

EU CITIZENSHIP LAW
(AUTHOR: NIAMH NIC SHUIBHNE,
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Abstract:

„EU Citizenship Law” (Legislația UE în materie de cetățenie) de Niamh Nic Shuibhne explorează cadrul juridic și evoluțiile care modelează cetățenia Uniunii Europene. Cele 640 de pagini pun accentul pe valoarea solidarității, examinând modul în care cetățenia UE promovează cooperarea și asistența reciprocă între statele membre pentru a face față provocărilor comune și a construi o Uniune coezivă. Printre subiectele cheie se numără echilibrul dintre solidaritate și responsabilitatea financiară, evoluția interpretărilor Curții de Justiție a UE și impactul asupra coeziunii și integrării sociale. Concluzionând cu o reflecție asupra naturii imperfecte, dar extraordinare a cetățeniei UE, autoarea subliniază potențialul acesteia de a spori protecția juridică și de a susține valorile europene. Această lucrare cuprinzătoare este o resursă esențială pentru studenții și practicienii dreptului din întreaga Uniune și pentru cei care aspiră la statutul de membru.

Cuvinte cheie: cetățenia Uniunii Europene, solidaritate, cadru juridic, coeziune socială, integrare

Résumé :

L'ouvrage «EU Citizenship Law» (Législation sur la citoyenneté de l'UE) de Niamh Nic Shuibhne explore le cadre juridique et les évolutions qui façonnent la citoyenneté de l'Union européenne. Ce livre de 640 pages met l'accent sur la valeur de la solidarité, en examinant comment la citoyenneté européenne promeut la coopération et l'assistance mutuelle entre les États membres pour relever les défis communs et construire une Union cohésive. L'équilibre entre la solidarité et la responsabilité financière, l'évolution des interprétations de la Cour de justice de l'Union européenne et l'impact sur la cohésion sociale et l'intégration sont autant de thèmes clés abordés dans cet ouvrage. En concluant par une réflexion sur la nature imparfaite mais extraordinaire de la citoyenneté européenne, l'auteur souligne son potentiel pour renforcer les protections juridiques et défendre les valeurs européennes. Cet ouvrage complet est une ressource essentielle pour les étudiants en droit et les praticiens dans toute l'UE et pour ceux qui aspirent à y adhérer.

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Mots-clés : Citoyenneté de l'Union européenne, solidarité, cadre juridique, cohésion sociale, intégration

One of the most recent works about European Union citizenship published by Oxford University Press is *EU Citizenship Law* signed by Niamh Nic Shuibhne, professor of EU Law at the University of Edinburgh.

In the opinion of its author, the objective of this book is to articulate, explain, and analyse the legal framework and the legal developments that have shaped the status of European Union citizenship and the rights that it confers on Member State nationals.

This is a comprehensive book (640 pages covering 10 dense chapters) and it is impossible, in a review with limited space, to deal with its full, highly rich and well-documented content. We will concentrate only on the value of solidarity, as interpreted and applied by the European Union and its institutions.

Fundamental ideas

European citizenship reinforces the value of solidarity by promoting cooperation, unity, and mutual assistance among Member States and their citizens. It underlines the concept that by standing together and supporting each other, Europeans can address shared challenges, achieve common objectives, and build a stronger, more cohesive Union.

The book has 44 express references to solidarity in the main text, in footnotes and in bibliography, a major place being reserved to the book with the challenging title *Questioning EU Citizenship: Judges and the Limits of Free Movement and Solidarity in the EU* (Hart Publishing, 2017).

The starting point is explained by professor Niamh Nic Shuibhne in the following terms: “The values on which the Union is founded include solidarity, non-discrimination and respect for human rights; in its relations with the wider world the Union should uphold its values and contribute to the protection of its citizens”. (p. 223)

It is emphasized that “These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.” (p. 27)

The author explains that these “are not legal questions only; they are cultural, moral, social, and political questions too. The incremental expansion of Union competence for its external borders is one of the most significant legal developments post-Maastricht. That Treaty’s construction of a three-pillar Union architecture – the third limb of which addressed ‘Justice and Home Affairs’ – evolved post-Lisbon to the Area of Freedom, Security and Justice,

a field of shared Union/Member State competence[...] the purpose of it is to “ensure the absence of internal border controls for persons and a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals”. (p. 9)

It is reminded that the EU Court determined that “beneficiaries of the right of residence must not become an unreasonable burden on the public finances of the host Member State. The Court accepts a certain degree of financial solidarity between nationals of a host Member State and nationals of other Member States, particularly if the difficulties which a beneficiary of the right of residence encounters are temporary.” (p. 56)

However, it is further specified that the language of the Court later changed to reflect greater accommodation of the interests of the State. For example, in a student case, the Court held that “although the Member States must, in the organisation and application of their social assistance systems, show a certain degree of financial solidarity with nationals of other Member States” it is nevertheless “permissible for a Member State to ensure that the grant of assistance to cover the maintenance costs of students from other Member States does not become an unreasonable burden which could have consequences for the overall level of assistance which may be granted by that State.” (p. 56)

Some lawyers have suggested that nationality is, as the Court put it, a “special relationship of solidarity and good faith” which together with “the reciprocity of rights and duties[...] forms the bedrock of the bond of nationality” and that it is therefore “difficult to conceive that that is a connection that can be entirely disregarded when assessing the proportionality of the measures that a Member State adopts to achieve the integration objective. Acquiring the nationality of the host State is thus deemed to represent a Union citizen’s intention to become permanently integrated in that State.” (p. 93)

At the same time, it is recalled that the Union “shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals.” (p. 95)

The EU Court indicated that where a decision withdrawing naturalisation is based on “the deception practised by the person concerned in connection with the procedure for acquisition of the nationality in question, such a decision could be compatible with European Union law. In other words, a decision withdrawing naturalization is potentially justifiable on public interest grounds—even where that might result in the person’s statelessness – since it is legitimate for a Member State to wish to protect the special relationship of solidarity and

good faith between it and its nationals and also the reciprocity of rights and duties, which form the bedrock of the bond of nationality.”(p. 112)

Evoking the Covid-19 pandemic, the author reminds that the European Union was going at that time through an unprecedented public health crisis, to which the Member States have responded by demonstrating equally unprecedented solidarity as regards health-related matters. In those cases, it were the limits of social solidarity which the Court was called upon to clarify. (p. 382)

Some lawyers observed that the EU law is based on values of solidarity which have been further reinforced since the creation of citizenship of the Union. Does the case law on lawful residence and equal treatment for economically inactive Union citizens bear that out? The law establishes that economically inactive Union citizens who reside in a host State for more than three months must (continue to) demonstrate that they have sufficient resources to avoid becoming a burden on the host State’s social assistance system as well as comprehensive sickness insurance. (p. 410)

It is interesting to learn that the EU Court interpreted the concept of social cohesion in the sense that is not about extending the possibility of creating bonds and promoting new forms of solidarity in Europe. It is mainly about respecting the particular value system of the host Member State. (p. 466)

The book signals that different groups of workers are not necessarily equal under EU law. Some cases confirm that the significance and measuring of integration developed for EU citizenship law can also now apply to the economic freedoms. For frontier workers, factors that establish membership of a community of solidarity can be investigated in certain circumstances – to determine whether residence alone is enough or whether, instead, it might be considered whether it is appropriate in such cases on a supplementary basis to have recourse to additional criteria which characterise the degree of integration in an economic and social environment, for example, place of employment, distance to the frontier from the place of residence etc. (p. 476)

Conclusion

Professor Niamh Nic Shuibhne tends to express some caution about what we can expect of European Union citizenship. She writes: “Yes, we can do EU citizenship law better. At the same time, citizenship will not provide all the answers to all the questions or doubts that we have about the Union, or its Member States, in increasingly challenging times. Nevertheless, in my view, Union citizenship is extraordinary. Its legal evolution is imperfect, its legal

framework is complicated, and its full legal potential is as yet unrealised. Even so, Union citizenship is still extraordinary. It provides a place for us to be our best legal selves, to consider the worth and deepen the protection of the person, and to defend a European Union where principles and values really do matter.” (p. X of the Preface)

The final paragraph of the book under review states the following: “EU citizenship law guards the parameters, but it does not take down the fences. The very possibility of expelling and excluding Union citizens therefore highlights, above all, fundamental and unresolved questions about Union citizenship itself and about the Union as the place within which that citizenship is determined and experienced; about identity, values, integration, and responsibility – about, most fundamentally, *home*”. (p. 533)

In its entirety, the comprehensive tome *EU Citizenship Law* stands as an indispensable resource, highly deserving of recommendation to law students and law practitioners alike across the European Union Member States, as well as to aspirants to membership therein.