

BOOK REVIEW

Katarina Hyltén-Cavallius, *EU Citizenship at the Edges of Freedom of Movement*, Hart Publishing 2020, 198 pages, ISBN: 9781509937257

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The concept of EU citizenship, established in the Treaty of Maastricht, has been the subject of in-depth scholarly research from many disciplinary lenses. Despite the initial perception of EU citizenship as a declaratory status, its interpretation in the case law of the Court of Justice of the EU (CJEU) has prompted many theoretical reflections on the matter. Over the years, legal scholars have theorized on what EU citizenship is, what it was meant to become, the impetus the Court gave to it through its liberal case law, as well as the restrictive interpretations that appeared in the past decade.¹ This thick body of literature on EU citizenship has been theoretically rich and accounts for many innovative readings of the CJEU case law to this day.

In that context, it can be quite challenging to provide an original contribution that delivers new insights into the legal evolution of the EU citizenship. This is precisely what Katarina Hyltén-Cavallius tries to do in her book 'EU Citizenship at the Edges of Freedom of Movement'. The book is based on the PhD Thesis she defended in Copenhagen University in 2017 and provides an analysis of EU citizenship as a legal concept. Specifically, Hyltén-Cavallius looks at the interaction of EU citizenship with other EU legal norms in the CJEU case-law and suggests that EU citizenship develops in the Court's jurisprudence as a two-tiered legal concept: a fundamental status of the individual in some cases and a poor legal status in others.

This finding is based on the examination of how EU citizenship appears in relation to three specific free movement rights tied to it: the right to move and reside within the territory of Member States Article 21 TFEU, the right to equal treatment under Article 18 TFEU and the right to vote under Article 22. The analysis of EU citizenship rights whose enjoyment does not depend on the citizens' exercise of free movement or their residence within the Union territory (Articles 23 and 24 TFEU) is excluded from the book.

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¹ Indicatively Michelle Everson, 'The Legacy of the Market Citizen' in Jo Shaw and Gillian More (eds), *New legal dynamics of European Union* (Clarendon Press 1995); Dora Kostakopoulou, 'Ideas, Norms and European Citizenship: Explaining Institutional Change' (2005) 68 *The Modern Law Review* 233; Niamh Nic Shuibhne, 'The Resilience of EU Market Citizenship' (2010) 47 *Common Market Law Review* 1597; Niamh Nic Shuibhne, 'The Outer Limits of EU Citizenship: Displacing Economic Free Movement Rights?' and Jo Shaw, 'Citizenship and Enlargement: The Outer Limits of EU Political Citizenship' in Okeoghene Odudu and Catherine Barnard (eds), *The Outer Limits of European Union Law* (Hart Publishing 2009); Loïc Azoulay, 'The (mis)construction of the European individual : two essays on Union citizenship law' EUI LAW Working Paper 2014/14; Dimitry Kochenov (ed), *EU Citizenship and Federalism: The Role of Rights* (Cambridge University Press 2017); Dimitry Kochenov, Nathan Cambien and Elise Muir (eds), *European Citizenship under Stress: Social Justice, Brexit and Other Challenges* (Brill Nijhoff 2020).

The book begins with an overview of the historical origin of EU citizenship and the scholarly analysis on the meaning and purpose of the concept, that followed each step of its evolution. This provides the reader with the broader background against which her analysis takes place. Then, the main body of the analysis develops in Chapters 3-7, in which Hyltén-Cavallius provides an extensive overview of the CJEU case-law in relation to different matters in order to demonstrate how EU citizenship appears in the case-law as a two-tiered legal concept.

In Chapter 3, she examines the interplay between Directive 2004/38 and the right to move and reside within the Union under Article 21 TFEU. In this Chapter, she highlights how EU citizenship is understood as a powerful legal concept when it comes to removing restrictions on the exercise of free movement by Member States. However, when it comes to the exercise of the right to residence, the CJEU has relied more on secondary law, which, according to her, points to a residual status for the EU citizenship.

In Chapter 4, she proceeds to the examination of residence and family reunification rights. She demonstrates that EU citizenship appears to be less strong when it comes to residence and family reunification rights based on Article 21 TFEU and tied to the exercise of free movement. This is not the case for rights based on Article 20 TFEU and the continued existence of the Union citizen within the Union's territory. As a result, legal landscape characterized by uncertainty is shaped for EU citizens.

Following, in Chapter 5, Hyltén-Cavallius examines the case-law related to the right to equal treatment. In this Chapter she presents the historical ties of non-discrimination with the case-law on free movement. Further, she shows that the potential of Article 18 TFEU has been narrowed by the emphasis of the Court on the provisions of Directive 2004/38 in relation to EU citizens' claims for equal treatment in the host Member State.

In Chapter 6, the focus is on the CJEU's case-law on political rights. After reviewing the relevant judgements delivered by the CJEU, Hyltén-Cavallius argues that, in the context of political rights, EU citizenship appears as a strong legal quality outside the edges of free movement, extending the scope of EU law in purely internal situations. However, she emphasizes that EU citizenship does not offer protection when it comes to disenfranchisement of EU citizens in national elections of the Member State of origin, as a result of the exercise of free movement rights.

Finally, in Chapter 7, Hyltén-Cavallius examines the relation of EU citizenship to the EU Charter of Fundamental Rights. Specifically, she elaborates on the interplay between Charter rights and EU citizenship rights and their relation to the jurisdictional scope and context of the Charter. In this Chapter, she finds that there exists an uneven and inconsistent application of EU fundamental rights standards by the CJEU depending on the nature of the citizens' claim.

Her case-law analysis throughout these Chapters frames her analytical finding, which is that EU citizenship develops in the CJEU jurisprudence as a two-tiered legal concept. It exists as the fundamental status of the individual, capable of producing tangible legal effects by enlarging the jurisdictional scope of EU law and triggering the application of the Charter and fundamental rights review. At the same time, however, it appears as a poor legal status, a residual personal category with lesser or no protection under EU law that pushes the individual out of the enjoyment of personal free movement rights, and beyond the applicability of the Charter.

The book provides a thorough overview of the CJEU case-law on EU citizenship. A more streamlined approach with focus on selected case-law could potentially assist in better framing Hyltén-Cavallius' argument. While she succeeds in highlighting the inconsistencies of the Court's case-law, the reader can get lost while going through all the case-law the Court has delivered on the matter and miss the point she is making. This is especially due to the complex nature of the jurisprudence on this matter, which has inherent overlaps, despite the chosen structure of presentation.

What is more, the finding of the EU Citizenship as a two-tiered concept is well suited to explain the inconsistent reality of the Court's jurisprudential evolution. This finding could be theoretically enriched. It would be interesting to see more analysis by Hyltén-Cavallius on what this means for the development of EU citizenship, to what extent the concept is destined to sit at the edges of freedom of movement in order to appear as a fundamental legal status and what legal implications (besides uncertainty) this brings about for EU citizens and EU law.

Overall, Hyltén-Cavallius' book is suggested for getting a concise and thorough overview of the jurisprudence of the Court on EU citizenship. It provides the reader with all the relevant legal material on the matter and sets the basis for further reflection on the EU citizenship concept.