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Book review: EU Citizenship at the Edges of Freedom of Movement (Katarina Hyltén-Cavallius)

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The concept of EU citizenship status, and in particular, the voluminous portfolio of cases on its interpretation before the Court of Justice of the EU (CJEU), has been the hot topic of conversation in academic literature for decades. However, despite EU citizenship being a potentially saturated area, Hyltén-Cavallius' monograph, *EU Citizenship at the Edges of Freedom of Movement*, is a valuable, detailed and methodological contribution to the existing literature. Its main value is in the fact that it importantly provides a very up-to-date overview of the case law since several significant developments in the late 2000s, as well as the critical eye it casts over what is an otherwise heavily discussed concept.

Hyltén-Cavallius adopts the commonplace traditional legal approach of a purely doctrinal analysis in the monograph. Although this may be perceived to be somewhat of a run-of-the-mill approach for a very complicated and politically rich area, her sharp and pointed conclusions provide an original contribution nonetheless. The book is organised into 8 chapters, inclusive of the Introduction and Conclusion with 6 substantive chapters that consider the development of the concept of EU citizenship at what Hyltén-Cavallius has called "the edges of free movement". She seeks to examine the issue of whether EU citizenship still exists as a legal status that confers rights to equal treatment since this has been less the case of late, but simultaneously seeing that the scope of EU citizenship has also expanded to confer fundamental rights in some purely internal situations (p.2-3).

Her thesis is that there is a gap in the CJEU's interpretation of and meaning attributed to EU citizenship status concerning legal claims as to what is perceived to be *genuine use* of free movement as opposed to when Member States *deprive* EU citizens of the 'genuine enjoyment' of their rights under the Treaties (p.3). She calls it a 'two-tiered concept' as it has been pulled in these two opposing directions, and the monograph is dedicated to explaining where and how this is the case through an in-depth doctrinal examination of the case law over the years. EU citizenship is rightly described as an 'interactive process between the Court and the legislator' (p.11).

Chapter 2 is a historical overview of EU citizenship. This will be familiar to most, if not all, EU citizenship scholars. To note for Hyltén-Cavallius' thesis: the Adonnino Report of 1985, where EU citizenship was first beginning to be fleshed out as a concept under EU law, placed a significant emphasis on free movement and citizens not being a burden on host Member States. This is indeed an interesting observation given that this is consistent with what Hyltén-Cavallius calls the genuine use of free movement, and it is this rhetoric that has persisted to this

very day. It is despite the shifting sands of the EU as an entity itself, encompassing social and political rights when EU citizenship status was eventually established.

Chapters 3-7 helpfully break down the analysis into the main categories of rights under EU citizenship which include: rights to free movement and residence (Chapter 3), residence and family reunification (Chapter 4), equal treatment (Chapter 5), political free movement rights (Chapter 6), Charter rights (Chapter 7). Of note is the inclusion of political free movement rights, which is arguably the lesser studied of the various rights under the citizenship provisions in the Treaty.

Chapter 3 focuses on the main right under EU citizenship, to freely move and reside under Article 21(1) TFEU and the Citizens' Rights Directive 2004/38. These will be very familiar to EU citizenship scholars, and somewhat mirroring the structure of the Directive itself, Hyltén-Cavallius takes us through its purpose, what she calls a right to exit and movement, residence for more than three months and permanent residence, then the protection against expulsion afforded to a permanent resident. Noticing that whilst EU internal market law prohibits any protectionist argument being used by Member States to justify restrictions on non-national goods or services, in the context of restricting citizens seeking to exercise non-economic free movement rights, it is entirely a protectionist argument being made to justify this obstacle. An individual must ensure they are not a financial burden in order to benefit from non-economic free movement rights (p.31). It becomes the premise for equal treatment rights, and the assumption that anyone economically active deserves these rights, and not otherwise.

The right to move becomes a right to exit, and the right to reside actually means to a right to integrate once in the Member State (p.33). Sadly, there is a conflict between trying to make economic free movement as effective as possible, whilst still laying down restrictions and conditions for personal non-economic rights to free movement (p.37). The two-tiered nature of the concept is also fleshed out in Hyltén-Cavallius' section on public interest and deportation where her analysis brings her to the conclusion that public interest grounds for deportation are not linked to a citizen's economic activity or resources. This means they are not available as restrictions on an EU citizens' free movement rights but equally, being economically active does not prioritise you for protection against deportation either. All this goes a way towards the overall thesis of EU citizenship being pulled in opposing directions.

Chapter 4 on family reunification sees Hyltén-Cavallius considering the legally uncertain space where there is gap between residence and family reunification rights under Article 21 TFEU and Directive 2004/38 versus under Article 20 TFEU (p.57). Indeed, tension arises between the genuine use of economic free movement and genuine use of non-economic free movement. There must be a formal recognition of residence – usually easier under Article 21 TFEU and the Directive's economic criteria – before family life is protected (p.60). Otherwise,

rights are conferred on the basis of one's dependence to another, largely to do with a child's dependency on their parent(s). This has, however, led to situations where it seems that if a non-EU adult is claiming dependency on an EU adult, the CJEU has deemed one adult would not need the other if one was forced to leave the EU. A lack of evidence of "strong" dependency and that does not engage Article 20 TFEU puts both the EU citizen and non-EU national outside the scope of EU law and fundamental rights protection.

The genuine enjoyment doctrine, from the famous *Ruiz Zambrano* case, thus seems to put strength of dependency at the heart of rights. As such, security of rights increases with increased dependency (p.76). A question arises as to whether fundamental rights considerations should overtake what has become special bond of dependency (p.77). Article 20 TFEU seems to represent the space where the citizen ought to be, and Article 21(1) TFEU dictates the conditions that define and decide that location. Hyltén-Cavallius also notes that non-EU nationals are most vulnerable because of this reliance and dependence dictated on an EU family member, who must also be continuously and genuinely resident in the EU Member State in question.

Chapter 5 on equal treatment delves deeper yet into the argument that EU citizenship has become a two-tiered concept by considering the equality principle underlying EU citizenship. She argues that it relies on a free movement of persons rationale, which seeks to prohibit discrimination on nationality grounds only in the free movement context (p.80). As such, it has become a positive demand on EU citizens to fulfil the Directive's conditions, to the extent that a Member State must now differentiate an integrated EU citizen with those who have restrictions imposed on them and need these restrictions to be removed (p.87). This manifests in the conundrum of the EU tourist vs more permanent moving citizen.

Chapter 6, on political rights, is perhaps the most original inclusion,¹ with a very interesting perspective offered on how the scope of these rights present a conundrum for the EU citizen. It appears that the portfolio available to a moving EU citizen would seek to make them feel more "local" through municipal elections, which is instead of making them feel more "European" and could explain the low take up in such political rights. Hyltén-Cavallius notes that following the CJEU's rationale in its jurisprudence in *Sala* and equal treatment, EU citizenship with factual residence should mean voting and democratic participation on the same terms as nationals – which is just not the case. It is clear that 'EU citizenship still has a lot to prove before its character as a strong political status is clear.' (p.145)

Chapter 7 is the penultimate chapter on perhaps the most contested area of EU citizenship, its relationship with fundamental rights and the Charter of Fundamental Rights. Overall, it is clear to her that EU citizenship's failure to fulfil conditions for genuine use of free movement

¹ This view is perhaps prejudiced on my own exclusion of these rights in my research on EU citizenship.

under the Directive conditions are not relieved by the fundamental rights protection in the Charter. She notices that any case with children involved engages the Charter, but is not always following the physical movement of the citizen in a consistent way, neither under the Directive nor the Treaty (p.152). The case analysis uncovers the sad truth of the enjoyment of family life under EU citizenship being really only for those who can show they can finance it (p.161) with the infamous genuine enjoyment doctrine rightly criticised for 'failing to accomplish a foreseeable applicability of EU fundamental rights' (p189).

Hyltén-Cavallius concludes with her worries as to inconsistencies in the legal development of EU citizenship, as espoused so meticulously in the previous seven chapters. Legal claims may be similar, but will find themselves being treated differently as to whether fundamental rights under the Charter are engaged (p.192). EU citizenship may promise 'formal equal access to the possibilities of personal and economic betterment' but in factual reality, it is 'a poor status to rely on.' (p.196) Hyltén-Cavallius hints at the reasons behind the development of EU citizenship as a two-tiered concept, highlighting the fact that there has been crisis after crisis in the background of these decisions. It is this element which could have enhanced some of the analysis at times, which is stated to be purely doctrinal at the outset, but arguably it is difficult to untie the citizenship jurisprudence with the political context. After all, it seems that citizens' rights come and go with the wind.

Perhaps it is too ambitious for this monograph to ask to search for reasons why the CJEU has gone down the path it has. Hyltén-Cavallius has undertaken a huge task of making sense of the CJEU's developments and managed very eloquently to make sense of what could otherwise be argued to be a non-sensical development. It remains to be seen what perhaps should be the resolution to the aforementioned inconsistencies, how and whether the CJEU should tackle this. *EU Citizenship at the Edges of Freedom of Movement* will be of great value to scholars of EU citizenship of all levels, especially those seeking to make heads and tails of the recent citizenship jurisprudence. The careful analysis of years of history of this concept helps to contextualise the eventual conclusion of it being a two-tiered concept based on the idea that the status – and indeed, citizens themselves – may find themselves at the edges of free movement and therefore in a legal space difficult to overcome. It is a welcome addition to the burgeoning literature, let us hope that the CJEU does not continue to prove Hyltén-Cavallius' thesis right!