MULTI-LAYERED EUROZENSHIP: CHALLENGES AND OPPORTUNITIES IN AN ERA OF AUTHORITARIAN POPULISM

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I would like to thank the organisers, the Basque Council of the European Movement and the University of the Basque Country for inviting me to this symposium. I would also like to thank you for the very warm hospitality! This is a perfect setting to discuss the importance of partnership, of doing things together and co-designing policies and institutional responses. Partnership strikes at the heart of Eurozenship, that is, European Union citizenship, and I am grateful for the opportunity to talk about it.

European Union citizenship (Eurozenship) is not an autonomous institution; it has always been a multi-layered institutional design. This is because the European Union itself is a compound political arrangement; it encompasses states, regions, municipalities, peoples and citizens. During the early phase of European integration, it became settled law that the rights of free movement and residence in the EU would apply to active, and, subsequently, non-active, economic actors who are nationals of the Member States.[1] Drawing on this settlement, the Treaty on European Union (in force on 1 November 1993), which formally introduced EU citizenship, stated that EU citizens are those who hold the nationality of a Member State (formerly Article 8(1) TEU, now Article 20(1) TFEU). In addition to this provision, the Final Act of the Treaty on European Union included a Declaration

[1] Regulation (EEC) No 1612/68.

stating that the determination of whether an individual possesses the nationality of a Member State falls within the Member States' jurisdiction.[2]

Both the express provision of the TEU (formerly, Article 8(1) TEU) and the Declaration demonstrated that EU citizenship was entangled with Member State nationality and was designed to be additional to it. But this did not stop the Court of Justice from ruling that, although determination of nationality falls within the Member States' competence, they must, nonetheless, exercise their prerogatives with due regard to the requirements of European Union law.[3]

The Court of Justice also extended mobility rights to work-seekers and secondary legislation gave non-active economic actors, who are self-sufficient and are covered by health insurance,[4] the right to choose their place of residence in 1990. Pensioners and students benefited from this extension, as they were keen to enrich their lives by experiencing other cultures and life options and to expand their knowledge base. State discretion and control over the entry and residence of EU citizens have been limited in this area since the ultimate philosophy underpinning EU mobility rules is a rights-based one. It thus comes as no surprise that EU citizenship has become a constitutional norm and a fundamental status.[5] European judges have taken quite seriously the constitutionalisation of Union citizenship and sought to respond positively to citizens' needs and expectations. But, as their decisions are guided by norms that often conflict with states' interests in unilateral migration control and the pursuit of power, governments have not hesitated to express their disapproval of what they perceive to be judicial policy-making.

Besides free movement and residence rights, EU citizens also have rights of political participation in local and EP elections in the Member State of residence,[6] diplomatic protection when they are travelling abroad and the right to petition the EP and to apply to the Ombudsman. Article 25

[2] See the Declaration on Nationality of a Member State, annexed to the Final Act of the Treaty on European Union which stated that 'the question whether an individual possesses the nationality of a Member State shall be settled solely by reference to the national law of the Member State concerned'. Compare also the Birmingham declaration; Bull. EC 10–1992 I 8.9. The Amsterdam Treaty added the statement that 'Union citizenship shall complement national citizenship' to the former Article 8(1) EC.
[3] Case C-369/90, *Micheletti* [1992] ECR I-4239, http://curia.europa.eu/juris/liste.jsf?num=C-369/90.
[4] Directives 90/364/EEC, 90/365/EEC and 90/366/EEC, which was replaced by Directive 93/96/EEC.
[5] Case C-184/99, *Grzelczyk* [2001] ECR-I 6193, http://curia.europa.eu/juris/liste.jsf?num=C-184/99.
[6] Two directives implemented the provision on electoral rights; namely 93/109/EC and 94/80/EC.

of TFEU has always carried the promise of the extension of the rights associated with the Union citizenship status by a unanimous decision of the Council in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, but this procedure has not been activated yet. The adoption of the so-called Citizenship Directive (*Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States*)[7] was an important milestone; it strengthened citizens' rights. In sum, both secondary legislation and the Court of Justice's case law have facilitated intra-EU mobility and have limited the scope for officials in the Member States to discriminate against European citizens on the ground of nationality. Accordingly, European Union citizenship has become a "Eurozenship", that is, a legal status that is different from national citizenship and denizenship.

The economic crisis in Europe, the Syrian exodus, terrorist attacks, political instability in certain Member States and the tendency of certain governments to disrespect EU norms, the rule of law and democratic principles provided a fertile ground for the re-assertion of national particularism and for the dissemination of discourses questioning not only the idea of free movement of persons but the whole European project *per se*. Both migration and internal mobility have become highly politicised since 2015 and political parties on both the right and the left of the political spectrum displayed a preference for tight border controls and restrictive policies. In fact, in certain Member States EU citizens became again "migrants" or "foreigners," and right-wing political parties have embarked upon political campaigns advocating the restriction of EU mobility.

This, in turn, made the political environment more hostile and has disrupted the integral space of human relationships and democracy in the European Union. The price of the hostile political environment is disunity in the EU and the European societies, constructions of 'Otherness' and the erosion of rights or restrictive access to rights. Populism, anti-Europeanism, xenophobia and discrimination have infiltrated the 'inhabited social and democratic spaces' in Europe and have placed core rights relating to free movement in danger. In political and media discourses, human beings and EU citizens are re-designated as 'others', welfare tourists and unreasonable burdens.

[7] Directive 2004/38/EC (Citizenship Directive).

The decision of the United Kingdom to withdraw from the European Union has introduced additional concerns and challenges which raise important questions about future internal and external (im)mobilities and the place of the UK in the EU. Accordingly, the present institutional reality in the European Union has two faces: forces of fragmentation, division and neo-nationalism collide with calls for the empowerment of the Union and the enhancement of free mobility and the European dimension of societies and supranational institutions' efforts to strengthen rights protection for citizens and residents in the European Union. The forthcoming elections to the European Parliament will highlight the divide between centrifugalism and fragmentation, on the one hand, and Europeanism and more integration and unity, on the other. Candidates for the European Parliament and nominees for the Commission will have to address issues that strike at the heart of the European integration process and to decide the shape of the EU's future political trajectory.

In the subsequent discussion, I would like to discuss both dimensions of the institutional reality of citizenship and intra-EU mobility in the EU and to outline some key challenges and opportunities. These are interconnected since any change in the interpretive frameworks and policy templates in any of them will shape, to a greater or lesser degree, the way we address the others.

a) Defending mobility in an era of retro-nationalism and authoritarian populism

Mobility strikes at the heart of EU citizenship: the free movement and residence of active economic actors, be they workers or self-employed individuals, not-yet active economic actors (i.e., job-seekers) and non-active, but economically self-sufficient, individuals (i.e., in the main students and pensioners) have been one of the four pillars of the internal market and a foundation of the European polity. It contributes to economic prosperity, unity and inter-societal connectivity and the betterment of individuals and families. In other words, it has had transformative effects: it has transformed societies and economies. In addition to the economic and social dimensions, intra-EU mobility has connected multiple publics within, and above, the Member States. It has fostered inter-relationships among individuals and group actors with various layers of governance and has created a greater sense of

inclusion and belonging in a diverse, but common, European space. This, in turn, has promoted a wider sense of European identity and made European societies more open and respectful of diversity. In some quarters, this change has been perceived as a promoter of post-national allegiances and thus as a threat to nationalistic pride and societal solidarity.

The muscular re-assertion of the state over the last ten years following multiple acts of terrorism in Europe, the economic crisis and the Syrian exodus has fuelled political discourses of authoritarian populism and nationalistic ideology. In the place of open societies, introverted and protectionist depictions of community are advocated. Globalisation, trade, migration, cultural pluralism, liberal democratic values are increasingly called into question by political elites seeking electoral or personal advantages from advocating the fragmentation and polarisation of societies and the European Union. For them, the way forward is a return to the 'nation-state' of the past, 'less Europe' and the robust management of populations, be they citizens or ethnic residents or newcomers. They do not hesitate to politicise any grievance and to capitalise on peoples' insecurities in order to manipulate their electoral preferences and aggregate anti-establishment resentments. However, as Dicey accurately observed a century ago, 'nationalism has the tendency to stimulate among the inhabitants of a given country an intense desire for national power and thereby bring into existence a form of government, which is hostile both to the personal liberty of its own subjects and to the independence of other European states'.[8] It also has the endemic tendency to fragment rather that to unite because it has to rely on a 'constitutive outside', that is, on people's 'others'.

While citizens may not be quick to appreciate this danger, EU citizens and residents in the EU have experienced the erosion of their status and the changing public perceptions about their place in the host societies. Political and media discourses shamelessly depict them as 'others', 'welfare tourists', unreasonable burdens' and so on, while pre- and post-referendum political rhetoric and legislative changes in the UK placed core rights relating to free movement in danger. In this respect, the defence of internal mobility and EU citizenship is required in order to counteract the cooperation detracting and cooperation destructing tendencies of rising retro-nationalism and authoritarian

[8] A. V. Dicey, *The Statemanship of Wordsworth: An Essay* (Oxford: Clarendon Press, 1917) at p. 102.

populism. Defending, and praising, mobility is tantamount to defending, and praising, both the experience of relating to one another and the openness of societies.[9]

b) The challenge of compliance with EU Mobility Rules and extending EU citizens' franchise

The defence of mobility would not be effective if Member States' compliance with EU mobility and citizenship law is weak. There exist incorrect interpretations of key terms of the Citizenship directive, requirements imposed on citizens which do not have any legal basis in EU law and obstacles in their access to rights. Accordingly, there is a need for more oversight over the implementation of EU law and for better enforcement of internal mobility rules. The European Commission published guidance on the interpretation of the terms and the implementation of the provisions of the Citizenship directive in 2009[10] and intends to issue a new set of guidelines in 2019-20. It remains to be seen whether progress with this initiative remains smooth in the light of Eurosceptic reactions on the part of certain Member States.

Greater inclusion and community cohesion in the EU could be achieved by extending the EU citizens franchise in the Member State of residence. Respecting national governments' concerns, and often misperceptions, about the alleged dilution of the national character of Parliamentary elections due to the participation of EU citizens, the European Commission and the European Parliament have not actively pursued the EU citizens' full political participation in the Member State of residence. This has impeded the full incorporation of EU citizens in the host societies and has legitimised their disempowerment. It is true that if EU citizens resident in the UK had been permitted to take part in the referendum of the UK's continued membership on 23 June2016 – an issue that directly affects them and their families, their perception as 'others' or 'guests' would have been unwarranted. The result of

[9] Dora Kostakopoulou, *The Future Governance of Citizenship* (Cambridge: Cambridge University Press, 2008).
[10] Communication from the Commission to the European Parliament and the Council, COM(2009) 313 final, Brussels, 2 July 2009.

the referendum might have been different as well; in any case, three million votes could not have been disregarded.

Both the Spinelli Group and the European Citizenship Foundation have advocated full political participation in the Member State of residence. They have also convincingly argued that the trajectory of EU citizenship should not be stifled by the simple aggregation of national preferences, but it has to be planned in the light of the guiding values of the European Union (Article 2 TEU), which include respect for democracy and human rights. As the Spinelli Groups' *Manifesto for the Future of Europe: A Shared Destiny* has observed, to protect EU citizens resident in Member States other than their own, EU competence should be strengthened[11] and EU citizens should not any longer be disenfranchised in national elections. The European Citizenship Foundation has also campaigned for this reform and is building a partnership with the European Citizens' Initiative 'My Europe, My Vote' to further support the proposal for the grant of full EU citizenship voting rights to EU citizens.[12] Such a reform would promote (transnational) democracy and would make EU citizenship even more meaningful.

c) Strengthening the Social Dimension of EU Citizenship

The social dimension of EU citizenship is underdeveloped. And yet it is this dimension that would make a concrete difference to EU citizens' lives which have been battered by austerity and the unfavourable environment in labour markets across the Member States. One does not have to graft Marshall's theory of social citizenship[13] onto the European Union in order to advocate the inclusion of meaningful social rights and duties next to the civil and political rights contained in the Treaty on the Functioning of the EU. For there exist several justifications for such an inclusion; namely, freedom of movement and residence cannot be realised effectively if they are not supported by a social

[11] Manifesto (Brussels, 2018), at p. 30.
[12] ECIT's Manifesto, 6 September 2018, Brussels.
[13] T. S. Marshall, 'Citizenship and social class', in Marshall, T. H. (ed) *Citizenship and social class: And other essays* (London: Pluto, 1950), pp. 3-51.

dimension. Nor are individuals asocial beings. The notion of EU citizens qua 'market citizens' is an illusion; it has no empirical basis.

In 2016 the European Commission took the important initiative of adopting the European Pillar of Social Rights. This was subsequently proclaimed jointly by the European Parliament, the Council and the Commission on 17 November 2017.[14] Its key principles include 'social protection' (Principle 12), a minimum income to ensure dignified living (Principle 14), access to healthcare (Principle 16), assistance for the homeless and the combating of homelessness (Principle 19), protection of health and safety at work (Principle 10), the right to fair wages (Principle 6) and protection from dismissal (Principle 7). These principles would be an excellent supplement to the existing provisions relating free movement and EU citizenship law. The EU Charter of Fundamental Rights, which is gaining increasing visibility and importance, is another key instrument which could be used to strengthen the social rights of EU citizens.

At the same time, one should not underestimate possible opportunities for genuine change that might exist at the European Union level if Brexit takes place. For instance, the United Kingdom's departure may signal the launch of a European social policy built on preferences shared by France, Germany and the Scandinavian Member States. The United Kingdom has always insisted on deregulating measures across the public services and in labour law and has played a key role in advocating a minimalist welfare state. Other Member States can now steer the European Union towards a 'welfare European Union' and transform EU citizenship into a European social citizenship.

d) The transformation of security in the context of intra-EU mobility

[14] European Commission, *The European Pillar of Social Rights*, 24 October 2017, at https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights_en

As noted above, intra-EU mobility has always been a cherished principle in the EU law and politics. It constitutes a cornerstone of the internal market: it is one of the four fundamental freedoms.[15] For this reason, since the early stages of European integration the Court of Justice of the EU was keen to circumscribe the Member States' residual power to restrict the free movement of persons by invoking internal security concerns. And although since the entry into force of the Treaty of Rome, the Member States have been allowed to derogate from the free movement provisions of the Treaty on the grounds of public health, public policy and public security (Article 45(3) TEFU), soon afterwards a directive was adopted, namely, directive 64/221/EEC, with a view to limiting the Member States' exclusionary powers and to institutionalising a strict interpretation of what is now Article 45(3) TFEU.

The terms public policy and public security were never defined by supranational institutions. At the same time, however, they never remained exclusively national concepts thereby escaping the purview of supranational Community institutions. The Court made it clear that they must be interpreted strictly because they limit the fundamental freedoms of movement and residence, and that national authorities' decisions in this domain must comply with the principle of proportionality.[16] The above mentioned directive, which was adopted in 1964 (64/221/EEC), limited the Member States' discretion by stating that the above-mentioned grounds cannot be invoked by a Member State in order to serve economic ends (Article 2(2)).[17] Instead, they have to be based exclusively on the personal conduct of the individual concerned and may never be imposed automatically. The Court proceeded to add flesh to the provisions of Directive 64/221 by establishing in a number of cases that Member States must verify that a Union citizen's personal conduct poses "a genuine and sufficiently serious threat to the requirements of public policy affecting one of the fundamental interests of society."[18] The Court's preference for a rights-based approach to the interpretation of the Treaty's derogations has protected individuals and has circumscribed national authorities' discretionary powers by requiring

[15] The definition of the internal market is provided by Article 26 TEU (formerly Article 14 TEC). Article 26(2) explicitly refers to the freedom of movement of goods, persons, services and capital.
[16] Case C-100/01, *Olazabal* [2002] ECR I-10981, http://curia.europa.eu/juris/liste.jsf?num=C-100/01; Joined Cases C-482/01 and C-493/01, *Orfanopoulos and Oliveri* [2004] ECR I-5257, http://curia.europa.eu/juris/liste.jsf?num=C-482/01.
[17] Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health, http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:31964L0221.
[18] Case C-30/77, *R v Bouchereau* [1977] ECR 1999, para. 35, http://curia.europa.eu/juris/liste.jsf?num=C-30/77.

that policy or security risks are clearly personified before national authorities decide to take any action.

It has also been well-established that previous criminal convictions do not in themselves constitute grounds for imposing limitations on cross-border movement,[19] and that EU citizen offenders will be excluded if they are likely to re-offend. Generally speaking, automatic deportations without a careful consideration of personal circumstances are unlawful under EU law. The security threat which traditionally activated Article 45(3) TFEU thus has to be real, sufficiently serious, present and confined to personal conduct. It cannot be based on national authorities' speculative assessment of an EU citizen's conduct, disapprobation of past criminal conduct of a rehabilitated EU citizen and on policy exigencies, such as deterring the committal of similar offences or deterring other EU citizens from committing similar offences.[20]

The limitations in the powers of the Member States in this area imposed by both Directive 64/221 and the case law aimed to protect EU citizens who were in a position of vulnerability in a host Member State, on the one hand, and to safeguard both the integrity and the continued appeal of the fundamental freedom of free movement and residence. In the new millennium, the Citizenship Directive (2004/38/EC), which replaced Directive 64/221, incorporated the Court's case law and stated clearly in Article 27(2) that "justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted." Article 28(1) of the directive also incorporated rulings from the ECtHR by stating that "[b]efore taking an expulsion decision on grounds of public policy or public security, the host Member State shall take into account considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into the host Member State and the extent of his/her links with the country of origin." According to the directive, permanent residents, that is, EU citizens resident for five years or more in a host Member State, can be ordered to leave only on "serious grounds of public policy or public security" (Article 28(2)), and permanent

[19] Article 27(2) of Directive 2004/38/EC; Case C-348/96, *Calfa* [1999] ECR I-11, para. 22 to 24, http://curia.europa.eu/juris/liste.jsf?num=C-348/96.
[20] Case C-67/74, *Bonsignore v Oberstadtdirecktor der Stadt Koln* [1975] ECR I-297.

resident Union citizens for the previous ten years and minors may not be ordered to leave the territory of a Member State, except on imperative grounds of public security (Article 28(3)). In addition, according to Article 33, an expulsion order cannot be issued by the host Member State as a penalty or legal consequence of a custodial penalty unless the general requirements pertaining to the application of restrictions on entry and residence apply (Articles 27-29), and if it is issued it should be subject to assessment after two years. This change was based on the Court's decision in *Calfa* that automatic expulsion for life following a criminal conviction without consideration of the personal conduct of the offender or the danger (s)he represents for the requirement of public policy contravened EU law.[21]

The increased security of residence offered to long-term resident EU citizens and to minors by Article 28(3) of the Citizenship Directive 'civilised' public security[22] in so far as it accorded priority to the rights and interests of EU citizens over the interests of states. EU citizens were formally recognised as members of their communities of residence and thus beneficiaries of protection from deportation. The Commission sought to provide an authoritative interpretation of the notion of public security in Article 23 of the Directive in its guidelines for the better transposition of the Citizenship Directive.[23] It stated that 'public security in generally interpreted to cover both internal and external security along the lines of preserving the integrity of the territory of a Member State and its institutions'.[24] In other words, public security had a state-centric dimension. By contrast, the notion of 'public policy', which provided a less extensive level of protection, referred to 'disturbances of social order'. On this interpretation, public security was seen to cover terrorism and espionage, while criminal offences were seen to fall within the ambit of public policy. The distinction could thus easily be drawn between public security and public policy and long-term resident EU citizens and minors could only be ordered to leave the territory of the host Member State if they imposed a very serious risk to the internal or external security of the state and its institutions.

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[21] Case C-348/96, *Calfa*, cit.
[22] The term is borrowed from Ian Loader and Neil Walker, *Civilising Security* (Cambridge: Cambridge University Press, 2007).
[23] European Commission, *Communication from the European Commission to the European Parliament and the Council on guidance for better transposition and application of Directive 2004/38/EC on the right of citizens of the Union and of their family members to move and reside freely within the territory of the Member States*, COM (2009) 313, final, Brussels.
[24] Ibid, p. 10.

The economic crisis in 2008, coupled with populist discourses in certain Member States, such as the Netherlands and the UK, about the undesirability of the continued presence of 'foreign criminals' and EU citizens who had 'abused the hospitality and showed disrespect for the values' of the host community, led to a reconsideration of what public security might mean in the context of EU law and thus to a reappraisal of the level of protection that could be provided to long-term resident EU citizens who committed criminal offences. The wider political environment of domestic unease due to austerity and rising Euro-scepticism and xenophobia was too noisy to be ignored by supranational institutions, such as the Court of Justice of the EU. In the first two cases on the public security exceptions following the entry into force of the Citizenship Directive, namely, Case C-145/09, *Land Baden-Wurttemberg v. Tsakouridis*[25] and Case C-348/09 *Pietro Infusino v Oberburgermeisterin der Stadt Remscheid,*[26] the Justices were keen to extend the ambit of 'public security' under Article 28(3) of the Citizenship Directive so as to cover serious criminality. In the former case, the Court ruled that dealing in narcotics as part of an organised group is a public security threat capable of triggering expulsion measures against longstanding resident EU citizens. In the latter case, the Court made an even more pronounced widening of the public security derogation: it ruled that it encompasses all criminal offences that 'might pose a direct threat to the calm and physical security of the population' as 'long as the manner in which such offences were committed discloses particular serious characteristics, which is a matter for the referring court to determine'.[27] And since all forms of criminality can be seen to 'pose a direct threat to the calm and physical security of the population' of the host Member State, the meaning of public security in EU law has shifted away from national security to societal security matters and to conduct which offends 'the particular values of the legal order of the Member State'.

This interpretive shift undermines the rights-based approach to mobility that the Court had promoted for several decades and the rationale of the Citizenship Directive. The difference between Articles 28(2) and 28(3) becomes inexact thereby weakening the EU citizenship status. Instead of

[25] 2010 ECR I-2013.
[26] 2012 WL Celex no 600CJ0348 (May 22, 2012).
[27] Ibid, paras 28-29.

affirming equal treatment and non-discrimination on the ground of nationality, the recent case law creates a clear taxonomy of community membership whereby even very long-term resident EU citizens can easily become 'deportable foreigners' or 'dangerous outsiders' when they break the law. Internal mobility in the EU thus becomes infected by the securitisation ethos that charcterised the regulation of migration in national laws and the Area of Freedom, Security and Justice in the European Union.

In two subsequent cases, it was decided that time spent in prison cannot be taken into account in calculating the five-year residency period that triggers more enhanced protection under Article 28(2) of the Citizenship Directive or the even more increased level of protection afforded by Article 28(3). In the cases of *Onuekwere* and *M.G.*,[28] the Court ruled that periods in prison cannot count towards the acquisition of permanent residence or the enhanced protection of Article 28(3), and that such periods also interrupt in principle the continuity of the requisite periods for granting such advantages. Mr Onuekwere, a Nigerian national married to an Irish national residing in the UK, obtained a residence permit in the UK valid for five years. During his residence, he committed various offences and was imprisoned for a total period of three years and three months. The central question was whether this period would count towards the five-year residence requirement for obtaining permanent residence as the family member of an EU citizen who had exercised her EU free movement rights. The Court's central argument was that the right to permanent residence could not be based on purely formal considerations such as the time physically spent in a Member State's territory, but must also take into account "qualitative elements, relating to the level of integration in the host Member State" (para. 25). But in making such a determination, national authorities must make an overall assessment of an EU citizen's situation. In the context of that overall assessment, not only should the relevant consideration of one's imprisonment be considered, but national authorities may also take into account other relevant facts relating to the person concerned, such as, for example, that an individual had resided in the host Member State during the 10 years prior to imprisonment. Although the Court noted that criminal offences committed by an EU citizen show a lack of respect

[28] Case C-378/12, *Onuekwere* [2014], http://curia.europa.eu/juris/liste.jsf?num=C-378/12; Case C-400/12, *M. G.* [2014], http://curia.europa.eu/juris/liste.jsf?num=C-400/12.

for "the values expressed by the society of the host Member State in its criminal law" (para. 26), both decisions are, nonetheless, reflective of the principles and the aim underpinning the Citizenship Directive and in line with the Commission's guidance on the interpretation of the provisions of the directive.[29]

In other words, the Member States are required to demonstrate an "intelligent regard" for EU citizens and are not required to grant permanent residence to EU citizens whose residence on their territory was confined to a prison. The fundamental status of EU citizenship does not imply an unconditional institutional idealism. It is premised on one's participation in societal interactions and the living realities he/she established – and not on his/her isolation from the host society due to criminal activity. But, on the other hand, the fundamental status of EU citizenship should not be undermined by attempts to 'securitise' intra-EU mobility and to turn EU citizens into foreigners.[30] National criminal justice systems offer much scope for the punishment of offending conduct on the part of both nationals and long-term resident EU nationals who fall within the ambit of Article 28(3) of the Citizenship Directive. The fact that the latter hold the nationality of another Member State is not a good enough justification for ordering their expulsion following their criminal conviction and for depicting them as "burdens" and "outsiders." The task is to maintain the fundamental status of EU citizenship and to resist the encroaching of the sociopolitical space that has been created by it by national narratives on migration control and societal security.

Conclusion

Eurozenship's space is a socio-political space within which particularistic identities can simultaneously coexist and merge into wider moralities that do not tolerate discrimination on the ground of nationality and disrespect of human beings. In this enlarged communal space, our conceptions of community, membership and democracy are reconfigured, and the lives of 'others'

[29] European Commission, (COM(2009)313), para. 3(3), http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52009DC0313.
[30] Dora Kostakopoulou, 'When EU Citizens become Foreigners', *European Law Journal*, 2014, Vol. 20(4), pp. 447-463.

(i.e., non-national EU citizens) and their claims to equal treatment, equal opportunity and fair play become part of 'our realities' and of a shared moral code. This is one of the greatest achievements of European integration over the last 60 years. For, as Dewey has observed, 'everything which bars freedom and the fullness of communication sets up barriers that divide human beings into sets and cliques, into antagonistic sects and factions, and thereby undermines the democratic way of life'.[31] And further, 'to cooperate by giving differences a chance to show themselves because of the belief that the expression of difference is not only a right of the other persons but is a means of enriching one's own life-experience, is inherent in the democratic personal way of life'.[32]

Eurozenship has enabled EU citizens to escape the closure of territorial democracy and to enjoy a wide range of associative relations with others across national boundaries. It has thus enriched our thinking and political imagination by making another world visible; namely a notion of community anchored on the values of democracy, rights, diversity, non-discrimination on the ground of nationality and human cooperation. It is this world and the benefits of human cooperation that need to be defended against all those forces and actors both within and outside the European Union preaching retro-nationalism and authoritarian populism as the second decade of the 21st century draws to its close.

[31] Dewey's address in New York City on 20 October 1939, entitled 'Creative Democracy: The Task Before Us', p. 4; reprinted in *The Later Works*, Vol. 14.
[32] Ibid.