore cannot find employment in the host state.

The second difficulty, rather surprisingly, comes from the narrow interpretation of the definition of a family member contained in the Directive, which excludes parents of minor children. Alokpa explicitly confirms such an exclusion, unless the parents are dependent on the child financially, a situation highly unlikely, in the case of minor children.

Nearly ten years ago, the CJEU in the case of Chen C-200/02 ruled that self-sufficient Union national children have the right to be accompanied by their third-country national parents. In the meantime the Charter of Fundamental Rights has been introduced and many changes to the architecture of Europe are ongoing with

<sup>67</sup> Alokpa [33].

<sup>68</sup> Alokpa [36].



the future EU accession to the ECHR. Yet, in the *Alokpa* case the interpretation of Articles 20 and 21 TFEU by the CJEU was not undertaken in the light of fundamental rights. The Court was primarily concerned with the satisfaction of the conditions laid down by secondary legislation, in particular Directive 2004/38/EC, and a human rights-analysis of the right to family life in the host country was not undertaken. The Court has merely applied the *Zambrano* test and left its application to the national court to decide on the basis of the facts of the case.

## CONCLUSIONS

The interaction between citizenship, migration and human rights plays a crucial role for the process of European integration. The institutional overlap between the EU and the Council of Europe in the field of fundamental rights raises concerns about the relationship between the two European legal systems, the traditional autonomy and integrity of nation states and the role of the judiciary.

The introduction of the Lisbon Treaty within the EU has marked a new era of integration based on human rights in Europe.<sup>69</sup> The Charter of Fundamental Rights and Freedoms is now a legally binding human rights catalogue and the EU’s Accession to the ECHR is forthcoming. The Convention constitutes a minimum standard of protection in Europe, but a more extensive safeguard is now guaranteed by the Charter. Thus, Member States are committed in an unprecedented way to uphold respect for human rights through the binding effect of the Charter, which applies in situations falling within the scope of EU law.<sup>70</sup>

Although the new architecture of Europe on human rights protection is destined to shape, even more than before, the citizenship and migration dilemma, EU states still tend to control unwanted migration through restrictive policies and laws, often limiting individual rights. Consequently, the Court of Justice follows a very cautious approach to the topic, carefully balancing Member States’ interests at stake with individual rights. The dominant concept is still Union citizenship and very little is left to the human dimension beyond the citizenship label.

A broader discussion about the place of human rights protection within Europe should be paramount. Advocate-General Sharpston, in her Opinion to the *Zambrano* case, welcomed a new era where the EU citizenship’s philosophy would have the ability to reverse the relationship between the refugee (TCN) and the citizen.<sup>71</sup>

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<sup>69</sup> Morano-Foadi, S. and Andreadakis, S. (2011) Reflections on the Architecture of the EU after the Treaty of Lisbon: the European judicial approach to fundamental rights in Special Issue edited by Sonia Morano-Foadi and Francesco Duina, entitled “The Institutionalisation of Regional Trade Agreements Worldwide: New Dynamics and Future Perspectives”, *European Law Journal*, Vol. 17, No. 5, September 2011, 595–610.

<sup>70</sup> *Ibid.*

<sup>71</sup> Opinion of the Advocate General Sharpston in the Case *Zambrano* CELEX:62009CC0034.

Thus, applying EU Citizenship provisions to Zambrano would not exclude the refugee, but bring the refugee in; the interpretation of the concept of citizenship in Zambrano would be “inclusive” rather than “exclusive” as the caveat for combating social exclusion and achieving integration in Europe.<sup>72</sup>

In the light of the ECHR and the Charter, judges’ balancing exercise between human rights and legitimate state interests is crucial for the future of social cohesion within the EU. Free movement provisions for citizens confer more powerful rights than any EU provisions on migration law or domestic immigration law. Union citizenship is the fundamental status of a national of a MS, and thus reflects the motivation “to lay down the foundation for an ever closer union amongst the peoples of Europe”.<sup>73</sup> This is justified by the particular structure of Europe.

However, such a system is not sustainable, particularly in view of the EU’s accession to the ECHR. The debate underpinning the nexus between human rights and immigration law concerns, above all, the scope of the ECHR’s application at national level. Non-EU citizens’ rights to enter or remain in a Member State are not as such guaranteed by the Convention. Though, immigration control has to be exercised consistently with Convention’s obligations. Thus, the expulsion of a person from a State where members of his/her family were living might raise an issue under Article 8 ECHR.<sup>74</sup> The case law in relation to Zambrano and following decisions, including the most recent case, *Alokpa*, have been introduced in line with this logic. However, the CJEU has constantly ignored the human rights dimension in this area, despite reference to the Charter being expressly raised by the referring national courts. In fact in *Alokpa*, both the Advocate-General Mengozzi and the CJEU decided the case referring to citizenship Treaty provisions and secondary legislation, ignoring any reference to the Charter or the ECHR, despite affirming that their interpretation was beyond what was required by the national judge and widely reflecting on EU law.

Thus, to conclude it appears appropriate to question the role played by human rights within Europe after the Lisbon Treaty and the EU’s accession to the ECHR. Free movement provisions for citizens confer more powerful rights than any EU provisions on migration law or domestic immigration law<sup>75</sup>. Is such a system still

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<sup>72</sup> *Ibid.*

<sup>73</sup> THYM, D. *Op. cit.* at footnote 37 at p. 724.

<sup>74</sup> *Abdulaziz, Cabales And Balkandali v UK* (1985) 7 EHRR 471.

<sup>75</sup> On 20th May 2014, the Advocate-General Szpunar issued an opinion on the pending case *McCarthy* 2014 (Case C-202/13). This is a different case from the *McCarthy* case mentioned at page 311 of the present paper, but it also involves a dual national of the UK and Ireland residing in Spain, with his third-country national (Colombian) wife and their joint child (also a dual citizen of the UK and Ireland). This case falls within the scope of EU law, as Mr. McCarthy is a British & Irish citizen living in Spain with his family. However, the case does not concern his position in Spain, but his visits to the UK, where he is a citizen. Each time the family seeks to travel to the UK for short visits, they have to obtain a ‘family visa’ for Mr. McCarthy’s wife. This entails a trip within Spain from their residence in Marbella to the British consulate. The Opinion raises important questions about the sco-

sustainable and will the CJEU keep ignoring the human rights dimension, despite the referring national courts making express reference to the Charter?

**ABSTRACT:** The “matrioska” doll set contains a number of nested dolls. Its peculiarity is the rigid hierarchy between them: the smallest dolls cannot be pulled out first from the set without moving the biggest ones. This visual idea could be applied to the paradoxes of nested EU citizenship and Third Country Nationals’ (TCNs) stratification of rights and entitlements within the Union. EU law should be able to guarantee a platform of common rights for all, citizens and TCNs. Legal residence rather than citizenship should be the basis to access entitlements and social goods. By contrast, differential treatment between citizens and legally-residing TCNs is still the rule, which contradicts the aim of guaranteeing social cohesion and human rights’ protection. This paper discusses the law applicable to citizens and migrants, reflecting on CJEU case law decided after the introduction of the Treaty of Lisbon.

**KEY WORDS:** Citizenship, Migration, Human Rights, Third Country Nationals and EU Citizens.

**SUMARIO:** El sistema de la muñeca “matrioska” contiene una serie de muñecas anidadas. Su peculiaridad es la jerarquía rígida entre ellas: no se pueden extraer las muñecas más pequeñas sin sacar primero las más grandes. Esta imagen visual puede aplicarse a las paradojas de la estratificación de los derechos de la ciudadanía de la Unión Europea y de los nacionales de terceros Estados. El Derecho de la Unión Europea debería ser capaz de garantizar una base de derechos comunes para todos, ciudadanos europeos y ciudadanos de terceros Estados. La residencia legal, en lugar de la ciudadanía, debería erigirse en el fundamento para el disfrute de los derechos y servicios sociales. Por el contrario, la regla actual es el trato diferenciado entre los ciudadanos europeos y los ciudadanos de terceros Estados, aunque residan legalmente en la Unión, lo cual contradice el objetivo de garantizar la cohesión social y la protección de los derechos humanos. Este artículo analiza el Derecho aplicable a los ciudadanos europeos y a los inmigrantes, reflexionando sobre la jurisprudencia de los Tribunales europeos acaecida tras la entrada en vigor del Tratado de Lisboa.

**PALABRAS CLAVE:** Ciudadanía – Inmigración – Derechos Humanos – Nacionales de terceros Estados.

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pe of the EU’s free movement law rules and the relationship between those rules and EU or national rules on border controls and visas. For further details see OPINION OF ADVOCATE GENERAL SZPUNAR delivered on 20 May 2014 Case C-202/13 Sean Ambrose McCarthy, Helena Patricia McCarthy Rodriguez, Natasha Caley McCarthy Rodriguez, v Secretary of State for the Home Department at <http://curia.europa.eu/>

