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# New Vision of 'Social Europe': Renationalising the Integration Process in the Internal Market of the European Union

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***Abstract*—**The article deals with one of the most significant issues concerning the functioning of the internal market of the European Union – the free movement of workers and free movement of persons. The purpose is to identify the political and legal effects of the "renationalisation process" on the EU and its Member States. The concept of renationalisation is expressed through Member States' aim to verify the relationship with the EU. The tendency is more visible in the public opinion of several MS's of the 'EU core' and may be confirmed by the changes applied by the regulatory body. The thesis for the article is the return of renationalisation tendencies in the area of the Single Market, which is supported by, among others, an open criticism of the foundations of EU integration or considerations on withdrawal from the EU by some MS. This analysis will focus primarily on the effects that renationalisation may have on the free movement of persons. The free movement of persons is one of the key issues for the development of the European integration. It is still subject to theoretical reflections, new doubts and practical issues. The latest developments in politics, law and jurisprudence demonstrate the need to reflect on the attempts to redefine certain principles regarding migrant EU workers and their protection against nationality-based discrimination.

***Keywords*—**European law, European Union, common market, free movement of workers, posting of workers, case law.

## I. Introduction

At the beginning of the second decade of the 21st century we achieved a critical mass as regards EU integration processes. Competitive economy ceased to be the EU's flagship. For over a decade it has been "replaced" by EU's hallmark "pro-citizen" projects based on the protection of the EU's high standards of human rights. However, these projects collide to a varying degree with economic freedoms (especially the freedom of services) and interests of (some) Member States and, consequently, interfere with EU's market effectiveness. Such discussions are gaining momentum now and the aim of this study is to analyse two examples of issues related, i.e. the phenomenon of social dumping in relation to posting of workers and the influence of the so-called benefit tourism on the freedom of movement of EU citizens. The most important right granted to EU citizens by the Treaties of the EU is the right to freedom of movement and the associated prohibition of discrimination on the grounds of national citizenship. Consequently, it is necessary to balance the protection of employees and labour markets in certain states on the one hand and entrepreneurs that post workers on the other.

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## II. Free Movement of Workers and Free Movement of Persons: general Remarks

The free movement of workers in the EU internal market is based on the principle of non-discrimination (the requirement of equal, i.e. national treatment) of workers of the Member States on the grounds of their nationality as regards employment, remuneration and other conditions of work. The free movement involves the right to seek employment, move freely within the territory of Member States and stay in a Member State for the purpose of employment and to remain in the territory of a Member State after having been employed in that state (Article 45 TFEU). In a wider context of secondary legislation, it can be assumed that the free movement constitutes EU citizens' right to employment and residence (e.g. the right to settle) and the right to enjoy the entitlements related to residence and employment (such as professional training as well as social and tax benefits) in any Member State on equal footing with nationals of that Member State. This freedom goes as far as to give migrant workers the possibility to be joined by family members or other related persons, also from third countries. This is expressed by the right of family members to move, reside and enjoy other related entitlements in the host state.

The free movement of workers is part of the free movement of persons for economic purposes. In addition to workers, it covers also entrepreneurs, including self-employed persons and persons setting up and running enterprises, as well as providers and recipients of services. In wider terms, this freedom constitutes a particular aspect of the free movement of European Union citizens and their families as guaranteed particularly under Article 18, Article 20(2) (a) and Article 21 TFEU and Directive 2004/38 [1]. In contrast to previous secondary legislation which regulated the right to move and reside separately for each category of persons, this directive defines their status jointly, providing unified principles of the free movement of persons. This, however, does not mean that the rights of all EU citizens in this area have been put on an equal footing. Those who travel for the purpose of carrying

out a paid activity, and especially workers and family members of a worker, are still granted a more privileged status.

The Treaty right of EU citizens to move freely (Article 21 TFUE) acts as lex generalis as regards the free movement of workers (Article 45 TFEU) and other market freedoms. This view is also shared by the CJEU, which found that the general right of every European Union citizen to move and reside freely within the territory of Member States provided for in Article 21 TFEU is made more specific in Article 45 TFEU – as regards the free movement of workers, and in Article 49 TFEU – as regards the freedom of establishment. The links indicated there make it possible for the Court of Justice to extend the entitlements of economically active individuals, in particular job seekers, by referring to European Union citizenship. Of the importance here is the access to social rights on a national treatment basis.

## III. The Renationalistaion of European Integration – The Case of Posting of Workers in the EU

The issue of renationalization of European integrations process is manifested by the will of some of the Member States to verify their relations with the European Union. In the age of the financial crisis in (and of) the EU and in relation to the large migration of the population, at the international level emerged strong social and political criticism of the integration process and some Member States considered even withdrawal from the EU. In those States requirements of the strong control of the domestic parliaments over the EU legislation and increase of the Member States competences in the field of some EU policies are more and more popular. The objective of the article is to determine the legal effects of the above mentioned processes within the free movements of the Common Market, mainly within the free movement of workers.

The migrant workers in the EU internal market are still perceived in the host Member States as having a status closer to third-country nationals (aliens) than national workers. This is of essential importance as EU citizenship is defined through the rights deriving from the status related to it and it is these rights that are the essence of EU citizenship. It appears relevant to present the scope of posting of workers within the EU. Posting is therefore not a new phenomenon but an element of internationalisation and enhanced crossborder activities in the global context, as well as in the context of cross-border markets. Several factors have further contributed to the debate: increase in the number of postings and the increase evidence of unfair competition [2].

Posting of workers plays a significant role in the internal market, particularly with respect to transnational provision of services. Any activities aimed at reducing the possibility of exercising this form of economic activity per se undermine the foundations of the European integration based on the freedoms of the internal market. On the other hand, significant wage disparities between individual Member States result in the so-called social dumping. Undoubtedly, pay gaps influence the conditions of competition between companies from different Member States. They give advantage in terms of labour costs to companies that post workers from cheaper countries over local companies based in countries where the service is provided. The evaluation of social dumping is not clear-cut as, on the one hand, it constitutes a regular part of the functioning of the free market, but, at the same time, it also poses a threat that needs to be addressed. There has been a growth in 'creative', abusive and fraudulent practices, such as letter-box companies, bogus self-employment and numerous other forms of unacceptable practice, which involve the exploitation of posted workers [3].

Questions have been raised as to whether the 1996 Posting of Workers Directive (PWD) [4] provides a sufficient legal instrument for ensuring a level playing field in the free cross-border provision of services within the EU, whilst also delivering a sufficient foundation for the social protection of posted workers, in accordance with the EU Treaty. The basic EU legal act concerning posting of workers is Directive 96/71, which provides for three types of posting: direct services provided by an undertaking under a contract, posting workers to an establishment or an undertaking owned by the same group, and posting workers through a temporary work agency established in another member state.

Most importantly, the Directive defines the scope of regulations of the host state that an undertaking which posts workers has to comply with. Pursuant to Article 3(1) of Directive 96/71, member states shall guarantee workers posted to their territory the terms and conditions of employment covering, among others: maximum work periods and minimum rest periods, minimum rates of pay, including overtime rates, health, safety and hygiene at work and non-discrimination, particularly equality of treatment between men and women. This provision applies where the matters it covers are laid down in the Member State where the work is carried out, i.e. if this Member State has adopted laws, regulations and administrative provisions, as well as collective agreements. In the above sense, arbitration awards are also considered a kind of regulation if they have been declared universally applicable in a given Member State, but only insofar as they concern the activities referred to in the Annex of the Directive (currently the construction sector only) [5].

Over a long time there has been a general call for a change to the rules concerning posting of workers in the European Union so as to increase the scope of national level regulations of the host state that posting undertakings should comply with, which is supported by the necessity to enhance the protection of workers' rights. This issue will be analysed at a later stage.

## IV. The Case Law of the Court of Justice of the European Union

Protection of employees has also been addressed in the case-law of the Court of Justice of the European Union (CJEU). Above all, it seems the CJEU attaches great importance to this issue. In particular, it should be noted that the requirement of the protection of workers might justify a restriction on the free movement of services on condition that it complies with the principle of proportionality. The Court

has indicated that the European Union has not only an economic but also a social purpose. In other words, a balance needs to be struck between the rights guaranteed by the Treaty freedoms and the goals of social policy (for example, in cases C-438/05 Viking Line and C-341/05 Laval). The Court has also allowed for justifying restrictions based on the desire to prevent social dumping, for example in case C-244/04 Commission v Germany. On the other hand, in case C-549/13 Bundesdruckerei, the Court has observed the need to protect undertakings established in other member states from regulations that would undermine their competitive advantage resulting from the existing differences in the rates of pay.

The most important element of workers' protection is the right to a minimum wage. According to the CJEU, this should be ensured at the level of EU law. As a result, in case C-60/03 Wolff, the CJEU has concluded that the national regulations which lay down that an undertaking which appoints another undertaking to provide building services is liable as a guarantor for the obligations of that undertaking (or its subcontractor) concerning payment of the minimum wage are in line with EU law [6]. Directive 96/71, however, does not contain a definition of a minimum wage, which means that the relevant provisions of member states apply. This creates serious practical problems. In its case-law, the CJEU has only defined certain elements of the minimum wage (cf. C-341/02 Commission v Germany, C-522/12 Isb and C-396/13 Elektrobudowa. Only the elements of remuneration which do not alter the relationship between the services provided by the worker and the consideration which that worker receives in return may be taken into account for the purpose of calculating the minimum wage. At the same time, EU law allows for calculating the minimum wage in different ways, for example on an hourly basis or on the basis of piecework, following the categorisation of employees into pay groups, as provided for in relevant collective agreements in force in the host Member State, the condition being that the calculation and categorisation is performed on the basis of binding and transparent legislation. Moreover, in the opinion of the CJEU, also a daily allowance may be regarded as part of the minimum wage on the same conditions as those governing the inclusion of the allowance in the minimum wage paid to local workers when they are posted within the Member State concerned. Also the compensation for daily travelling time and the pay which posted workers must receive for the minimum paid annual holidays should be considered as part of the minimum wage, whereas the compensation for additional work or work under particular conditions and meal vouchers are not taken into account for the purpose of calculating the minimum wage. The Court points out, however, that national-level regulations concerning the minimum wage may not restrict the free movement of services.

## V. The New Law of EU

On 18 June 2016, the period prescribed for implementing the Enforcement Directive expired. The Directive is an interesting legal act aimed at fighting the so-called letterbox companies, i.e. companies which have no or very little activity in the place where they are registered. The Directive lists the circumstances, regarding both the undertaking and the employee, that Member States should take into account when assessing whether in an individual case posting of workers indeed takes place. In order to assess whether an employee temporarily carries out his or her work in a Member State other than the one in which he or she normally works, what should be taken into account is the nature of activities as well as the fact that the work is carried out for a limited period of time and that travel, board and lodging or accommodation is provided or reimbursed by the employer. As regards the undertaking, what matters is, among others, the place where the undertaking performs its substantial business activity, the place where posted workers are recruited, as well as the law applicable to the contracts concluded with workers and clients. The Directive has also imposed on the Member States new requirements concerning administrative cooperation and access to information. Nevertheless, Directive 2014/67 is merely an introduction to changes to the overall principles governing posting of workers in the EU internal market. On 8 March 2016, the Commission submitted a Proposal for a Directive amending Directive 96/71/EC [7]. The stated objective of the proposed amendments is to strike a balance between the freedom to provide services and the need to protect the rights of posted workers. The amendments also seek to address the issue of unfair practices and promote the principle of equal pay for equal work carried out in the same place.

Yet, it should be noted that the Member States have been highly divided on the need to amend the existing measures. On the one hand, the changes have been supported by Austria, Belgium, France, Germany, Luxemburg, the Netherlands and Sweden, which want to see the principle of "equal pay for equal work in the same place" established and the maximum duration of posting determined (along with adaptation of EU rules on the coordination of social security systems). An opposite position has been taken by Central and Eastern European Countries (Bulgaria, the Czech Republic, Estonia, Hungary, Lithuania, Latvia, Poland, Slovakia and Romania). In their opinion, a possible revision of Directive 96/71 should wait until the effects of the application of the Enforcement Directive are known [8]. These countries claim that wage differences constitute one of the elements of competitive advantage for service providers and that the compulsory equalisation of wages would be incompatible with the internal market principles. In their view, posted workers should also be covered by the regulations of the posting Member State as regards social security. This shows different interests of the "old" and "new" Member States, resulting from different wages and working conditions in these countries.

The Proposal contains a number of significant changes to the existing legislation. First of all, in case of posting that lasts for periods longer than 24 months, the host Member State is deemed to be the country in which the work is normally carried out. Therefore, the law of the host Member State applies to the employment contract of such posted workers if no other choice of law has been made by the parties. Even in

case a different choice has been made, it cannot, however, have the result of depriving the employee of the protection afforded to him by provisions that cannot be derogated from by agreement under the law of the host Member State. This principle should apply from the start of the posting assignment whenever it is envisaged for more than 24 months and from the first day subsequent to the 24 months when it effectively exceeds this duration. The Preamble indicates that this restriction does not affect the right of undertakings posting workers to invoke the freedom to provide services. However, if the posting exceeds 24 months, the period of posting will be in fact reduced to two years. In order to prevent any circumvention of this time limit by replacing posted workers carrying out the same task in the same place, only the total period of posting of given workers will be taken into account. An exception is made for cases where the actual posting lasts less than six months [9].

The Proposal also gives the faculty to the Member States to oblige undertakings to subcontract only to undertakings that grant workers certain conditions on remuneration, including those resulting from non-universally applicable collective agreements. This is only possible if the same obligations are imposed on national subcontractors. It should be noted that this change is a reaction to the ruling of the CJEU in case C-346/06 Rüffert, where it stated that a Member State cannot require the contracting authority to designate as contractors for public works only contractors which agree to pay their employees at least the wage provided for in the collective agreement in force at the place where those services are performed. The Court emphasised that it is in contradiction with Union law to allow the host Member State to make the provision of services in its territory conditional on the observance of terms and conditions of employment which go beyond the mandatory rules for minimum protection, set out in Article 3(1) of Directive 96/71. On the other hand, the ruling in case C-115/14 RegioPost allowed for such a requirement, but only with respect to the minimum wage set out in universally binding regulations. Nevertheless, according to the ruling in case C-549/13 Bundesdruckerei, such a requirement may apply only in case where a public contract is carried out in the host member state. If a contract is carried out mainly in another member state in which the minimum wage rates are lower, such a requirement would be disproportionate as it does not relate to the cost of living in that country. Consequently, such regulations would prevent subcontractors established in another Member State from deriving a competitive advantage from the differences between the respective rates of pay [10].

## VI. The New Problems – Benefit Tourism in the EU

On the other side of the same tendency to limit the scope of equal treatment resulting from the Treaty freedoms there is a dispute concerning the right of free movement of nationals of the European Union who are economically non-active and the fear of the so-called benefit tourism, which relies in massive migration of citizens to the Member States which ensure a high level of social protection. It seems that as a result of the financial crisis, public opinion in countries that host a significant number of citizens of other Member States is becoming increasingly sensitive to the arguments referring to the need to address social tourism and limit the rights granted to the citizens of other Member States, especially those who are economically non-active. It seems, however, that the scope of this phenomenon is considerably overestimated. According to the data presented by the European Commission in the Communication "Free movement of EU citizens and their families: Five actions to make a difference," at the end of 2012, 14.1 million EU citizens were residing in another Member State (2.8% of the total population), whereas the share of non-EU nationals was 4.0%. The employment rate of mobile EU citizens stood at 67.7% and increased from 2005 to 2012. For comparison, the employment rate among nationals was 64.6%. 79% of mobile EU citizens not in employment were living in a household with at least one person in employment and 64% of them had worked previously in the state of origin. According to the Commission, mobile EU citizens do not use welfare benefits more intensively that the host country's nationals (they represented less than 1% of all beneficiaries [who are EU citizens] of non-contributory benefits in six out of 13 Member States examined; between 1% and 5% in five countries, and between 5% and 15% in two countries) and, in most Member States, they pay more in tax and social security contributions than they receive in benefits (which means they are net contributors). The Commission has also concluded that there is no relationship between the generosity of the welfare systems and the inflows of EU citizens who exercise their right to move freely [11].

From the beginning of the extension of rights of non-active EU nationals by the case-law of the CJEU, the abuse of free movement rights has presented a problem. The key role in extending the rights of migrating EU citizens and their families has been played by the relevant judgments of the Court of Justice. The point of departure was the claim (frequently cited) from judgment in *Grzelczyk*, that the status of an EU citizen ought to be the fundamental status of citizens of member states, thus enabling citizens in identical situations to exercise the right to equal treatment, regardless of their countries of origin. However, it must be emphasised that the Court's approach to the importance of EU citizenship and the resulting rights has been changing over time. Case Grzelczyk states that Union citizenship is destined to be the fundamental status of nationals of the member states, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality. The ruling has laid down the basis for increasing the scope of the principle of equal treatment. In the same ruling, the CJEU has also emphasised, however, that migrant EU nationals must not become an "unreasonable" burden on the public finances of the host member state. The so-called real link test that the CJEU referred to in rulings in cases such as C-224/98 D'Hoop, C-184/99 Grzelczyk, C-138/02 Collins, C-456/02 Trojani, and C-209/03 Bidar represents an attempt to strike a balance between the interests of host countries and migrant Union citizens.

On the one hand, this construct granted integrated migrants

(and EU citizens at the same time) the right to equal treatment, also as regards their access to social benefits. On the other hand, however, it enabled host states to limit the number of beneficiaries so as to avoid a non-rational burden on their social protection systems caused by the migrating EU citizens. The real link test was therefore also a tool to counteract the phenomenon of the so-called “benefit tourism", i.e. situations where individuals move to a country only to take advantage of the country’s more generous social protection system (compared against the social protection system in their country of origin. The real link test also defined the fundamental difference between the status of migrating employees and economically inactive EU citizens, as the former were entitled to equal treatment thanks to their economic activity, regardless of the level of their integration [12].

According to the test, the right to non-discriminatory treatment for citizens of the host country with respect to the access to various benefits (especially social benefits) can be granted only to those EU nationals who have demonstrated a certain degree of integration into the society of that state. The Court has clearly found that it is permissible for a Member State to ensure that the benefits granted do not become an unreasonable burden which could have consequences for the overall level of assistance which may be granted by that state. Nevertheless, the possibility to limit the rights of other Member States’ citizens has been restricted. The Court has stressed that the national authorities are obliged to do an overall examination of the situation of each person. As a result, they cannot take into account one criterion only, e.g. the length of the period of residence, which must not necessarily reflect the actual relationship of a given person with the society. On the contrary, it is necessary to take into consideration various individual circumstances that prove that a link with the state has been established, e.g. receiving education, starting a family or seeking employment for a sufficiently long period in the country in question. Moreover, the mere fact that a person does not have sufficient means of subsistence cannot automatically result in a Union citizen not being able to rely on the present Article 18 of TFEU concerning non-discrimination where this citizen has lawfully resided in the territory of the Member State (e.g. under national law). If a given person no longer fulfils the conditions on the right of residence, Member States can take a measure to remove the national. However, recourse to the social assistance system must not automatically entail such a measure. Thus, the Court’s assessment is that the principle of proportionality is the overriding requirement that all the measures taken by the Member States with regard to migrant workers need to comply with [13].

Directive 2004/38 regarding the right of citizens of the Union to move and reside freely within the territory of the Member States is based on a system of extending rights in line with the length of stay in the host country. Under the Directive, three categories of the right of residence are distinguished: up to three months, over three months and permanent residence, which is granted after five years of legal residence. A stay in excess of three months is, as a rule, conditional on having sufficient resources to support oneself. The Directive introduces an exception to the rule of equal treatment with respect to social benefits for persons during the first three months of stay (and for persons who, due to the fact that they seek work, are entitled to a longer stay in the host country) and with respect to benefits to cover subsistence costs for students until they acquire the right of permanent residence (unless they have the status of employees or self-employed or are family members of persons who have such a status). The Directive also obliges Member States To take into account personal circumstances and respect the principle of proportionality when taking decision on expelling a Union national or a family member of a Union national [14].

## VII. The New Proposals in the EU’s Law and the New Case-Law

The most recent case-law of the Court has brought about a visible change in balancing the expectations of migrant Union nationals and the Member States that face migration on a large scale. In case C-140/12 Brey regarding a German couple of pensioners who applied for a compensatory supplement that would allow them to bear living costs, the Court has concluded that such a non-contributory social security benefit (within the meaning of Regulation 883/2004 [15] falls under the concept of social assistance set out in Article 24(2) of Directive 2004/38. Nevertheless, the Court has stated that national legislation which automatically – whatever the circumstances – bars the grant of a benefit to a national of a Member State who is not economically active and does not meet the necessary requirements for obtaining the legal right to reside on the territory of the Member State for a period longer than three months, i.e. the requirement to have sufficient resources, is contrary to European Union law. The Court has reiterated that it is necessary to perform an individual assessment of whether a given person becomes an unreasonable burden on the social assistance system of the host Member State in view of the amount of the benefit, the period of receiving the benefit as well as the amount and regularity of income of a given person. Less than a year later, the Court again had to decide on the right to access to social benefits for Union nationals who do not meet the requirement of having sufficient means of subsistence [16]. This time, case C-333/13 Dano regarded a Romanian national who came to Germany along with children, had no education, did not look for a job in Romania or in Germany and spoke very little German. In Germany, she received child benefit and maintenance allowance; however, the German authorities refused to grant her social security benefits. The Court has concluded that Union citizens who do not have a right of residence under Directive 2004/38 due to the lack of sufficient resources may not claim entitlement to social benefits as this would run counter to an objective of the Directive, namely preventing citizens from becoming an unreasonable burden on the social assistance system of the host Member State. The Court has also stated that the Charter of Fundamental Rights does not apply to such case because when the Member States lay down the conditions for the grant of non-contributory cash

benefits and the extent of such benefits, they are not implementing EU law [17]. Legal scholars point to two possible interpretations of the ruling in the Dano case [18].

According to a more narrow interpretation, the requirements of proportionality do not have to be met when assessing the situation of a migrant EU citizen only in cases of benefit tourism, i.e. where a Union national goes to another Member State not in order to look for a job or receive education but only to benefit from social security and does not make any attempts to establish a relationship with the society of the host country. According to a broader interpretation, each time that a Union citizen no longer meets the requirement of having enough resources prior to acquisition of the right of permanent residence, he or she automatically loses the right of residence and automatically loses the right to rely on Union law, including the principle of non-discrimination. Adopting the latter interpretation would mean, in practice, limiting the right to freedom of movement to persons who are affluent enough to be able to bear living costs in the host country and to persons who are economically active.

It seems that the Court has eventually chosen to adopt the latter interpretation in its ruling in case C-67/14 Alimanovic regarding a Swedish family whose children were born in Germany and who returned to Germany after approximately 11 years. After the return to Germany, mother and daughter worked in jobs lasting less than a year. This is certainly not a case of benefit tourism. Yet, the Court has concluded that it is in line with Directive 2004/38 not to grant special non-contributory social benefits to persons who reside in the host country for over three months, continue to seek employment and have a genuine chance of being engaged. The Court has not taken account of the opinion of Advocate General, who stated that the Alimanovic family may legally reside in Germany under Article 10 of Regulation 492/11, which grants the children of a national of a Member State who is or has been employed the right to education. Earlier rulings of the Court derived from this provision the right to residence for the legal guardian of such a child, irrespectively of whether the requirement of sufficient resources is met. The Court has also disregarded the fact that members of the Alimanovic family took up employment in the host country, which results in their status being different than the status of persons who seek employment following the arrival in the host Member State (such a distinction has been made by the Court in the ruling in case C-138/02 Collins) [19]. The ruling in the Alimanovic case was supported by case C-299/14 Garcia-Nieto regarding persons during the first three months of stay in the host country [20]. These rulings seem to reflect a certain paradigm shift as to how the Court understands citizenship of the Union and the right to freedom of movement. This is reflected in moving away from an assumption underlying the earlier rulings that the scope of rights of Union nationals and their family members extending in line with the length of their stay in the host country serves their integration with the society of the host country. At that time the Court of Justice attached a lot of importance to the evaluation of the level of integration based on an evaluation of the entirety of individual circumstances – i.e. the importance of individualised assessment. The Court emphasised that member states must not limit themselves to one criterion only, e.g. length of residence, as this single criterion would not necessarily reflect the strength of the individual's link with the society [21].

Currently, integration is seen as a prerequisite for acquiring and maintaining the right of permanent residence, which imposes an obligation to seek integration with the society of the host Member State. Furthermore, it should be noted that integration is no longer seen only as an economic and personal relationship with a given state, but also as compliance with the values of the society of that Member State [22].

It should be stressed that social rights play an important role in the concept of EU citizenship. They provide real content for the framework of EU citizens' rights and go beyond the traditional dimension of economic integration. These rights are even treated as a response to the deficit of political rights, which are traditionally the very essence of citizenship. It seems therefore appropriate to refer to the commonly known notion of social citizenship, which is, in general, based on the idea of solidarity.

## VIII. Conclusion - Further Limiting the Free Movement of Persons in the EU

The latest developments in politics, law and jurisprudence demonstrate the need to reflect on the attempts to redefine certain principles regarding migrant EU workers and their protection against nationality-based discrimination. As of this writing, no formal changes in the legislation have been implemented. As a rule, migrant workers are treated in a non-discriminatory manner, i.e. as nationals. Nevertheless, in the light of the economic and refugee crisis as well as large-scale migration of EU citizens, integration in its current form faces strong social and political criticism. More and more frequently, leaving the EU is being considered. The demands to enhance the competence of the Member States at the expense of the EU competence are gaining popularity. As a result, new barriers as regards internal market freedoms are emerging. This concerns mostly the freedom of movement for workers. A kind of "renationalisation" of integration is taking place, which gives rise to social dumping, social rights abuse – which cannot be denied although it tends to be exaggerated – and the so called social tourism. The actions taken in order to tackle these issues lead to the destruction of EU citizenship and the principle of equal treatment of EU citizens no matter where they are.

The attempts at further limiting the free movement of persons should be evaluated in view of this fundamental shift in how the Court approaches the status related to EU citizenship. Such attempts were the backbone of negotiations between the United Kingdom and remaining Member States of the EU with respect to the so-called Brexit. In accordance with the declaration of the heads of state and government attached to conclusions adopted at the meeting of the European Council on 18-19 February 2016, the compromise reached is to apply if British citizens vote to stay in the EU in the upcoming referendum. The declaration states that the Member States

"have the right to define the fundamental principles of their social security systems and enjoy a broad margin of discretion to define and implement their social and employment policy, including setting the conditions for access to welfare benefits." Member States may also refuse to grant social benefits to persons who do not have sufficient resources to claim the right of residence in case of benefit tourism. Furthermore, the Member States can reject claims for social assistance by EU citizens who are entitled to reside on their territory solely because of their job-search, even if such benefits are also intended to facilitate access to the labour market of the host state. Furthermore, changes to the existing secondary legislation are to be introduced. First of all, in order to enable Member States to index child benefits states for children residing in other state than that where the worker resides to the conditions of the state of the child's residence. Until 1 January 2020 this rule should apply only to new claims made by EU workers, but from that date the Member States can extend indexation to already existing claims to child benefits. More significant may be the so-called "alert and safeguard mechanism" activated in case of a serious inflow of EU workers to a Member State. In such case, the state could notify the Commission and the Council that such situation exists on a scale that affects essential aspects of its social security system or leads to difficulties which are serious and liable to persist in its employment market or are putting an excessive pressure on the proper functioning of its public services. The Council (following a proposal from the Commission) could then authorise the state concerned to restrict the access to non-contributory in-work benefits for newly arriving EU workers for a total period of up to four years from the commencement of employment. However, the access to such benefits should gradually increase in order to take account of the growing connection of the worker concerned with the labour market of the host Member State. The limitation might apply to EU workers only during a period of 7 years [23].

The proposed amendments do not mostly affect migrant EU citizens who are economically non-active, but workers who pay taxes and other public levies in the host country just like the citizens of that country. This means that the amendments go beyond addressing the phenomenon of benefit tourism. When assessing the compromise, it is necessary to note that it does not affect the legal situation of migrant EU citizens directly. It only constitutes a commitment to amend secondary legislation at some time in the future. It is the details of these amendments to be proposed by the Commission that the actual consequences for migrant Union nationals will depend from. If the amendments make it possible to restrict the principle of equal treatment too greatly, without having to prove that there is a genuine threat to the social system of a given state, the Court may consider them as not compatible with the Treaties. It seems, however, that even if the United Kingdom leaves the EU, the amendments proposed in the declaration may still enter into force. Restricting the rights of migrant Union nationals, both economically active and non-active ones, seems to be in the interests of more Member States where public opinion is becoming increasingly reluctant to demonstrate financial solidarity with citizens of other Member States [24]. Hence, the question posed in the title of this article remains open.

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