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

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1. Introduction

Equality is a core element of citizenship: to be a citizen means to be entitled to equal treatment with other citizens. Yet the power of states to define and grant the status of national citizenship is still considered to be one of the pillars of national sovereignty. This entails the power to differentiate between a state's own nationals and foreigners with regard to their rights and legal protection. In this sense citizenship is, as Bosniak put it, 'soft on the inside but hard on the outside'.[1] However, the power of states to treat foreigners differently from nationals is increasingly limited by international human rights law, including the right to non-discrimination in Article 14 of the European Convention on Human Rights (ECHR). As De Schutter points out, the prohibition of discrimination on the grounds of nationality is emerging as a general principle of international and European human rights law.[2]

Within the law of the European Union (EU), Article 18 of the Treaty on the Functioning of the European Union (TFEU) prohibits discrimination on the basis of nationality, within the scope of the treaties (the TFEU and the Treaty on the European Union, TEU). With regard to EU citizens this provision is inclusive: it ensures equal treatment for EU citizens in other Member States and plays a key role in enabling free movement and giving substance to EU citizenship. However, Article 18 TFEU seems to be also

1 Bosniak 2006, at p. 4.
2 de Schutter 2009, at p. 78.

exclusive, in the sense that it is interpreted, by the EU Court of Justice (CJEU), as not applying to third-country nationals (TCNs). Thus, where the right to equal treatment is concerned, the 'soft on the inside, hard on the outside' character of citizenship appears to be reproduced at the EU level. At the same time, viewed from a national perspective, Article 18 TFEU functions to grant one group of foreigners (EU citizens living in Member States other than their own) a privileged status compared to other foreigners (TCNs).[3] This difference in treatment between EU citizens and TCNs has been accepted in several cases by the European Court of Human Rights (ECtHR), on the ground that the differential treatment of foreigners and EU citizens residing in the same Member State was justified because of 'the special legal order of the EU'.

Yet, also at the EU level, equal treatment clauses have been included in the body of EU migration law regulating the conditions for entry and the legal status to be granted to TCNs. Although none of these provisions are unlimited or absolute, they indicate that unequal treatment of TCNs is no longer self-evident. Moreover, in 2014 in the judgment of *Dhabhi v. Italy* the ECtHR found that an Italian family allowance scheme, which treated TCNs less favourably than EU workers, violated Article 14 ECHR in combination with 8 ECHR.[4] Whereas, in earlier cases, the ECtHR had already granted TCNs equal treatment with the respondent state's own nationals, the judgment in *Dhabhi* explicitly addresses the position of TCNs compared to EU workers as a privileged category of foreigners.

These developments raise the question of to what extent the apparently limited scope of Article 18 TFEU – only EU citizens are covered – still fits the broader body of European law, in particular EU migration law and the ECHR. This contribution seeks to answer this question through an examination of existing instruments and case law of the European courts on the equal treatment of TCNs. It does not argue that the equal treatment of TCNs is always called for. However, it asks whether differential treatment

3 This differentiation also implies a privileged status for EU citizens compared with EU nationals who have not left their 'own' country, also known as reverse discrimination. However, this differentiation, which results from the material scope of EU law rather than the personal scope of Art. 18 TFEU, will not be dealt with in this contribution.

4 ECtHR, *Dhabhi v. Italy*, 8 April 2014 (Appl.no. 17120/09).

of TCNs should not in principle be covered by Article 18 TFEU and be subject to the requirement of a reasonable and objective justification, also taking into account that this right to non-discrimination has been included in Article 21 (2) of the Charter on Fundamental Rights of the EU.[5] This question is particularly relevant with regard to EU policy and legislation in the area of immigration (Articles 77-80 TFEU), which essentially address the legal position of TCNs. However, other instruments of EU law, such as the Framework Decision on the European Arrest Warrant (EAW) 2002/584 or the Data Protection Directive 95/46/EC also involve the legal position of TCNs and might trigger the question of equal treatment based on nationality.[6]

In section 2 we examine ECtHR case law to see how differential treatment of foreigners and in particular differences in treatment between EU citizens and TCNs are dealt with by the ECtHR. Next, in section 3 we explore the meaning of the right to non-discrimination based on nationality in EU law. Taking into account the shift in emphasis which took place in EU policy with regard to the equal treatment of TCNs since 1999, we give a short overview of how in different instruments of EU migration law, the rights to non-discrimination and equal treatment have been incorporated. In this section we also mention recent developments in the case law of the CJEU which indicate that there may be room for a broader interpretation of Article 18 TFEU. Finally, we argue that it is time to (re)consider the meaning of Article 18 TFEU for TCNs.[7]

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5 See Groenendijk 2012. Dealing earlier with the scope of former Art. 12 TEC: Hublet 2009 and (in Dutch) Boeles 2005, at p. 500 ff.

6 Below, we only deal with this question with regard to the EAW, for the subject of data protection and non-discrimination of TCNs we refer to Brouwer 2011 and her (Dutch) annotation to the judgment of the CJEU, Case C-524/06, *Huber v. Germany* [2008], *JV* 2009/110, at pp. 515-532.

7 In this contribution we focus on discrimination based on nationality and will not deal with the right of non-discrimination on grounds of racial or ethnic origin as protected in Art. 14 ECHR but also in Directive 2000/43 (Racial Equality) and Directive 2000/78 (Employment Equality). The meaning of the non-discrimination clauses in these Directives for TCNs has been extensively dealt with in: Morano-Foadi and de Vries 2012.

2. Differential treatment of EU citizens and TCNs in ECtHR case law

2.1. Dhabhi v. Italy: equal access to family benefits for EU workers and TCNs

In *Dhabhi v. Italy*, the ECtHR was asked whether an Italian family benefits scheme discriminated against the applicant (a Tunisian national) on the grounds of his nationality.[8] The scheme provided for financial aid for large families with low income and was available to Italian nationals and EU citizens from other Member States, but not to lawfully resident TCNs such as the applicant. The ECtHR found that the Italian authorities' decision to deny family benefits to the applicant violated the prohibition of discrimination (Art. 14 in conjunction with Art. 8 ECHR). It stated that the applicant had been working and residing lawfully in Italy and had paid contributions to the National Institute for Social Security (*Istituto Nazionale della Previdenza Soziale*) in the same way as workers from EU Member States. The applicant's exclusion from family benefits was therefore exclusively based on the fact that he was not a national of an EU Member State. The ECtHR maintained that a difference in treatment based exclusively on the grounds of nationality requires very weighty reasons in order to be justified and that the budgetary arguments put forward by Italy did not constitute a sufficient justification.[9] *Dhabhi v. Italy* is not the first case in which the ECtHR decided on the unequal treatment of TCNs compared to EU citizens or to a Member State's own nationals. Article 14 ECHR prescribes that the rights and freedoms set forth in the Convention shall be secured without discrimination. The ECtHR has consistently interpreted this provision as requiring that differences in treatment in otherwise similar situations are prohibited unless

8 ECtHR, *Dhabhi v. Italy*, 8 April 2014 (Appl.no. 17120/09).

9 ECtHR, *Dhabhi v. Italy*, 8 April 2014 (Appl.no. 17120/09), at para. 53. The Court's reasoning here shows an interesting parallel with CJEU case law on sex discrimination in the field of social security, where budgetary reasons are also not accepted as justifying (indirect) differential treatment between men and women. See, for example, Case C-343/92, *Roks and others v. Bestuur van de Bedrijfsvereniging voor de Gezondheid, Geestelijke en Maatschappelijke Belangen and others*, [1994] ECR I-00571, at para. 38. Thanks to Susanne Burri for drawing our attention to this.

they are reasonably and objectively justified.[10] Article 14 covers differences in treatment on a listed number of grounds as well as 'other status'. Whereas Article 14 only applies to differences in treatment falling within the ambit of a Convention right, Article 1 of the Twelfth Protocol (1 P12) to the ECHR extends protection against discrimination to 'any right set forth by law', thus all rights granted by national law.[11] Although Articles 14 and 1 P12 ECHR do not mention nationality or immigration status as discrimination grounds, only 'national origin', ECtHR case law makes clear that differential treatment of foreigners compared to nationals or of different categories of foreigners falls within the scope of the Convention.[12] Such differential treatment thus requires a reasonable and objective justification, the existence of such justification being assessed in the last instance by the ECtHR.

In earlier case law the ECtHR often appeared to be very lenient towards differences in treatment between EU citizens and TCNs. In its well-known judgment in *Moustaquim v Belgium*, it stated in general terms that differential treatment of EU nationals and TCNs was reasonably and objectively justified because the EU (then the EC) constituted a 'special legal order'.[13] Simultaneously, however, the ECtHR developed a line of case law in which differences in the treatment of lawfully resident TCNs compared to a state's own nationals have been strictly scrutinised. The following subsections discuss both elements in the Court's case law. Subsection 2.5 analyses how *Dhabhi* fits in with earlier judgments of the ECtHR.

2.2. The expulsion cases: Moustaquim and C. v. Belgium

The case of *Moustaquim* concerned the expulsion of a Moroccan national from Belgium on public order grounds. Abderrahman Moustaquim, who arrived in Belgium at the age of one and obtained legal residence, was deported at the age of twenty following convictions for a range of criminal

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10 Standing case law since *Belgian Linguistic Case*: ECtHR, *Case 'Relating to certain aspects of the laws on the use of languages in education in Belgium' v. Belgium,* 23 July 1968 (Appl.no. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63, 2126/64).

11 However, this Protocol has been ratified by a limited number of EU Member States, see the Treaty Office of the Council of Europe: www.conventions.coe.int.

12 See the case law discussed in paras. 2.2-2.4.

13 ECtHR, *Moustaquim v. Belgium*, 18 February 1991 (Appl.no. 12313/83), at para. 49.

offences. In addition to the expulsion a ten-year entry ban was imposed. Moustaquim's parents and siblings lived in Belgium and he claimed that his deportation violated his right to family life as protected by Article 8 ECHR. In addition, he claimed that the deportation constituted discrimination against him on the grounds of his nationality because a juvenile delinquent with Belgian nationality or the nationality of another EU (then EC) Member State would not have been expelled. The ECtHR found that Moustaquim could not be compared to Belgian nationals because 'the latter have a right of abode in their own country and cannot be expelled from it; this is confirmed by Article 3 of Protocol No 4 [ECHR]'.[14] As regards the preferential treatment of nationals of other EU Member States, the ECtHR held that 'there is objective and reasonable justification for it, as Belgium belongs, together with those States, to a special legal order'.[15] The ECtHR thus found that, unlike Belgian nationals, nationals of other EU Member States were in a situation comparable to that of TCNs because, like TCNs, they were not *a priori* excluded from deportation. However, the difference in treatment was justified by the 'special legal order' constituted by the EU: the fact that Belgium had agreed with other states to grant each other's nationals favourable treatment in migration matters did not imply that it had to do the same for nationals of states not involved in the agreement. This part of the judgment was confirmed five years later in *C. v. Belgium* which concerned similar facts.[16] The ECtHR again stated that the difference in treatment was justified because the EU Member States formed a 'special legal order', this time adding that the EU had 'in addition, established its own citizenship'.[17]

2.3. Preferential treatment of EU citizens in other situations: Bigaeva and Ponomaryovi

Since *Moustaquim* and *C. v. Belgium*, the ECtHR has occasionally referred to the issue of preferential treatment of EU citizens as compared to other foreigners, also in situations not concerning expulsion. In *Bigaeva v. Greece*

14 ECtHR, *Moustaquim v. Belgium*, 18 February 1991 (Appl.no. 12313/83), at para. 49.
15 ECtHR, *Moustaquim v. Belgium*, 18 February 1991 (Appl.no. 12313/83), at para. 49.
16 ECtHR, *C. v. Belgium*, 7 August 1996 (Appl.no. 21794/93).
17 ECtHR, *C. v. Belgium*, 7 August 1996 (Appl.no. 21794/93), at para. 38.

the applicant was a Russian national who at the time of the judgment had lawfully lived in Greece for 16 years.[18] She had attended university in Athens and obtained a Greek law degree, but was eventually denied admission to the Greek bar because she did not meet the condition, stipulated in the Greek legislation in force at the time, of having Greek nationality or the nationality of another EU Member State. The ECtHR found a violation of Article 8 ECHR (the right to private life) taken alone, but dismissed the complaint of nationality discrimination (Arts 14 and 8 ECHR). It began by stating that differences in treatment concerning access to a particular profession generally do not fall within the scope of Article 14. In this case, having already found a violation of Article 8, the ECtHR did not have a choice but to find Article 14 applicable as well.[19] However, it held that it fell within the margin of appreciation of the Greek authorities to decide that lawyers had to have Greek nationality or the nationality of another EU Member State. The ECtHR took into account that the profession of a lawyer, although a liberal profession, involves the exercise of certain public functions relating to the administration of justice. The Greek authorities were therefore granted a large area of discretion to regulate this field.[20]

The case of *Ponomaryovi v. Bulgaria* concerned two Russian teenagers who were living in Bulgaria and were excluded from secondary education because they could not pay the required school fees.[21] Under the Bulgarian National Education Act the applicants had to pay sums equivalent to € 800-1300 per year, whereas school enrolment was free of charge for Bulgarian nationals and for certain categories of foreigners including, *inter alia*, holders of a permanent residence permit and minor children of EU migrant workers. The latter exemption had been included to implement EEC Council Directive 77/486 on the education of children of migrant workers when Bulgaria joined the

18 ECtHR, *Bigaeva v. Greece*, 28 May 2009 (Appl.no. 26713/05).

19 It is long-standing ECtHR case law that Art. 14 ECHR applies to differences in treatment that fall within the ambit of a substantive convention right (e.g. ECtHR, *Burden v. the United Kingdom* (Grand Chamber), 29 April 2008 (Appl.no. 13378/05), at para. 58). Given that the refusal to admit Bigaeva to the bar had been found to violate Art. 8, there could be no doubt that the facts of the case fell within the ambit of that provision.

20 ECtHR, *Bigaeva v. Greece*, 28 May 2009 (Appl.no. 26713/05), at para. 40.

21 ECtHR, *Ponomaryovi v. Bulgaria*, 21 June 2011 (Appl. no. 5335/05).

EU.[22] Taking into account the importance of the right to education, which is directly protected by the ECHR, the ECtHR found that Bulgaria had discriminated against the applicants on the grounds of their nationality and immigration status and had violated Article 14 in conjunction with Article 2 First Protocol ECHR. However, the ECtHR also noted in general terms that states may restrict access to 'resource-hungry public services – such as welfare programmes, public benefits and health care by short term and illegal immigrants, who, as a rule, do not contribute to their funding'. It continued to say that a state may also 'in certain circumstances, justifiably differentiate between different categories of aliens residing in its territory. For instance, *the preferential treatment of nationals of Member States of the European Union […] may be said to be based on an objective and reasonable justification, because the Union forms a special legal order, which has, moreover, established its own citizenship*' [emphasis added].[23] The ECtHR thus confirmed its reasoning in *Moustaquim* and *C. v. Belgium*, to which it also referred.

It follows from the *Bigaeva* and *Ponomaryovi* judgments that preferential treatment of EU citizens as compared to TCNs can be justified in other contexts than expulsions or even migration policy. Although it is clear from *Ponomaryovi v. Bulgaria* that states have a considerably smaller margin of appreciation where access to (primary and secondary) education is concerned, the ECtHR accepts that under certain circumstances EU citizens may receive favourable treatment as regards access to public benefits. Nevertheless, TCNs who are long-term lawful residents of the host state are often entitled to equal treatment with the nationals of those states. This is discussed in the following section.

2.4. Equal treatment of TCNs compared to a state's own nationals: the social security cases

The cases discussed above show that the ECtHR has sometimes readily accepted differential treatment on the grounds of nationality where this treatment resulted from the application of EU law. At the same time,

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22 ECtHR, *Ponomaryovi v. Bulgaria*, 21 June 2011 (Appl. no. 5335/05), at para. 32.

23 ECtHR, *Ponomaryovi v. Bulgaria*, 21 June 2011 (Appl. no. 5335/05), at para. 54.

however, the ECtHR established a line of case law holding that differences in treatment based exclusively on the ground of nationality can only be justified by 'very weighty reasons'. This was first decided in the well-known judgment of *Gaygusuz v. Austria*, concerning the access of a Turkish national to unemployment benefits.[24] Gaygusuz was not eligible for benefits due to his foreign nationality and claimed discrimination on the grounds of national origin. Unlike in *Moustaquim* and *C. v. Belgium*, the ECtHR found that Gaygusuz, who had long-term residence in Austria, could be compared to nationals of that state. In this regard, the ECtHR pointed out that Gaygusuz was lawfully resident in Austria, had worked there and had contributed to the unemployment insurance fund in the same capacity and on the same basis as Austrian nationals.[25] Therefore, and in the absence of a sufficient justification for a difference in treatment, the ECtHR found that he should have been entitled to receive emergency unemployment assistance on an equal footing with Austrian nationals.

In subsequent judgments the ECtHR confirmed that differences in treatment based exclusively on nationality require very weighty reasons to be justified. The case of *Koua Poirrez v. France* concerned an Ivory Coast national who had been adopted by a French national at the age of 21.[26] His application for an allowance for disabled adults was denied on the grounds that he did not have French nationality or the nationality of a state having signed a reciprocity agreement with France. The ECtHR held, in contrast with the *Moustaquim* judgment, that France could not give preferential treatment to its own nationals and/or nationals of countries with which a reciprocity agreement had been signed and found a violation of Article 14 in conjunction with Article 1 First Protocol ECHR.[27] It did so also in the case of *Luczak v. Poland*, concerning a French national who was denied access to the Polish Farmers' Social Security Fund.[28] Like in *Gaygusuz v. Austria*,

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24 ECtHR, *Gaygusuz v. Austria*, 16 September 1996 (Appl.no. 17371/90), at para. 42.
25 ECtHR, *Gaygusuz v. Austria*, 16 September 1996 (Appl.no. 17371/90), at para. 46.
26 ECtHR, *Koua Poirrez v. France*, 30 September 2003 (Appl.no. 40892/98).
27 ECtHR, *Koua Poirrez v. France*, 30 September 2003 (Appl.no. 40892/98), at para. 49. While it is possible that the Court's decision was influenced by the applicant's disability (disability being a prohibited discrimination ground), no mention of this is made in the judgment.
28 ECtHR, *Luczak v. Poland*, 27 November 2007 (Appl.no. 77782/01).

the ECtHR stressed that Luczak was permanently resident in Poland, had previously been affiliated to the general social security scheme and paid contributions to the farmers' scheme.[29] The ECtHR took into account several other considerations, including that Luczak had been left without any social security cover and that the government had not convincingly shown that the applicant's exclusion from the farmers' scheme served the general interest.[30]
The case of *Andrejeva v. Latvia* concerned a former national of the Soviet Union who had lived in Latvia since the age of 12 and had obtained lawful residence there as a 'permanently resident non-citizen' after the Soviet Union's demise.[31] The periods she had spent working outside Latvia had not been taken into account in the calculation of her pension benefits, while this would have been the case if she had had Latvian citizenship. The ECtHR agreed with the applicant that this difference in treatment violated Article 14 together with Article 1 First Protocol. The ECtHR stressed that the applicant was stateless and therefore did not have stable legal ties with any state other than Latvia.[32] Like in *Koua Poirrez*, the ECtHR dismissed the Latvian government's argument that the calculation of periods of employment abroad was a matter to be addressed through bilateral agreements and stated that 'by ratifying the Convention, the respondent State undertook to secure to 'everyone within [its] jurisdiction' the rights and freedoms guaranteed therein. Accordingly, in the present case the Latvian State could not be absolved of its responsibility under Article 14 of the Convention on the ground that it is not or was not bound by inter-State agreements on social security with Ukraine and Russia.[33]
Lastly, *Fawsie v. Greece* and *Saidoun v. Greece* concerned applicants who had been granted refugee status in the respondent state.[34] These cases again concerned the denial of a family allowance, which was reserved for Greek nationals and refugees of Greek origin and later also for nationals of other

29 ECtHR, *Luczak v. Poland*, 27 November 2007 (Appl.no. 77782/01), at para. 49.
30 ECtHR, *Luczak v. Poland*, 27 November 2007 (Appl.no. 77782/01), at paras. 52 and 59.
31 ECtHR, *Andrejeva v. Latvia* (Grand Chamber), 18 February 2009 (Appl.no. 55707/00).
32 ECtHR, *Andrejeva v. Latvia* (Grand Chamber), 18 February 2009 (Appl.no. 55707/00), at para. 88.
33 ECtHR, *Andrejeva v. Latvia* (Grand Chamber), 18 February 2009 (Appl.no. 55707/00), at para. 90.
34 ECtHR, *Fawsie v. Greece*, 28 October 2010 (Appl.no. 40080/07); ECtHR, *Saidoun v. Greece*, 28 October 2010 (Appl.no. 40083/07).

Member States belonging to the EU or the European Economic Area (EEA). The allowance aimed to address the demographic predicament faced by Greece. However, the ECtHR, again requiring very weighty reasons for the difference in treatment, was not persuaded that the demographic aims pursued by Greece justified the exclusion of TCNs. Interestingly, the fact that benefits were also granted to EU and EEA nationals was not seen by the ECtHR as a legitimate differentiation stemming from the 'special legal order' of the EU, but as an indication that it was not necessary to restrict the circle of beneficiaries to Greek nationals.

2.5. Return to Dhabhi: equal treatment for EU citizens and TCNs?

The previous subsections analysed ECtHR case law to see how the ECtHR deals with differences in treatment between EU citizens and TCNs. Subsections 2.2 and 2.3 showed that the ECtHR allows such distinctions in certain situations, including the expulsion of lawfully resident aliens for public order reasons, access to the profession of a lawyer and access to 'resource-hungry public services'. In *Moustaquim*, *C. v. Belgium* and *Ponomaryovi* the ECtHR specifically stated that the preferential treatment of EU citizens could be justified by the fact that the EU constitutes a 'special legal order' with its own citizenship. Meanwhile, subsection 2.4 showed that on other occasions the ECtHR left no or very little room for states to differentiate on the grounds of nationality and required very weighty reasons for such differentiations to be justified. In several cases (e.g. *Koua Poirrez*) the ECtHR expressly dismissed the argument that equal treatment could be limited to the nationals of states with which the respondent state had concluded bilateral agreements, whereas in *Fawsie* and *Saidoun* the inclusion of EU and EEA nationals in the benefit scheme was used by the ECtHR as support for its finding that it was not necessary to limit the scheme to Greek nationals.

In the *Dhabhi* case, discussed at the beginning of this section, the ECtHR found a violation of Article 14 because the difference in treatment between TCNs and EU nationals was not based on a sufficient justification. Does this mean that such differences in treatment can no longer be justified on the ground of the EU being a 'special legal order', as the ECtHR held in earlier

cases? Looking at the broader body of ECtHR case law, it appears that the Court relied on the 'special legal order' argument in cases where there was no obligation, under Article 14 ECHR, to grant TCNs equal treatment *with the state's own nationals*. In such cases, where states are allowed to differentiate between foreigners and their own nationals, they may also differentiate between different categories of foreigners and hence grant preferential treatment to EU citizens from other Member States (e.g. they may grant benefits to EU citizens shortly upon their arrival or regardless of meeting certain income standards while TCNs would have to first obtain long-term or unconditional residence). On the other hand, the case law discussed in subsection 2.4 shows that there are situations where foreign nationals must be granted treatment which is equal to the state's nationals. In such cases, unless EU citizens are granted preferential treatment even compared to the state's own nationals (so-called 'reverse discrimination'), equal treatment will have to be ensured for nationals, EU citizens and TCNs alike. It appears from the case law that an important factor weighing in favour of treating foreigners on a par with nationals is long-term lawful residence.[35] However, the case for equal treatment is also stronger where the applicant is stateless or has refugee status.[36] Moreover, the room for differentiation appears to depend on the nature of the right at stake: in *Moustaquim*, which concerned expulsion, the ECtHR accepted that the applicant was treated differently from EU nationals, although he had been lawfully resident since the age of one. On the other hand, in *Ponomaryovi* the margin of appreciation for the state was narrow (partly) because the right to education was at stake.[37]

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35 See also ECtHR, *Niedzwiecki v. Germany*, 25 October 2005 (Appl.no. 58453/00) and ECtHR, *Okpisz v. Germany*, 25 October 2005 (Appl.no. 59140/00).

36 See ECtHR, *Andrejeva v. Latvia* (Grand Chamber), 18 February 2009 (Appl.no. 55707/00), ECtHR, *Fawsie v. Greece*, 28 October 2010 (Appl.no. 40080/07); ECtHR, *Saidoun v. Greece*, 28 October 2010 (Appl.no. 40083/07) (discussed in 2.4). See also ECtHR, *Bah v. the United Kingdom*, 27 September 2011 (Appl.no. 56328/07), at paras. 45 and 47.

37 It is not clear to what extent the residence status of the applicants played a role in *Ponomaryovi*: although they did not have lawful residence at the time of the difference in treatment, they had been long-term lawful residents of Bulgaria until they turned 18. In ECtHR, *Anakomba Yula v. Belgium,* 10 March 2009 (Appl.no. 45413/07), the ECtHR found a violation of Arts 14 and 6 ECHR, despite the applicant's unlawful residence status, because of the importance of the right involved.

Concerning the judgment in *Dhabhi*, it remains unclear why the ECtHR chose to use EU nationals as the comparator instead of (only) Italian nationals who, as it appears from the facts of the case, were also entitled to the family allowance at stake. Nevertheless in *Dhabhi*, as in *Gaygusuz* and *Luczak*, the ECtHR stressed that the applicant had held a residence and work permit, had been insured by the National Institute for Social Security and had paid contributions in the same way as employees who were nationals of an EU Member State. The ECtHR added that the applicant was not a short-term or irregular migrant and could not be excluded from family benefits on those grounds.[38]

3. EU law and the principle of non-discrimination based on nationality

3.1. Equality clauses in EU migration law: Tampere and beyond

Within the EU framework, EU citizens and their family members (including TCNs) have a strong legal position which finds its origin in the principle of freedom of movement and the rights laid down in Directive 64/221, later replaced by the Citizenship Directive 2004/38.[39] With the definition of EU citizenship in the Maastricht Treaty and the following case law of the CJEU, the protection of EU citizens, with its current legal basis in Article 20 TFEU, became closely connected to their nationality. This means, as explained above, that EU citizenship may function as the sole justification for the differentiation between EU citizens and TCNs residing in Member States. Early instruments of asylum and migration law in the EU, adopted between 1990 and 1999, were generally aimed at controlling and preventing migration and thus strengthened this 'divide' between EU citizens and non-EU citizens. In the Tampere Conclusions of 1999, including the five-year programme for a common immigration policy, the Member States underlined for the first time the importance of fair and equal treatment of legally residing TCNs in the EU.[40] According to these conclusions, long-

38 ECtHR, *Dhabhi v. Italy*, 8 April 2014 (Appl.no. 17120/09), at para. 52.

39 Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJ L 158 p. 77).

40 Tampere European Council, 15-16 October 1999, Presidency Conclusions SN 200/99.

term resident TCNs should be granted rights 'as near as possible' to those of EU citizens to ensure their integration in the EU. This goal of giving legally residing TCNs rights which are 'comparable', respectively 'as near as possible', to those enjoyed by EU citizens was laid down in the preambles to Directive 2003/86 on Family Reunification and Directive 2003/109 on long-term resident third-country nationals.[41] Although the importance of non-discrimination and the right to equality for TCNs has been emphasized in later EU policies,[42] the Tampere goal of giving TCNs rights equal to those of EU citizens seems to have been abandoned. Or in the words of Carrera: 'the excitement about the potentials of the Tampere Programme gradually became a shared nostalgia'.[43]

Where initially the purpose of equal treatment was clearly connected to the protection of human rights or fair treatment of TCNs, in more recent instruments the EU legislator applies the right to equal treatment more as a tool to attract highly-skilled migrant workers or researchers.[44] In other words, the goal of strengthening the position of those 'within' the EU changed into the goal of attracting a selected group of migrants from 'outside' the EU. Furthermore, the equality clauses which have been included in the different EU instruments leave the Member States with a wide discretionary power.[45] Especially within the area of social security and social benefits, we see that EU laws, either by vague definitions, or references to national laws, allow Member States to limit the scope of protection of equality. For example, Article

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41 Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ L 251 p.12), at recital 3, and Directive 2003/109 of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ L 16 p. 44), at recital 2.

42 See for example the European Commission, *European Agenda for the Integration of third country nationals*, 20 July 2011, COM (2011) 455, at point 8.

43 See Carrera 2014, at p. 153.

44 See for example, Art. 14 of the Blue Card Directive, 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 p.17), Art. 12 of the Single Permit Directive, Directive 2011/98/EU of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (OJ L 343 p.1), and recital 15 of the Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research (OJ L 289 p. 15).

45 Morano-Foadi and de Vries 2012, at p. 36 ff.

11 (1)(d) of Directive 2003/109 on long-term resident TCNs includes a right to equal treatment in the fields of social assistance and social protection but Article 11 (4) grants the Member States a discretionary power to limit such equal treatment to 'core benefits'. This discretionary power was limited by the CJEU in the judgment *Kamberaj*, where it emphasized that a derogation from the right of equal treatment in this field should be interpreted strictly, in order to safeguard the rights of TCNs to 'social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources' as protected in Article 34 of the EU Charter on Fundamental Rights.[46] The CJEU, however, did not answer the preliminary question of the Italian court which specifically addressed the meaning of Article 21 (2) in the Charter on the right to non-discrimination based on nationality, thereby avoiding, as such, a clear interpretation of the right to equality for long-term residents.[47] But also EU laws on 'economically attractive migrants', such as the Blue Card Directive 2009/50 on highly qualified workers, include a wide discretionary power with regard to the implementation of its equality clauses.[48] First, the Blue Card Directive only ensures full equal treatment with regard to payment between nationals of the Member States and EU Blue Card holders 'when they are in a comparable situation'. Second, the rights of Blue Cardholders to study and to obtain maintenance grants and loans, and procedures for obtaining houses may be limited. Third, except for the freedom of association for workers and employers and the right of mutual recognition of qualifications and certificates, the right to equal treatment of a Blue Card holder may be restricted if he/she moves to a second Member State.

Considering the principle of equality in practice, reports of the European Commission establish that equality clauses have been implemented very

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46 Case C-571/10, *Kamberaj v. Istituto per l'Edilizia sociale della Provincia autonoma di Bolzano and others*, [2012], *RV* 2012, no. 38, annotation Groenendijk, at paras. 86, 91. The case dealt with the differential treatment of an Albanian national in Italy with regard to social benefits for housing, and the question whether this was contrary to Article 11 (1) (d) Directive 2003/109 of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ L 16 p. 44).

47 See de Vries 2013.

48 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 p.17), see at recital 16.

differently by the Member States. For example, in the report of 2011 on the application of Directive 2005/71 on TCN researchers, the Commission found that only five countries incorporated in their national laws exactly the same wording provided by the Directive, whereas 17 countries made use of general anti-discrimination laws, prohibiting discrimination only on the grounds of sex, or racial and ethnic origin.[49] In the report on the implementation of the Blue Card Directive, the Commission refers to a 'variation of the scope of application' of the equal treatment provisions by the different Member States.[50] Also with regard to Directive 2004/83 or the Qualification Directive on the protection of refugees and beneficiaries of international protection, the European Commission concluded in 2010 that equal treatment provisions were not or only partially implemented.[51] On the other hand, the reports of the Commission also establish that sometimes Member States grant TCNs equal treatment, even if this is not provided in EU law. For example, in the report on the Students Directive 2004/114, the Commission points out that some Member States grant students the same rights as their own nationals, even if this Directive does not include an equality clause.[52]

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49 Commission Report on the application of Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research, COM (2011) 901, 20 December 2011, at p. 7.

50 Commission Communication on the implementation of Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, COM (2014) 287, 22 May 2014, at p. 9.

51 Directive 2004/83 of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ L 304 p.12). See the Commission Report on the application of directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, COM (2010) 314, at p. 14.

52 Commission Report on the application of Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, COM (2011) 587. Both Portugal and Spain used Art. 24 of this Directive, which allows Member States not to take into account the time during which the student has resided in their territory for the purpose of granting further rights to TCN students, granting these persons the same economic, social and civil rights as Portuguese citizens, respectively granting social security rights under the same conditions as Spanish nationals.

3.2. Article 18 TFEU and TCNs: case law of the CJEU

Considering the differentiated and fragmented approach with regard to the right of equality of TCNs in EU law, the question arises whether in these situations a general EU right to non-discrimination can or should be applied. In 2000, the EU Member States adopted their own catalogue of human rights in the Charter on Fundamental Rights of the European Union. This Charter, which became binding in 2009, when the Lisbon Treaty came into force, includes a right to non-discrimination on the basis of nationality in Article 21 (2). This article provides for the same text as Article 18 TFEU (or the former Article 12 TEC) and prohibits any discrimination on grounds of nationality 'within the scope of application of the Treaties, and without prejudice to any special provision contained therein'. According to one group of authors, Article 18 TFEU (and Art. 21 (2) of the Charter) only extends to EU nationals and cannot be applied to TCNs, referring to the fact that this article finds its origin in Article 12 of the EC Treaty, the scope of which was limited to EU citizens.[53] The inclusion of this non-discrimination clause in part 2 of the TFEU under the title 'non-discrimination and citizenship of the Union' implies, according to these authors, that it applies to EU citizens only. Other scholars, supporting the view that Article 18 TFEU does extend to TCNs, argue in the first place that the general non-discrimination clause in Article 19 TFEU (which clearly applies to TCNs) has been included in the same section as Article 18 TFEU and therefore it cannot be held that the title 'non-discrimination and citizenship of the Union' is to be read as limiting the scope of the provisions within this section.[54] They also point out that exactly the same text of Article 18 TFEU has been included in Article 21 (2) the Charter and that this provision, just as the whole Charter except for Title V on the citizenship rights of EU nationals, does not differentiate between EU

53 See Wiesbrock 2010, at p. 167.
54 See Morano-Foadi and de Vries 2012, at p. 23.

and non-EU nationals.[55] The explanatory memorandum of the Charter only mentions that Article 21 (2) is based on the former Article 12 EC.[56]

Until now, the CJEU has not provided clarity on the meaning of Article 18 TFEU. In 2009, in the *Vatsouras* judgment, the CJEU stated that Article 12 EC (now 18 TFEU) only concerns situations in which a national of one Member State would suffer discriminatory treatment in relation to nationals of another Member State solely on the basis of his/her nationality and 'is not intended to apply to cases of a possible difference in treatment between nationals of Member States and nationals of non-member countries'.[57] The conclusion in *Vatsouras* seems to support the limited interpretation of the first group of authors; however. it should be underlined that this judgment dealt with the legal situation before the entry into force of the Lisbon Treaty and the EU Charter on Fundamental Rights. Furthermore, it is important to note that in the *Vatsouras* case, Article 18 TFEU was invoked by an EU citizen who was excluded from social benefits which were solely granted to nationals of non-EU countries being asylum seekers with a temporary residence permit in the host Member State. This differential treatment between EU citizens and asylum seekers finds its basis in international law obligations protecting refugees and asylum seekers.[58] Therefore, instead of differentiation based on nationality, this case concerned in our view a legitimate differentiation between statuses. In 2013, in the judgment *Radia Hadj Hamed*, the CJEU was less explicit on the limited meaning of Article 18 TFEU.[59] Dealing with differential treatment between legally residing TCNs and the nationals of a Member State with regard to the granting of family benefits, the CJEU held that Article 18 TFEU could not be applied 'as it stands' to a situation where a TCN is in possession of a residence permit in a Member State, pointing to the background of Article 18 TFEU which concerns Union citizenship.

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55 Art. 21 (2): 'Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.'

56 Note from the Praesidium, Charte 4473/00 Convent 49, Brussels 11 October 2000. These explanations have no legal value and are only intended to clarify the provisions of the Charter.

57 Case C-22/08, *Vatsouras v. Arbeitsgemeinschaft N*ürnberg, [2009] ECR I-04585, at para. 52.

58 See Slingenberg 2014.

59 Case C-45/12, *Radia Hadj Ahmed v. Office national d'allocations familiales pour travailleurs salaries*, [2013], at para. 41.

Using the wording 'as it stands' (in German: 'nicht ohne Weiteres'; French: 'telle quelle'; Dutch: 'niet zonder meer') the CJEU seems to indicate that Article 18 TFEU could apply to TCNs, but only if their situation is covered by EU law. In this case, the CJEU found that the person invoking Article 18 TFEU (and Articles 20 and 21 of the Charter) did not fall within the categories of persons protected by EU law: neither the mother nor her daughter, for whom she applied for family benefits, fell within the scope of Directive 2004/38 or Regulation 1612/68 or of Directive 2003/109.[60]
In the following section, we address two judgments of the CJEU (and of one of a national court) which, even if the CJEU did not apply Article 18 TFEU to TCNs, in our view show how this provision could be relevant to determining the legal position of TCNs in areas not covered by the existing equal treatment clauses.

3.3. Lopes da Silva: article 18 TFEU, integration and the European Arrest Warrant

The judgment in *Lopes da Silva* deals with the implementation of Framework Decision 2002/584 on the European Arrest Warrant (EAW).[61] This case did not concern migration law, nor the position of a TCN. However, what we intend to point out here is that the reasoning of the CJEU as to why Article 18 TFEU could be invoked by an EU citizen with regard to the execution of an arrest warrant seems to be also applicable to legally residing TCNs. The question raised in Lopes da Silva concerned the optional non-execution clause in Article 4(6) of the Framework Decision which allows Member States to refuse to execute an arrest warrant where the requested person 'is staying in, or is a national or a resident of, the executing Member State'. Lopes da Silva, a Portuguese citizen residing at the time of the EAW in France, claimed that as France did not surrender its own nationals, his extradition to Portugal should be refused equally on the basis of Article 18 TFEU. The CJEU found that although Article 4(6) allows limitations to the optional clause to refuse to surrender a national or resident of the executing state, Article 18 TFEU

60 Case C-45/12, *Radia Hadj Ahmed v. Office national d'allocations familiales pour travailleurs salaries*, [2013], at para. 54.
61 Case C-42/11, *Lopes Da Silva,* [2012].

prohibits a Member State from excluding automatically and absolutely from its scope 'nationals of other Member States who are staying or resident in its territory, irrespective of their connections with it'. The CJEU emphasized the role of national courts with regard to the refusal of surrender 'to examine whether, in the main proceedings, there are sufficient connections between the person and the executing Member State – in particular family, economic and social connections – such as to demonstrate that the person requested is integrated in that Member State, so that he is in fact in a comparable situation to that of a national'.[62] In other words, the CJEU does not use the status of EU citizenship as such as the basis for equal treatment between nationals of different Member States, but the (family, economic and social) connections of the person concerned with the host country, which factors are to assessed by the national courts in each individual case.[63]

Even if the CJEU has not yet ruled on this matter, in 2013 a Dutch court applied Article 18 TFEU to a long-term resident TCN whose surrender was requested by another Member State on the basis of an EAW.[64] The reasoning of the Amsterdam court is admirably simple: as TCNs fall within the scope of the Framework Decision on the EAW, Article 18 TFEU, in combination with the exclusion clause, should be applied to them. In the words of the court: 'in the area of freedom, security and justice, which the EU intends to be, it would be incongruous (translated from Dutch: 'ongerijmd', EB, KdV) that in the field of judicial cooperation EU law would on the one hand allow Member States to limit the rights of persons residing within their territory irrespective of their nationality, and on the other hand would not allow a claim based on the right to non-discrimination of persons without the nationality of a Member State'.

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62 Case C-42/11, *Lopes Da Silva,* [2012], at paras. 52-58.

63 Whereas the freedom of movement was explicitly referred to by the CJEU in the case of Case C-123/08, *Wolzenburg*, [2009] ECR I-09621, at para. 48, and by AG Mengozzi in the opinion for the Lopes da Silva case (Case C-42/11, *Lopes Da Silva,* [2012], at para. 48), to justify the necessity of the non-discrimination of EU citizens with regard to the refusal of the EAW execution, in the Lopes da Silva judgment itself the CJEU did not refer to the freedom of movement at all and only used the argument of integration in the light of Article 18 TFEU. See further on the status of EU citizens, van Eijken 2014.

64 District court of Amsterdam, 23 July 2013, accessible via www.rechtspraak.nl: ECLI:NL:2013:4914.

3.4. Commission v. the Netherlands: comparability and proportionality

In *Commission v. the Netherlands*, the CJEU addressed the question of whether the administrative charges to be paid by non-EU citizens for the issuing of residence permits in the Netherlands were in accordance with Directive 2003/109 on long-term resident TCNs.[65] Although the Commission did not invoke the application of Article 18 TFEU, it compared the national rules applying to TCNs to those applying to EU citizens, in order to support its argument that the rules applying to TCNs were disproportional and therefore unlawful. The Commission argued that, taking into account the goals of Directive 2003/109, respectively Directive 2004/38, the administrative charges to be paid by TCNs and EU citizens must be comparable. Being seven to 27 times higher than those imposed on EU citizens, the Commission found that the Dutch charges on TCNs were disproportionate and would hinder the exercise of their rights under Directive 2003/109. In its judgment, the CJEU confirmed that the administrative charges applied by the Netherlands to long-term resident TCNs were excessive and disproportionate. Unlike the Commission, the CJEU only compared the charges applied by the Dutch authorities to TCNs to those applied to Dutch citizens. Like the Commission, however, the CJEU applied a non-discrimination test which could have been based on Article 18 TFEU. Finding that the Dutch charges applied to TCNs were disproportionate compared to those applied to nationals and liable to create an obstacle to the exercise of the rights conferred by Directive 2003/109, the CJEU found it was no longer necessary to examine the Commission's argument with regard to the comparability between the Directive 2003/109 and Directive 2004/38.[66]

4. Conclusion

The prohibition of discrimination on the ground of nationality is gaining importance as a norm of international and European (human rights) law. Whereas, for EU citizens, the prohibition of nationality-based discrimination

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65 Case C-508/10, *Commission v. the Netherlands*, [2012], at paras. 45-49.
66 Case C-508/10, *Commission v. the Netherlands*, [2012], at paras. 77-78.

is a core element of EU law, through Article 14 ECHR and secondary EU law this norm is gradually being extended to TCNs. The question raised in the introduction to this article was whether, given these developments, it is time to (re)interpret Article 18 TFEU so as to apply also to TCNs. Such an 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.

It was shown in subsection 2.2 that the ECtHR has occasionally accepted differences in treatment between EU citizens and TCNs because of the EU being a 'special legal order'. In these cases, the ECtHR accepted that certain (non-discrimination) rights granted by EU law were reserved for EU citizens and not extended to TCNs. Article 14 ECHR thus does not oblige the EU, or the Member States, to expand the protection of Article 18 TFEU to TCNs. Nevertheless, Article 14 ECHR itself may stand in the way of differences in treatment between a state's own nationals and foreign nationals, be they EU citizens or TCNs. Article 18 TFEU was originally intended to enable the free movement of EU citizens in the context of economic integration and, later, EU citizenship. However, the incorporation in the Union's legal order of fundamental rights protection and the principle of non-discrimination (as reflected in Article 2 TEU and in Article 21 of the Charter) would support a broader understanding of this provision, expanding its protection to situations where nationality-based discrimination presents an obstacle to the enjoyment of equality and fundamental rights (including the right to family life, data protection, and the right to effective remedies) by TCNs.

Such an approach to Article 18 TFEU would not imply that all differences in treatment between TCNs and nationals of the Member States would henceforth be prohibited. The discussion of ECtHR case law in section 2 shows that Article 14 ECHR applies to differential treatment based on nationality but that such differences in treatment do not amount to prohibited discrimination if based on a reasonable and objective justification. If Article 18 TFEU were to apply to TCNs, the approach of the ECtHR could serve as guidance for its application at least in those fields that are also covered by the ECHR. This would also not require all TCNs, regardless of their legal status, to be granted free movement and (EU) citizenship

rights in the same way as EU nationals. The aim of European integration and reciprocity between the Member States could still justify preferential treatment by those Member States of each other's citizens, as compared to TCNs. However, if Article 18 TFEU were to apply this would allow national courts and the CJEU to always assess whether such a justification is relevant to the differential treatment at hand. A more consistent and uniform approach with regard to the application of the non-discrimination principle to TCNs is also necessary to enhance mutual trust between Member States, which is one of the underlying pillars of the cooperation within the field of asylum, migration and criminal law.[67]

Finally, the judgments discussed in section 3 provide some indications that the CJEU may be ready to apply Article 18 TFEU in cases involving TCNs, whereas at least one Dutch court has already done so. Also, the *Lopes da Silva* judgment illustrates (see 3.3) that the equal treatment of EU citizens with a Member State's own nationals may be based on reasons that are equally pertinent to the fair treatment of TCNs, which is one the objectives of the EU's immigration policy (Article 79 TFEU). The application of Article 18 TFEU may lead to a more consistent approach in this regard, but also with regard to the implementation by Member States of current non-discrimination clauses in EU migration law.

67 See the CJEU in Case C-187/01 and 384/01, *Gözütok and Brugge*, [2003] ECR I-01345 dealing with the EAW and in Case C-411/10 and 493/10, *NS v. SSHD*, [2011] ECR I-13905 dealing with the Common European Asylum System.

BIBLIOGRAPHY

Boeles, P., 'Europese burgers en derdelanders: wat betekent het verbod van discriminatie naar nationaliteit sinds Amsterdam?', *SEW,* No. 12, 2005, pp. 500-513.

Bosniak, L., *The Citizen and the Alien. Dilemmas of Contemporary Membership*, Princeton University Press, Princeton/Oxford, 2006.

Brouwer, E., 'Legal Boundaries and the Use of Migration Technology', in: Dijstelbloem, H. and Meijer, A. (eds.), *Migration and the New Technological Borders of Europe*, Palgrave Macmillan, Basingstoke, 2011, pp. 134-169.

Carrera, S., 'Integration of Immigrants in EU Law and Policy', in: Azoulai, L. and de Vries, K.M. (eds.), *EU Migration Law. Legal Complexities and Political Rationales*, Oxford University Press, Oxford, 2014.

van Eijken, H., *The Role of European Citizenship in the Constitutionalisation of the European Union*, Europa Law Publishing, Groningen, 2014.

Groenendijk, C.A., 'Are third-country nationals protected by the Union law prohibition of discrimination on grounds of nationality?', in: Barwig, K. and Dobbelstein, R. (eds.), *Den Fremden akzeptieren. Festschrift für Gisbert Brinkmann. Schriften zum Migrationsrecht, 6*, Nomos, Baden-Baden, 2012, pp. 131-142.

Hublet, C., 'The Scope of Article 12 of the Treaty of the European Communities vis-à-vis Third-Country Nationals: Evolution at Last?', *European Law Journal*, Vol. 15, No. 6, 2009, pp. 757-774.

Morano-Foadi, S. and de Vries, K.M., 'The equality clauses in the EU directives on non-discrimination and migration/asylum', in: Morani-Foadi, S. and Malena, M. (eds.), *Integration for third-country nationals in the European Union. The Equality Challenge*, Edward Elgar Publishing, Cheltenham, 2012, pp. 16-44.

de Schutter, O., *Links between migration and discrimination* (Report prepared for the European Commission), Publications Office of the European Union, Luxembourg, 2009.

Slingenberg, L., *The Reception of Asylum Seekers under International Law. Between Sovereignty and Equality*, Hart Publishing, Oxford, 2014.

de Vries, K.M., 'Towards Integration and Equality for Third-Country Nationals? Reflections on Kamberaj', *European Law Review*, Vol. 38, No. 2, 2013, pp. 248-258.

Wiesbrock, A., *Legal Migration to the European Union*, Martinus Nijhoff Publishers, Leiden, 2010.