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RIGHT TO GOOD ADMINISTRATION IN THE CONTEXT OF THIRD COUNTRY NATIONALS

Introduction

In 1992 the Maastricht Treaty introduced the *Concept of Citizenship of the Union*, marking a significant shift away from the EU's origins as a purely economic union. The consequent strengthening of the rights of EU citizens, however, has carried the potential to widen the gap between the treatment of EU citizens and the millions of third country nationals currently resident in the EU. [1]

By granting EU citizenship European Union created a common identity for Member States nationals, but the European citizenship granted union citizenship rights only for EU nationals.

For non-nationals, who arrived from third countries (non-EU states) and stayed in one of the EU Member States the regulation about the union citizenship didn't provided union rights. Meanwhile, third country nationals (TCNs) remain explicitly outside the scope of European citizenship.

The TCN status largely determined by the law and regulations of the Member States of residence. As a result of this, TCNs in one Member State may live under a very different national legal regime-and hence have different prospects for obtaining national and thence European citizenship.[2]

So, although the EU comes closer to achieving the *common identity* which has so long been aimed for, the rights of the TCNs can be said to be ignored and possibly discriminated against in comparison to the EU nationals.[3]

Because the greatest obstacles to integration arise from differences among MS naturalization regimes and immigration rules, the EU decided to harmonise the status of the TCNs after the Tampere Programme.[4]

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[1] Doukas, Irenie: *Non-discrimination on grounds of nationality: the position of third country nationals within the EU*, 4 Cambridge Student Law Review, 2008., 1. p.

[2] Becker, a. michael: *Managing Diversity in the European Union: Inclusive European Citizenship and Third-Country Nationals*, Yale Human Rights &Development Law Journal, Vol.7., 138. p.

[3] Becker 2014, 12. p.

[4] Gyeney, Laura: *Legal Migration to the European Union with special regard to the right to respect family life*, Summary of Doctoral Thesis, Budapest, 2011.

The basis for policy development in the sphere of integration was elaborated by the 1999 Tampere European Council. The conclusions of the Tampere Council – in the context of setting out the political guidelines for the EC immigration – pointed towards an inclusive policy based on equal treatment and a secure legal status, particularly in the case of long-term residents. The Council requested the creation of a uniform set of rules through which *fair treatment* of all TCNs residing legally in the EU Member States should be ensured.[5]

This fair and equal treatment paradigm of integration envisaged[6] that a *vigorous integration policy* should aim at granting legally resident TCNs rights and obligations comparable to those of EU citizens.[7]

I. The Rights of the Third Country Nationals in the EU

EU developed a patchwork of TCN provisions provided different rights regarding residency, free movement, family reunifications, students and researchers in form of EU Directives.

Community acquis on legal migration includes the Directive 2003/86/EC on the right to family reunification[8], Directive 2003/109/EC on the status of long term residents[9], Directive 2004/114/EC on the conditions of admission of students, pupils, unremunerated trainees and volunteers[10], Directive 2005/71/EC on a specific procedure for admitting third country national researchers,[11] Directive 2009/50/EC on the conditions of entry and residence of third country nationals for the purposes of highly qualified employment.[12]

Directive 2003/109 EC is the most significant developments in the regulation of the position of third country nationals. A long-term resident is defined as third-country national who is in has long-term resident status and has met the conditions on the acquisition in question, conditions on the duration, and order and public security.

The Directive creates not only a common European long-term residence status (*European Denizenship*) but granted a conditional right to free movement within the EU.[13]

It establishes the rights and conditions for granting and withdrawing long-term resident status of third-country nationals who meet several conditions. Persons with this status are

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5 Tampere European Council – Presidency Conclusions – 15 and 16 October 1999 at paragraph 18.

6 Carrera, Sergio: *Benchmarking Integration in the EU: Analyzing the Debate and Moving it Forward, Bertelsmann Foundation*, 2008, 8. p.

7 Murphy, Cliodhna: *Immigration, integration and citizenship in European Union Law: the position of third country nationals*, 8 Hibernian Law Journal 155, 2008-2009. 158. p.

8 Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, Official Journal L 251, 03/10/2003 P. 0012 – 0018.

9 Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, Official Journal L 016, 23/01/2004 P. 0044 – 0053.

10 Council Directive 2004/114/EC of 13December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service.

11 Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research.

12 Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, OJ L 155, 18.6.2009, p. 17–29.

13 Tutilescu, Amelia: *Considerations on the legal status of third-country nationals who are long-term residents in the EU*, Journal of Law and Administrative Sciences, No.3/2015, 199. p.

entitled to equal treatment as nationals in a range of areas such as employment, education, social security, tax advantages and freedom of association.[14]

Besides the necessary criteria to be met for obtaining long-term resident status in the territory of a Member State, the Directive provides travel conditions in another Member State and rules that must be fulfilled to obtain long-term resident status in that State.[15]

Other important step in the regulation of TCN is the Directive 2003/86/EC on the right to family reunification. The purpose of this Directive is to determine the conditions under which non-EU nationals residing lawfully on the territory of EU countries may exercise the right to family reunification.[16] "Family reunification is a necessary way of making family life possible. It helps to create socio-cultural stability facilitating the integration of third country nationals in the Member State, which also serves to promote economic and social cohesion".[17]

It commonly codifies the right to family reunion, defines who can apply for family reunification, sets out the conditions for admission, gives a certain level of protection against expulsion and provides family members with certain rights of access to the labour market, education, and equal treatment.

In these legal instruments relating to entry and residence conditions for third-country nationals some of the rights and guarantees provided by these are similar to those conferred by European citizenship. The conditions of entry and residence of third-country nationals (migration law) have therefore unquestionably become a matter of concern at European level and are being addressed by the EU legislator. These relevant instruments often contain a list of minimum rights to which the third-country national is entitled in the host state.

The Court show also willingness to interpret to concept of union citizenship to third country nationals too. In several cases interpreted the rights of the TCN's analogously to union citizens' rights. With these steps, the Court could in the same time clarify the rights of the TCN's and with the help of the non-discrimination principle developed and make more comparable the treatment of the EU citizens and TCN's.

But these international instruments leave a margin of appreciation to States when they treat TCN nationals. Directives constitute a restriction of Member States discretion in this regard, but there are number of fields, in which the Member States' discretion remains untouched.[18]

States often see *foreigners* as a potential threat to the security of their country and to their national identity. This is why we see a strong reluctance to cooperate in order to create common standards in this area, as shown by the difficulty to agree on the Schengen Agreements. Furthermore, national politicians do not want to be seen as *opening up the floodgates* to immigration, as this can have huge political costs for them. Thus, a more restrained approach is shown on their part.[19]

So, the fundamental rights could have relevant effect in the *Area of freedom, security and justice*. Immigration law is at the core of this Area, covering questions that by nature have a

[14] Tutilescu 2015, 202. p.

[15] Tutilescu 2015, 202. p.

[16] Cliodhna 2008, 158. p.

[17] Directive on Family Reunification, Preamble, para. 4.

[18] Cliodhna 2008, 168. p.

[19] Doukas 20008-2009, 7. p.

potential impact on fundamental rights: the very essence of immigration law is to regulate entry and status, and therefore, to establish lines of differentiation between individuals.

The Charter is therefore destined to play the role of minimum floor for the enactment of the rights of foreigners under the common immigration policy, and the breadth of the endeavour to regulate the status of TCN is likely to engage many Charter rights.

II. The Charter of Fundamental Rights

The Charter contains rights and freedoms under six titles: Dignity, Freedoms, Equality, Solidarity, Citizens' Rights, and Justice. Proclaimed in 2000. The Charter has become legally binding on the EU and primary union law with the entry into force of the Treaty of Lisbon, in December 2009.

The provisions of this Charter are addressed to the EU institutions, bodies, offices and agencies and to the Member States only when they are implementing Union law.[20]

Generally, it doesn't contain obligation for Member States but the national authorities must respect such rights only when they act within the scope or field of Union law.[21]

The Charter of the Fundamental Rights regulating not only the rights of union citizens also contributed to the legal status of TCNs. Article 45 (2) states that freedom of movement and residence rights *may be granted*, in accordance with the Treaty (TFEU) to TCNs legally resident in the territory of the Member States.

This provision in the Charter *Every person has the right* or *Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State* means that the number of rights enshrined in Art. 20. TEU are already enjoyed by subjects of the Union without any requirement of having a member states nationality, such as the right to petition the European Parliament and European Ombudsman could extended.

The Art.41 states:

"1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.
2. This right includes:
   (a) he right of every person to be heard,
   (b) he right of every person to have access to his or her file,
   (c) he obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties."[22]

[20] Article 51(1) of the Charter of Fundamental Rights.

[21] Case C-400/10 PPUJMcB [20111 ECR 1-0000, paragraphs 51 and 52.

[22] Article 41 of the Charter of Fundamental Rights.

III. Right to Good Administration

The right to good administration is one of the fundamental rights of the citizens of the EU, guaranteed with Article 41 of the Charter of Fundamental Rights of the EU.

The right to good administration is an umbrella provision comprising various administrative rules and meant to protect all persons from administration errors. For example, the right to have affairs handled impartially, acting within a reasonable time, right to be heard, right to access to his or her file, the obligation of the administration to give reasons for its decisions, right to make good any damage, right to communicate to the institutions of the EU to any of the languages of the Treaties.[23]

This right, as defined in the Charter, applies only to cases where an institution, body of agency of the EU is involved.[24] So the scope of this right, as defined in Article 41 of the EU Charter, is limited to situations in which persons are dealing with the institutions and bodies of the European Union. This means that national authorities must respect such rights when they act within the scope or field of Union law.

Therefore, the beneficiary of the right is any person, and the correlative obligation belongs to the institutions, bodies, offices and agencies of the European Union.

This obligation belongs to the administrations of the Member States only to the extent but to which the European law is applied.

The TCN's procedural problems mostly occurred before the national bodies in family reunification process or residence permit process.

National measures related to admission conditions and admission procedures of TCN' family members, students, researchers, and highly qualified workers and to the admission procedure of workers, are now with the help of the Directives of the EU likely to fall within the category of measures implementing EU law and, therefore, to be covered by the Charter. But the wording of Article 41 of the Charter of Fundamental Rights contains no mention of obligations on the Member States.

IV. Applicable right in the national procedure, too?

Administrative rules play an important role in the implementation of law, including law regarding the protection of the various fundamental rights. As such, administrative law is an important factor in the protection of rights. The right to be heard and the duty to collect sufficient information may, for instance, be important for the realization of the various rights protected by national legislations and constitutions. These rules may therefore function as means to an end, the end being the attainment of the substantive right in question in a given case. This is also true for the implementation of the substantive law of the European Union.

This is an important question, as its answer may determine the outcome as regards the applicability of the right to good administration in situations in which Member States

[23] Kristjánsdóttir, Margrét Vala: *Good administration as a Fundamental Right*, Icelandic Review of Politics and Administration Vol. 9, Issue 1 2013, 240. p.

[24] The limitation in Article 41 is, on the other hand, addressed in the Court's judgement of 21. December 2011 in Case C-482/10 Cicala (Teresa Cicala v. Regione Siciliana [2011] Judgement 21 December 2011), where the Court states that 'according to its wording Article 41 of the Charter is addressed not to the Member States but solely to the EU institutions and bodies.' (Judgement 21 December 201, para 28).

implement EU law. EU fundamental rights may be invoked only when the contested measures come within the scope of application of EU law through measures enacted by EU institutions, implementing acts or other national acts falling within the field of application of EU law.[25]

The existence and proper functioning of a procedural framework is a precondition for the effective implementation of EU law.[26]

The right to a reasoned decision may, for instance, be regarded as a tool for enforcing a Union right such as the right of free movement of workers.[27] It may in other words be a *gateway* to this fundamental right of EU law.[28]

Since the EU Directives in the field of TCN's contain procedural rules and these procedural rules have to implements into the national legislation and process regulation, national measures related to admission conditions and admission procedures of TCN's fall within the category of measures implementing EU law. So, covered by the Charter. As a consequence of this the Member States must comply with rights in the Charter in connection of procedural regulation, such as right to good administration using national measure and process in relation of TCN's.

This is confirmed, for example, in joined cases C-147/06 and C-148/06[29] concerning procedures for the award of public work contracts.[30] In this case, *Advocate General Colomer* addressed the question whether the right to good administration imposed obligations on Member States on these grounds (i.e. as a Treaty rule).[31]

The Advocate General pointed out that all the Member States provided for the right to be heard in their legal systems and that it was a part of the right to good administration enshrined in Article 41 of the Charter of Fundamental Rights.[32]

So, it could be argued that their very reliance on EU secondary legislation brings the situation of third-country nationals within the scope of Union law, thereby triggering the application good administration right.

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[25] Case 36/75 Rutili [1975] ECR 1219, para.26; Case 222/84 Johnston [1986] ECR 1651, paras.17-19; and Case 222/86 Heylens and Others [1987] ECR 4097, paras.14-15; Case 5/88 Wachauf [1989] ECR 2609, para.22; Case C-2/92 Bostock [1994] ECR 1-955, para. 16.

[26] Kristjánsdóttir 2013, 238. p.

[27] Case 222/86 Unectef v. Georges Haylens and others [1987] ECR 04097, para. 15.

[28] Kristjánsdóttir 2013, 238. p.

[29] SECAP SpA and Santorso Soc. Coop. Arl v. Comune di Torino [2008] ECR I-03565.

[30] The case included the question whether a tenderer suspected of submitting an abnormally low tender had a right to state his point of view and supply relevant explanations before being excluded from the award of a contract.

[31] Kristjánsdóttir 2013, 249. p.

[32] SECAP SpA and Santorso Soc. Coop. Arl v. Comune di Torino [2008] ECR I-03565., Opinion of AG Colomer, para 50.

V. Right to good administration as a general principle of EU law

In the Åkerberg case the Court supports a broad interpretation of Article 51(1).[33] In the case the Court stated that the Member States must comply with the requirements flowing from the fundamental rights guaranteed in the legal order of the European Union.[34] If national legislation falls within the scope of EU law, that legislation must be compatible with the fundamental rights guaranteed, including those guaranteed in the Charter of Fundamental Rights.[35] This implies an obligation on Member States to respect EU fundamental rights when implementing EU law,[36] as well as a duty on national courts to ascertain whether a certain EU legal act or implementing measure has infringed rights of a fundamental nature that must be respected in the EU legal order.[37]

The inclusion of the right to good administration in the Charter of Fundamental Rights constitutes a formal recognition of this right as a fundamental right. Fundamental rights constitute general principles of Union law, that are binding not only on the EU institutions but also on the Member States when their actions fall within the scope of Union law.[38]

In case concerning the Common European Asylum System[39] the Court provided a question regarding the applicability of the right to be heard to citizens of Member States.

In his opinion of 26 April 2012, *Advocate General Bot* claims that this right must, as a general principle of EU law, be applicable in any procedure which may culminate in a decision of an administrative or judicial nature adversely affecting a person's interest. This requirement not only applies to the EU institutions by virtue of Article 41(2)(a) but also, because it constitutes a general principle of EU law, it applies to the authorities of the Member States when they adopt decisions falling within the scope of EU law, even when the applicable legislation does not expressly provide for such a procedural requirement.[40]

As a consequence, a national authority is obliged to ensure, when it adopts a decision falling within the scope of EU law, observance of the right of the person concerned to good administration, which constitutes a general principle of EU law.[41]

This right must, as a general principle of EU law, be applicable in any procedure which (…) affecting a person's interest. This requirement not only applies to the EU institutions by virtue of Article 41 (2)(a) but also, because it constitutes a general principle of EU law, it applies to the authorities of the Member States when they adopt decisions falling within the scope of EU law.[42]

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[33] This provisions are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.

[34] C-617/10 Åklageren v. Hans Åkerberg Fransson, Judgement of 26 February 2013, para.18.

[35] C-617/10 Åkerberg case, paras.19-21.

[36] C-117/06 Mollendorfand Mollendorf-Niehuus [2007] ECR 1-836.

[37] T-55/08 UEFA [2011] ECR I-0000, para. 179.

[38] 5/88 Wachauf [1989] ECR 2609; C-260/89 ERT [1991] ECR 1-2925.

[39] C-277/11, Minister of Justice, Equality and Law Reform [2012] ECR I 00000. Judgement 22 November 2012.

[40] C-277/11, Opinion of AG Bot, paras. 31-32.

[41] C-277/11, Opinion of AG Bot, paras. 31-32.

[42] C-277/11, Opinion of AG Bot, paras. 31-32.

So, the Court did, however, lay down a minimum standard regarding the concept of integration which may be employed in determining the nature of the integration conditions[43], holding that:

„The fact that the concept of integration is not defined cannot be interpreted as authorising the Member States to employ that concept in a manner contrary to general principles of Community law, in particular to fundamental rights. The Member States which wish to make use of the derogation cannot employ an unspecified concept of integration, but must apply the condition for integration provided for by their legislation existing on the date of implementation of the Directive."[44]

Legally binding integration measures are ultimately only constrained by a minimalist obligation to respect fundamental rights and the general principles of Community law.

VI. Principle of Non-Discrimination in relation to good administration

A further potentially crucial tool for third-county nationals to rely upon vis a vis the Member States is the principle of non-discrimination.

The Charter and the Treaties prohibits discrimination on the ground of nationality.

The principle of non-discrimination on grounds of nationality is created for the establishment of a free market. The key provision in this context was Article 39 EC, which provides for the free movement of workers, requiring the abolition of any discrimination on grounds of nationality as regards employment, remuneration and other conditions of work and employment.

The Treaties contain general legislation in relation of non-discrimination principle now. So, Article 18 TFEU (Article 12 EC) prohibits any discrimination on grounds of nationality, but only within the scope of application of the Treaty. The secondary legislation, most notably Directive 2000/43/EC[45] and Directive 2000/78/EC[46] explicitly excludes from its scope nationality discrimination, conditions relating to the entry and residence and third-country nationals as well as any treatment arising.

It is notable that in the Lisbon Treaty, Articles 18 and 19 TFEU are listed under the heading *non-discrimination and citizenship of the Union*, so it seems that the TCN are excluded from the applicability these provisions.

Nevertheless, there are a number of situations where TCNs can be given very similar rights to those of Member State nationals under the EC Treaty with the help of the three main Directives.

There are extremely similar conditions of entry and exit, rights of residence and rights to take up employment in the Member States. Although there is difference in treatment in the area of free movement.[47]

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[43] Cliodhna 2008, 168. p.

[44] C-540/03 European Parliament v Council [2006] ECR 1-5769., para.70.

[45] Council Directive 2000/43/EC of 29. June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L 180/22, Article 3(2).

[46] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L 303/16, Article 3(2).

[47] Doukas 20008-2009, 9. p.

Tampere Council pointed towards an inclusive policy based on equal treatment and a secure legal status too, particularly in the case of long-term residents. The Council requested the creation of a uniform set of rules through which *fair treatment* of all TCNs residing legally in the EU Member States should be ensured.[48]

In its recent case law, the Court also seems to have developed an alternative to the full extension of Union citizenship to TCNs. Contrary to earlier case law, it has started to interpret the rights and concepts applicable to TCNs in analogy with the case law governing the situation of Union citizens.[49] The case law developed in interpreting Union citizens' rights thus serves as guidance in interpreting provisions governing the situation of TCNs.[50]

In the recent situation, we could conclude that the Article 19 TFEU undoubtedly applies to third-country nationals. But Article 18 TFEU, which prohibits any discrimination on grounds of nationality in view of academic researchers apply only to EU nationals, but the wording of the provision does not explicitly exclude its application to third-country nationals.[51]Article 21(2) of the Charter is affected by the same degree of legal uncertainty regarding its application to third-country nationals as Article 18 TFEU.

It could be inferred from the case law of the Court that third-country nationals may rely on the principle of non-discrimination on grounds of nationality as a general principle of EU law. So, where a situation falls within the scope of EU law it would be difficult to justify excluding a specific group of persons from the personal scope of such a general principle.[52]

Consequently, although the prohibition of nationality discrimination is laid down in Article 18 TFEU, it is a general principle which is also applicable in cases where Article 18 cannot be relied upon. The general principle of non-discrimination on grounds of nationality must therefore be applicable not only to EU citizens but also to third-country nationals.

Only the equal treatment principle and the correlated prohibition of discrimination on grounds of nationality are suitable to satisfactorily govern the status of foreigners, particularly with regard to entitlement and enjoyment of EU fundamental rights.[53]

The prohibition of discrimination as a general principle and/or fundamental right may also be supported by its incorporation in the Charter of Fundamental Rights. The legally binding force of the Charter and its application to all matters covered by Union law equally implies a possible application of the principle to cases of third-country nationals.

The extension of the equal treatment principle – even if only for the purposes of entitlement and enjoyment of fundamental rights –, would have as one of its most important implications the enlargement of the scope of application of the Charter. [54] Such an

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[48] Cliodhna 2008, 158. p.

[49] In the CEZ case the CJEU clarified that even in a case where Article 18 TFEU is not applicable, the general principle of non-discrimination on grounds of nationality can be invoked. According to the Court, Article 18 TFEU, which prohibits any discrimination on grounds of nationality, is merely a specific expression of the general principle of equality-Case C-115/08 CEZ [2009] ECR 1-10265., paras. 88-91.

[50] Wiesbrock, Anja: *Granting Citizenship-related Rights to Third-Country Nationals: An Alternative to the Full Extension of European Union Citizenship?,* European Journal of Migration and Law 14 2012, 67. p.

[51] Hublet, Chloé: *The Scope of Article 12 of the Treaty of the European Communities vis-à-vis Third-Country Nationals: Evolution at Last?*, 15 European Law Journal 2009., 757. p.

[52] Wiesbrock 2012, 82. p.

[53] Brouwer, Evelien – De vrie, Karin: *Third-country nationals and discrimination on the ground of nationality: article 18 TFEU in the context of article 14 ECHR and EU migration law: time for a new approach*, 139-140. p.

[54] Brouwer-de Vrie, 144. p.

interpretation would allow TCNs to rely on this provision where they are treated differently on account of their nationality in any area falling within the scope of the EU treaties.

But the allowing third-country nationals to rely on a right to non-discrimination at the Union level would open the door to a large number of claims, not only concerning the distinction made between different categories of third-country nationals in national immigration law implementing Union legislation, but also regarding the distinction made between Union citizens and third-country nationals. Were third-country nationals to be covered by the principle of non-discrimination on grounds of nationality, which is one of the core rights of Union citizenship, this would diminish the dividing line between third-country nationals and Union citizens significantly, as well as undermining the validity of making such a distinction.[55]

Conclusion

The Charter of Fundamental Rights of the EU is binding, with a legal value similar to that of the Treaties. It applies both to European citizens and to third-country nationals. Title V is dedicated to *citizens' rights*, but its Article 41 (right to good administration) and Article 45(2) (freedom of movement and of residence) also include nationals of third countries.

Hopefully, taken together, Union citizenship and the Charter can have profound effects in terms of extending the personal scope of European citizenship status.

It must also be noted that in the Tampere European Council of October 1999 one of the conclusions reached in relation to EU Justice and Home affairs policy was that the EU "must ensure fair treatment of third country nationals", and should create rules that „should aim at granting them rights and obligations comparable to those of EU citizens".[56]

Although the rights are not equal, the position of the TCNs is comparable to that of the EU nationals, especially in light of the ECJ's expansive approach to interpretation.[57]

One of the greatest challenges is to guarantee access to effective remedy for third-country nationals whose fundamental rights and freedoms have been subjected to exemptions and violations by Member States and their authorities in relation to European law. One of the Charter's crucial features is Chapter VI on justice, which includes the right to effective justice and remedy if fundamental and citizenship rights are violated. The discretion and autonomy of national administrations over European citizenship-related matters have been transformed as a result of EU integration and now fall within the scope of EU law.[58]

As a result of this we could conclude that the Charter restricts Member States' discretionary power regarding matters relating to security of residence, family reunification, expulsion, and acquisition and loss of nationality. However, the provisions of Article 41 of the Charter represent a valuable source of inspiration for the national legislator because they manage to bring together, under the same right, various other procedural or material rights.[59]

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[55] Wiesbrock 2012, 81. p.

[56] Tampere European Council, Presidency conclusions, 15 and 16 October 1999., para.18.

[57] Doukas 2008, 10. p.

[58] Opinion of the European Economic and Social Committee on A more inclusive citizenship open to immigrants, 2014/C 67/04., para.5.4.

[59] http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/519224/IPOL_IDA(2015)519224_EN.pdf.

It has been pointed out that the right to good administration may in the future be enhanced through its codification in secondary legislation and the interpretation of this principle as a legally enforceable guarantee for the individual, which is its objective.[60] Although these aspirations may not yet be achieved, the references made in the case-law to the subjective right stated in Article 41 may just be an important step in the development towards a common administrative order within the EU.

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[60] Kristjánsdóttir 2013, 253. p.