



## SPS - LAW Joint Seminar 2<sup>nd</sup> term 2012-2013

### *Transnational Citizenship: Theories, Laws and Practices*

Organised by Rainer Bauböck & Claire Kilpatrick

Tuesday 11:00 – 13:00

Cappella, Villa Schifanoia

For LAW please register with: [Eleonora.Masella@eui.eu](mailto:Eleonora.Masella@eui.eu)

For SPS please register with: [Monika.Rzemieniecka@EUI.eu](mailto:Monika.Rzemieniecka@EUI.eu)

#### **Overview**

This seminar looks at how theories of citizenship, often based on national developments, can be applied to new legal statuses, rights and duties and social practices cutting across international borders. The overall aim of the seminar is to ask (a) what sense and content the term citizenship has outside a nationally-defined boundary (b) what relationships exist between nationally-defined citizenship and new transnational manifestations of membership. The seminar starts by introducing key theories of citizenship. It examines the acquisition and loss of national citizenship and how nationally bounded citizenship is destabilised/enriched through migration practices and the addition of EU citizenship. It looks then at candidate examples of transnational citizenship in the civil, political, social and participatory domains, mainly drawn from EU developments. It explores links and differences between multi-level and transnational citizenship. The seminar is suitable for social and political scientists and lawyers. Notes on finding and reading Court of Justice cases can be found at the end of this syllabus.

Participants are expected:

- to read all the basic seminar texts
- to prepare a reaction paragraph on the readings for the week and send it to the research assistant helping with seminars ([conor.talbot@eui.eu](mailto:conor.talbot@eui.eu)) by Monday at noon
- to read all reaction paragraphs and engage actively in discussions in class

SPS researchers who wish to write a term paper for this seminar must send an outline before 12 March 2013. The full term paper has to be submitted **by 31 May 2013**.

Auditing participants should register with the seminar administrator and have to do all mandatory reading and send a reaction paragraph for the weeks in which they attend the seminar.

#### **Preparatory meeting, 8 January 10:00 – 10:30 Cappella**

In this meeting we will discuss the format and requirements, including the reading duties and reaction paragraphs for week 1 and form the three working groups for week 2. All registered participants need to participate in the preparatory meeting.

**15 January**

**Week 1: Introducing Transnational Citizenship**

The seminar instructors will give introductory overviews of theories of citizenship and how they apply to transnational contexts.

**Readings:**

Walzer, M. (1983). *Spheres of Justice. A Defense of Pluralism and Equality*. New York, Basic Books, [pp. 35-42, 52-63](#).

Marshall, T. H. (1949/1965). *Citizenship and Social Class. Class, Citizenship, and Social Development. Essays by T.H. Marshall*. New York, Anchor Books, [pp. 8- 17](#).

Bauböck, R. (2001). *Recombinant Citizenship. Inclusions and Exclusions in European Societies*. M. Kohli and A. Woodward. London, Routledge, pp. 38-58.

**Further reading:**

Kymlicka, W. (2002). *Contemporary Political Philosophy*. Oxford, Oxford University Press, 2<sup>nd</sup> edition, [chap. 7, pp. 284-336](#).

**22 January**

**Week 2: National Citizenship**

This meeting will consider citizenship as nationality, i.e. as a legal status linking individuals to particular states. We will compare the basic rules that regulate acquisition and loss of this status and examine recent trends. The *Nottebohm* case will be discussed with regard to the scope of application of a “genuine link” criterion for citizenship attribution. In the preparatory meeting on 8 January three groups will be formed, each of which writes a short comparative report (of no more than 1500 words) on a specific topic based on comparing citizenship laws of several countries. The groups are free to select countries for their reports (they can choose those that the participants know best).

The material for these reports is available at [www.eudo-citizenship.eu](http://www.eudo-citizenship.eu) (nationality laws, modes of acquisition and loss, country reports, comparative reports, citizenship indicators will be the most useful resources).

- (1) Birthright citizenship: compare mixes between *ius sanguinis* and *ius soli* in different citizenship laws
- (2) Naturalisation: compare conditions for ordinary and facilitated admission.

(3) Multiple citizenship and loss of citizenship: policy changes driven by international law, individual choice or ethnic and security interests of states?

**Readings:**

[Maarten Vink and Rainer Bauböck \(forthcoming 2013\)](#) Citizenship configurations: analysing the multiple purposes of citizenship laws in 36 European states

Case law: *Nottebohm* ICJ 1955, read summary of the judgment at <http://www.icj-cij.org/docket/files/18/2676.pdf>

**29 January**

**Week 3: Transnational Citizenship Statuses: Denizenship, External Citizenship, Dual Citizenship**

National citizenship cannot be contained within nation-state territories. Migration creates both non-resident citizens and non-citizen residents. We will consider in this week how contemporary democracies have responded by creating new statuses of quasi-citizenship for long-term resident foreigners, while sending countries have simultaneously strengthened their extraterritorial citizenship and both have, for quite different reasons, increasingly tolerated dual citizenship.

**Readings:**

Spiro, P. (2009). "Dual citizenship as human right." International Journal of Constitutional Law **8**(11): 111-130.

Bauböck, R. (2009). "The Rights and Duties of External Citizenship." Citizenship Studies **13**(5): 475-499.

Walker, N. (2010) Denizenship and the Deterritorialization of the EU, EUI LAW Working paper 2008/08. <http://cadmus.eui.eu/handle/1814/8082>

**Further reading:**

Waterbury, M. A. (2010). Bridging the divide: Towards a comparative framework for understanding kin state and migrant-sending state diaspora politics. Diaspora and Transnationalism. Concepts, Theories and Methods. R. Bauböck and T. Faist. Amsterdam, Amsterdam University Press: 131-148.

Rubio-Marín, R. (2006). "External Citizenship and the Nation-State: Democratic Challenges and Prudential Consideration." New York University Law Review **81**(1): 117-147.

**5 February**

**Week 4: European Union Citizenship**

This seminar and the next examine the basic architecture of EU citizenship: its evolution, the key characteristics of its definition in the EU Treaties such as its derivation from Member State nationality and its relationship to the personal economic freedoms. By looking at the 'citizenship' provisions in the Treaty on the

Functioning of the European Union (TFEU), Articles 18-24, we aim to build a clear picture of what these provisions add to existing personal rights and freedoms provided by EU law.

This week, we especially focus on the nationality nexus of EU citizenship as well as the question of whether EU citizenship is engaged with no or a minimal cross-border element (this is also called the 'wholly internal' question).

A further key question will be to develop what we mean by transnational citizenship by considering in what ways EU citizenship can be considered to be a good example of transnational citizenship. This is a theme we will tease out and develop further in subsequent weeks.

**Readings:**

Articles 18-24 TFEU

Directive 2004/38/EC (the Citizens' Rights Directive)

P. Craig and G. de Búrca, *EU Law: Text, Cases and Materials*. Ch 23 *Citizenship of the European Union*, 819-853 (OUP, 2011) Note pp 848-850 are also relevant to Seminar 6.

The nationality nexus will be explored by looking at:

Case C-135/08, *Janko Rottman v Freistaat Bayern* Judgment of the Court (Grand Chamber) of 2 March 2010.

The cross-border requirements of EU citizenship will be explored by looking at:

Case C-34/09 *Gerardo Ruiz Zambrano v Office national de l'emploi (ONEM)*, Judgment of the Court (Grand Chamber) of 8 March 2011.

Case C-434/09 *Shirley McCarthy v Secretary of State for the Home Department*, Judgment of the Court (Third Chamber) of 5 May 2011.

Case C-256/11 *Dereci*, Judgment of the Court (Grand Chamber) of 15 November 2011.

### **Further readings:**

EUDO Citizenship Forum Debate: <http://eudo-citizenship.eu/commentaries/citizenship-forum/254-has-the-european-court-of-justice-challenged-member-state-sovereignty-in-nationality-law>

De Witte, F, 'The End of EU Citizenship and the Means of Non-Discrimination', *Maastricht Journal of European and Comparative Law*, 2011, 18(1), p. 86.

Kochenov, D., Case C-135/08, *Janko Rottmann v. Freistaat Bayern*, Judgment of the Court (Grand Chamber) of 2 March 2010, not yet reported, *Common Market Law Review* 47: 1831–1846, 2010.

Olsen, E 'The Origins of European Citizenship in the First Two Decades of European Integration' 15 *JEEP* (2008) 40.

van Elsuwege, P. & Adam, S., Citizenship rights and the federal balance between the European Union and its Member States: Comment on *Dereci*, *E.L. Rev.* 2012, 37(2), 176-190

## **12 February**

### **Week 5: The EU as an Example of Transnational Civil Citizenship: The Rights to Move and Reside and Whether EU Citizenship Transcends Market Citizenship**

This week we explore further two central issues raised by EU citizenship. The first is the extent to which it represents an example of transnational civil citizenship in its protection of rights to move and reside, including the new right of permanent residence introduced by Directive 2004/38/EC and within the context of an Eastern enlargement which produced large numbers of movers. The second is the extent to which EU citizenship represents a definitive step beyond protecting the economically active and self-sufficient and how, in that event, we should evaluate such a step.

#### ***I - Rights to Move and Reside***

##### **Case-law**

Case C-83/11 *Rahman*, Judgment of the Court (Grand Chamber) of 5 September 2012.

Case C-364/10 *Hungary v Slovakia*, Judgment of the Court (Grand Chamber) of 16 October 2012.

Case C-40/11 *Iida*, Judgment of the Court (Third Chamber) of 8 November 2012.

Cases C-424/10 and C-425/10 *Ziolkowski and Szeja and Others*, Judgment of the Court (Grand Chamber) of 21 December 2011.

#### ***II - Beyond Market Citizenship?***

N. Nic Shuibhne, 'The resilience of EU market citizenship' 47 *Common Market Law Review* (2010) pp. 1597–1628.

F. Wollenschläger, 'A New Fundamental Freedom Beyond Market Integration' 17 *European Law Journal* (2011) 1. Extracts pp.30-34.

### **Further reading:**

Everson, M, 'The Legacy of the Market Citizen' in J. Shaw and G. More (eds) *New Legal Dynamics of European Union* (OUP, 1995) 73-90

Shaw, J (2011). 'Citizenship: Contrasting Dynamics at the Interface of Integration and Constitutionalism' in P. Craig and G. de Búrca (eds) *The Evolution of EU Law* (2<sup>nd</sup> edn)

### **19 February**

#### **Week 6: Transnational Political Citizenship: Electoral Rights for Non-Citizens and Non-Residents**

The right to vote and to stand as candidate in political elections is traditionally considered as the core of democratic citizenship. This is so because democratic legitimacy is provided through legislative representation of citizens and electoral accountability of governments. The traditional view is that only citizens residing in the territory enjoy electoral rights. In Europe we find, however, two trends towards an increasing transnationalisation of political rights: voting rights for non-nationals (EU citizens but in several states also for third country nationals) and voting rights for citizens residing permanently abroad.

In this week we will discuss these trends from constitutional, comparative and normative perspectives.

#### **Readings:**

Bundesverfassungsgericht, Urteil vom 31.10.1990 – 2 BvF 2/89, 2 BvF 6/89 – (BVerfGE 83, 37)

Benhabib, S. (2004). The Rights of Others. Cambridge, UK, Cambridge University Press, pp. 171-183, 202-212.

López-Guerra, C. (2005). "Should Expatriates Vote?" The Journal of Political Philosophy **13**(2): 216-234.

Owen, D. (2010). Resident Aliens, Non-resident Citizens and Voting Rights. Citizenship Acquisition and National Belonging. P. e. a. Cole. London, Palgrave: 52-73.

#### **Further reading:**

Shaw, J. (2007). The Transformation of Citizenship in the European Union. Electoral Rights and the Restructuring of Political Space. Cambridge, Cambridge University Press, pp. 48-87.

Bauböck, R. (2007). "Stakeholder Citizenship and Transnational Political Participation: A Normative Evaluation of External Voting " Fordham Law Review **75**(5): 2393-2447. (Read pp. 2393-2423)

Rodríguez, C. M., Noncitizen voting and the extraconstitutional construction of the polity, I-CON, Volume 8, Number 1, January 2010, pp. 30-49

### **26 February**

#### **Week 7: Criminality and (EU) Citizenship**

This seminar aims to examine citizenship through the lens of criminality in two ways. First, it looks at the interaction between the status of criminal and the status of citizen. Just as citizenship has often been defined along a national/foreigner axis, so too has it often been defined along a less well-explored but highly interesting criminal/non-criminal axis whereby criminals are deemed lesser citizens on a temporary or permanent basis. Second, it looks at how this axis plays out in a transnational context by examining how EU citizenship applies to EU criminals and criminal laws.

#### **Case-law:**

Case C-145/09 *Land Baden-Württemberg v Panagiotis Tsakouridis*, Judgment of the Court (Grand Chamber) of 23 November 2010.

Case C-348/09 *P.I. v Oberbürgermeisterin der Stadt Remscheid*, Judgment of the Court (Grand Chamber) of 22 May 2012.

Case C-123/08 *Wolzenburg* [2009] ECR I-9621

## 5 March

### Week 8: Transnational Social Citizenship: Labour and Welfare

The goal of this seminar is to consider the different ways in which transnational models of citizenship can be used to think about labour and welfare dilemmas. These include legal models for access to labour and social *rights*, such as education, health, housing and social welfare when outside one's own state and determination of when and how those rights should be restricted. This rights-based model is the one most fully reflected in EU practice and writings. However, alternatives exist. Transnational social citizenship can include ways of designing and organising *institutional spaces* for cross-border movement and social provision. A third option is that transnational social citizenship provides a vocabulary for considering how to resolve cross-border labour and social conflicts.

#### **1. Legal Rights-based model for transnational social citizenship:**

Think back on the reading and the cases we have looked at. It is clear that EU law, whether through an extensive reading of the free movement of persons' provisions (eg as a worker or a service-recipient) or through the citizenship provisions, has delivered access to labour markets and working rights, education, health, housing and a wide range of social welfare measures and benefits. What is important is to think about this model of delivering social citizenship. What are its main characteristics?

#### **2. Designing and organising institutional transnational social citizenship:**

J. Gordon, 'Transnational Labour Citizenship', 80 *Southern Californian Law Review* (2007), 503-5, 510-14, 524-5, 561-587.

This focuses on examining different citizenship models to consider how they can deal with work-related migrant issues and tensions, especially between US-Mexico. Consider how the model she suggests contrasts with the citizenship models applied to (a) EU workers (b) TCNs in the EU.

#### **3. Providing a principled vocabulary to resolve cross-border labour and social conflicts:**

F. Strumia, 'Remedying the Inequalities of Economic Citizenship in Europe: Cohesion Policy and the Negative Right to Move', 17 *European Law Journal* (2011)725-743

In recent years the labour and social reputation of the EU has been put under serious pressure by two different developments: cross-border social conflicts and their resolution by the Court of Justice, and the social crisis which has emerged from the EU's response to the banking crisis. Read the extracts summarising these two conflicts and consider:

(a) the extent to which EU citizenship or associated vocabulary has actually been used in resolving these conflicts

(b) the extent to which transnational labour/social citizenship could be used and how it might shape the debate on these two issues.

## Date tbc

### Week 9: To be decided according to group interest

We will decide on the topic for this week during the seminar. Possible topics might be: Social citizenship and social justice in the EU

Citizenship and third country nationals

## **Date tbc**

### **Week 10: Researcher presentations and reflections**

In the final meeting all researchers will make presentations that link the topics of the seminar to their research interests or dissertation themes. We will invite EUI fellows and visitors to attend this seminar and provide feedback. Depending on the number of participants we may split the meeting into parallel groups.

### **Finding and Reading a Court of Justice case (our thanks to Hanna Eklund, 2<sup>nd</sup> Year LAW for preparing this)**

#### *1. How to search for a case decided by the Court of Justice of the European Union (CJEU)?*

Go to curia .com, which is the CJEU's official database. Use their advanced search tool (click on the little reading-glass). Firstly, you can limit your search to cases already decided by the Court of Justice by ticking the "Cases closed"-box and you can limit your search even further by ticking the boxes in the "Document-list".

If you want to look at cases concerning a specific Member State, fill in the name of that state in the "Name of the Parties". If you want to look at, for instance, cases concerning citizenship, choose "Citizenship of the Union" in the "Subject-matter-list" or just write what you are searching for in "Text." If you want to look at cases from a specific year you can freely choose the time span of your search. Of course, you can combine all of the above.

When you click on the search tab you will get a list of the relevant documents in chronological order and available in most European languages.

#### *2. Different Court Actors and Different Court Formations*

The Court of Justice of the European Union consists of the Court of Justice, Advocate Generals, The General Court and specialized courts (see art. 19 TEU).

The Court of Justice is the main legal body with jurisdiction to interpret the Treaties. One of its most important functions is to give preliminary rulings, which means answering questions (on the interpretations of the Treaties and secondary law) asked by national courts of the different Member States.

When you look at a ruling for the first time start by looking at whether the Court sat in Full Court, Grand Chamber or Chamber.

The Court of Justice sits in full court when the case is regarded as exceptionally important or where the subject matter warrants, such as an action for dismissal of a commissioner. It sits in Grand Chamber (normally thirteen judges), when a case is particularly complex or important or when a Member State, party to the proceedings, so requests. Most frequent however, the Court sits in Chamber, which normally means three or five judges.

When you search for a case or a subject matter on Curia you will find that many of the Court of Justice's rulings are preceded by an Advocate General's opinion on the same case.

An AG's opinion is not required in every case, but normally used in the most important or complex cases. The opinion is given before the Court makes its decisions and it recommends how the case should be decided. It is important to know that the opinion does not bind the Court but it is very influential and quite often followed. It is generally a good idea to read the AG's opinion because its accessible style will help you understand the relevant issues of the case. The Court of Justice's judgments, on the contrary, often have an opaque style that can be difficult to read.

On that point, bear in mind that the Court of Justice gives a single ruling of all judges hearing the case. In other words, there are no dissenting opinions – everyone must agree on the outcome of the case. Especially in cases concerning difficult issues this might sometimes result in ambiguous reasoning.