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MOBILITY AND UNSPOKEN CITIZENS' RIGHTS IN EU-DOCUMENTS

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Abstract

The formulation of Union citizenship has concentrated on rights since the 1970s. In the Maastricht and subsequent EU treaties, Union citizenship is defined through rights. Against this background, discussion on rights in the EU documents on citizenship analysed in this article is surprisingly scarce. The research material consists of 15 documents produced by EU institutions in 2003–2007 as part of three programmes on citizenship.

In the documents, the discussion on rights focuses on mobility instead of other aspects of rights. Electoral rights and fundamental rights are discussed a little, but in general, the minuscule discussion on rights is dominated by discussions on freedom of mobility, which appears to be the most important right of the Union citizen. Union citizenship is understood above all as citizenship of a mobile person and as a status guaranteeing freedom of movement. Conception of free movement as the core of citizens' rights keep up the citizenship discussions in the history of integration.

Freedom for mobility lies also in the core of the area of freedom, security and justice – an area construct discussed in the documents. Both Union citizenship and the area of freedom, security and justice are innovations, through which EU can use power in the nation states' traditional fields of action: border control and citizenship. The central position given to the freedom of mobility and its connection with the economy as well as understanding citizenship rather as a status than practice link the Union citizenship formulated in the rights discussions to the liberalist tradition.

Discussions on freedom of mobility imply both promoting and regulating mobility as well as crossing and drawing borders. In this kind of discussions on rights, Union citizenship appears as a category with which people and mobility as well as the entire integration can be governed. These discussions do not promote citizenship as political agency.

Keywords: Union citizenship, electoral rights, fundamental rights, mobility, area of freedom, security and justice, EU-programmes on citizenship

Introduction*

In this article, I examine how rights are discussed in EU documents on citizenship. My aim is to analyse what kind of conceptions of citizenship are produced in these discussions. When rights are examined in the context of the EU-programmes, it becomes possible to make visible how rights defined in the treaties and laws are applied in the more practical levels in EU-policies. The documents regarding EU-programmes on citizenship offer an opportunity to examine how the concept of citizenship is re-invented and re-contextualised in the EU's first citizenship programmes launched after the adoption of Union citizenship in the Treaty of Maastricht in 1992. The EU-documents regarding citizenship programmes are part of the broader conceptual change, in which European integration challenges key concepts of political thought and practises – such as citizenship or rights.

The research material consists of 15 documents produced by EU institutions in 2003–2007 as part of three EU-programmes on citizenship – Active European Citizenship, Europe for Citizens and Fundamental Rights and Citizenship. For each programme, the research material includes programme proposals made by the European Commission, the decisions about the programmes taken by the European Parliament or the Parliament and the Council of the European Union together, as well as documents produced by the

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Parliament, the Council, the Committee of Regions and the Economic and Social Committee between the starting and ending points of the process. The documents referred to in this article are listed in the end of the article under the title Primary Material.

The timeframe of the selected documents is based on the forming processes of the programmes as well as on the phases of the integration process. The proposal of the Active European Citizenship programme was made in 2004 and in 2005, the proposals for both Europe for Citizens and Fundamental Rights and Citizenship programmes were made. The decisions regarding the programmes were made in 2004, 2006 and 2007. The programme period of the Active European Citizenship was 2004-2006 and for the other two, the programme period was 2007-2013. During the programme periods, citizenship and rights have been addressed in other contexts, un-related to the programmes, but this article focuses to these specific programmes. After 2007, no new documents regarding these programmes were made, except documents related to the next programme period, 2014-2020.

The documents regarding the three selected programs are linked to significant phases of European integration. The first is the process of drafting the Constitutional Treaty in 2005. The EU Constitutional Treaty was not ratified after failing to pass referenda in France and the Netherlands, but many of its formulations were adopted in the Treaty of Lisbon, signed in 2007. The second is the enlargement processes of 2004 and 2007, in which twelve new member states joined the EU. During these processes, the European

Union as a community and its legitimation were heatedly discussed and new meanings and definitions emerged.

These three citizenship programs have a central role in implementing the Maastricht citizenship. The purpose of EU's citizenship programmes is to give EU-funding for activities regarding citizenship. Through the *Active European Citizenship* programme, funding can be given for multinational cooperation actions at European level, meetings and debates among citizens on themes concerning the European Union, informal reflection, education and training projects, actions promoting citizens' participation and initiative, exchanges between citizens and their organisations, dissemination of information on Community action as well as preparation, back-up and evaluation of the actions funded (Decision 2004, 10). Through the *Europe for Citizens* programme, town twinning, citizens' projects and support measures, civil society organisations and European public policy research organisations, events, information and dissemination tools as well as preservation of the main sites and archives associated with the deportations and the commemoration of the victims can be funded (Decision 2006, 34-35). In a new programme period of Europe for Citizens, 2014-2020, similar kinds of activities will be funded (European Commission 2011). Through the *Fundamental Rights and Citizenship* programme, funding can be given for transnational projects by institutions and public or private organisations, universities, research institutes, non-governmental organisations, national, regional and local authorities, international organisations

and other not-for-profit organisations. Also Commission's actions related to information production and dissemination can be funded through the programme, as well as permanent work programme of the Conference of the European Constitutional Courts and the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union. (Decision 2007, 35-36.) In 2014-2020, the programme is fused with two other programmes and with a broader focus than earlier under the title Rights, Equality and Citizenship Programme (The European Parliament and the Council of the European Union 2013).

Union citizenship has been developed around rights since 1970s, and when Union citizenship was adopted in the Treaty of Maastricht in 1992, rights were the main contents given to this new status. Against this background, discussion on rights in the EU documents on citizenship analysed in this article is surprisingly scarce. Since rights are often considered the core of citizenship, one would expect that whenever citizenship is discussed, rights are on the agenda. Because the formulation of Union citizenship has concentrated on rights in the Maastricht treaty and earlier, one would expect that whenever Union citizenship is discussed, rights have a central place on the agenda. It seems especially legitimate to address these expectations to the documents the explicit names and aims of which are promoting citizenship. One would assume that the citizenship programmes are the key factors in implementing the Maastricht-citizenship. In the commission's fifth report on citizenship (Commission of the European communities 2008, 4, 10)

– it was required in the Maastricht treaty that the commission must report about the application of the Union citizenship every three years – all the three programmes are indeed mentioned as "important instruments to promote active European citizenship" and as "new boost for the EU fundamental rights and citizenship policies".

Despite all this, in the Active European Citizenship programme and the Europe for Citizens programme, rights are hardly mentioned at all. In the proposal for the Europe for Citizens programme (Commission 2005a, 2, 28), a division of labour between the programmes is referred to. According to the proposal, rights are the focus of the Fundamental Rights and Citizenship programme, whereas Europe for Citizens programme is said to tackle citizens' participation in integration process, European identity and citizens' duties. However, even in the Fundamental Rights and Citizenship programme, rights are only discussed a little.

Because of the scarcity of rights discussions in the documents related to the EU's citizenship programmes, it is important to study the quality of the minuscule rights discussion and the meanings attached to rights in it. Combining textual analysis and conceptual history, I analyse, what kind of rights and ways of using them are defined for citizens in the documents and what kind of conceptions of citizenship are thereby constructed.

In the study on European Union and integration, rights are a central object of research. In the juridical study of Union citizenship,

EU law and its application in the EU court are often scrutinised.[1] Inhabitants of the member states have contributed to the development of Union citizenship as they have appealed to Union citizenship and EU law in the EU court. The decisions and interpretations of the court have influenced in how Union citizenship has become to be understood.[2] O'Leary[3] examines the 'citizenship-like rights' in Community law and evaluates whether citizenship is a suitable concept to describe the legal status establishing the relationship between an individual and the EU. Also Maas[4] sheds light to the prehistory of the rights attached to Union citizenship. Electoral rights attached to Union citizenship are in the focus of Shaw.[5] Shaw[6] also studies Union citizenship as part of constructing the EU-polity. She examines it as a juridical status in relation to freedom of movement and EU court, but at the same time the more democratic possibilities attached to it. Zetterquist[7] studies rights and

[1] For instance, a theme issue of The Columbia Journal of European Law 2009.
[2] Allan Rosas, "Euroopan unionin kansalaisuus – paljon melua vähästä tai vähän melua paljosta?" *Lakimies* 7–8 (2005), p. 1251–1266;
Jacobs, Francis G, "Citizenship of the European Union. A Legal Analysis" *European Law Journal* 13(5) (2007), p. 591–610.
[3]Siofra O'Leary, *The evolving concept of community citizenship. From the free movement of persons to Union citizenship*. The Hague: Kluwer Law International, 1996.
[4] Maas, Willem, "The genesis of European rights" *Journal of common market studies* 43(5) (2005), p. 1009–1025.
[5] Jo Shaw, *The transformation of citizenship in the European Union. Electoral right and the restructuring of political space.* Cambridge: Cambridge University Press, 2007.
[6] Jo Shaw, Contrasting dynamics at the interface of integration and constitutionalism. *RSCAS Working Paper* 60 (2010).
[7] Ola Zetterquist, *A Europe of the member states or of the citizens? Two philosophical perspectives on sovereignty and rights in the European community*. English translation David Ratford. Lund: KFS AB, 2002.

sovereignty in the EU-integration and sees the integrating Europe as the Europe of member states on one hand and the citizens' Europe, on the other. Turkka[8] analyses the significance of the human and fundamental rights in the constitutionalism beyond the state, in which EU has had an important role.

Rights have a central position in liberalist and many other theories on citizenship and democracy. In them, citizenship and rights are often approached from the perspective of democracy: as instruments which give citizens an opportunity for using power or which protect their freedoms. This kind of theories are, however, not sufficient for opening all the meanings of citizenship. This is why, in this article, I use also ideas based on Foucault's[9] concept of governmentality. They take into consideration the complexity and many directions of power included in citizenship and rights. Therefore they enable to make it visible how through rights – and, more generally, through citizenship – power is used over citizens. Launching Union citizenship as well as the entire Maastricht Treaty created new possibilities to look at Europe and to govern it. Here I examine, with the help of literature inspired by the concept of

[8]Tapani Turkka, "Valtion tuolle puolen ulottuvan konstitutionalisoitumisen ongelma" *Kansalaisyhteiskunta* 1 (2011), p. 5—42.
[9] Michel Foucault, "Governmentality" In: Graham Burchell, Colin Gordon & Peter Miller (ed.) *The Foucault effect. Studies in governmentality. With two lectures and an interview with Michel Foucault*. London: Harvester Wheatsheaf., 1991, p. 87–104.

governmentality[10], how these possibilities are applied in the rights discussions of EU documents of citizenship.

The article starts with a short introduction to the development of (workers') rights in the history of integration since the early 1970s until the Treaty of Maastricht. Then I analyse the discussion on rights in the EU documents on citizenship. First I examine the electoral rights, which are considered as central and often as necessary element of citizenship. Then documents' discussions on fundamental rights are analysed. After that I concentrate on the area of freedom, security and justice, focusing particularly on the specific programme on Fundamental Rights and Citizenship. Central to this area construct is the right to mobility and – associated with it – drawing and crossing boundaries, which are the following topics of the article. Finally I draw conclusions about the kinds of conception of citizenship that are produced in the documents' discussions of rights and about the kind of governance they imply.

Rights in the history of Union citizenship

Union citizenship has been developed around rights, above all through workers' mobility rights. In the 1970s, the discussion on

[10]Mitchell Dean, *Critical and effective histories. Foucault's methods and historical sociology*. London & New York: Routledge, 1994;
Nikolas Rose, *Powers of freedom. Reframing political thought*. Cambridge: Cambridge University Press, 1999;
William Walters, & Jens Henrik Haahr, *Governing Europe. Discourse, governmentality and European integration*. London: Routledge, 2005.

citizenship focused on special rights and passport union.[11] What was meant by the term 'special rights' was that when residing in another Member State, Member State nationals need specific rights in addition to those they already have as citizens of their own country. In the 1970s, citizenship was first and foremost discussed in the context of free mobility but electoral rights and sense of citizenship were discussed also.[12]

The Scelba report (EP Working Documents), commissioned by the European parliament in 1977, considered that the integration process meant that 'Community citizens' need certain rights, especially fundamental rights, civil rights and political rights.[13] In the report, rights are a special extension of the rights normally enjoyed by nationals of a given Member State to the citizens of any other Member State who live in that state.[14] Central to the citizenship discussions of the 1970s was this 'special rights discourse', which included detaching citizenship and rights from nationality, rights in

[11]Antje Wiener, *'European' citizenship practice. Building institutions of a non-state*. Westview Press, 1998, p. 79.
[12] O'Leary 1996, p. 18; Willem Maas, *Creating European citizens*. Rowman & Littlefield Publishers, Inc, 2007, p. 31.
[13] Fundamental rights were called defensive rights in the report. Their purpose was to protect fundamental freedoms. Civil rights were described as those claims which citizens are entitled to make on the state. Political rights were said to guarantee citizens' political participation in the state's institutions. All of these rights were described as subjective public rights, which citizen possesses as a legal subject vis-à-vis the state. Social rights were not mentioned in the report. (O'Leary 1996, p. 19.)
[14] Local level political participation was considered important to rights in the report. Extending democratic rights and creating a political union were to lead eventually to citizens' involvement in all the political decisions, according to the report. (O'Leary 1996, p. 19.) The question was about democratisation of the Union and citizens' role in it – a goal which remains distant still today.

the core of citizenship and linking rights with economic issues.[15] All the three aspects have been essential in the later citizenship discussions in the history of integration.

The idea of the special rights has its background in the principle of non-discrimination formulated in the Treaty of Rome in 1957, according to which all Member State nationals must be treated equally in every Member State irrespective of their nationality. In the 'special rights discourse', identity, the principle of non-discrimination and rights were intertwined to ensure the core principles of the integration: free movement of people, services, capital and goods.

Discussions on citizenship continued in 1985 in the two reports of the People's Europe committee, which became important milestones in the development of Union citizenship.

In the first People's Europe report, citizens' rights were discussed under the title 'Community citizens' rights', and in the other report, the similar chapter was titled 'The special rights of citizens'. The suggestions of the committee carried on the earlier discussions on special rights based on mobility rights as well as the passport union. They were regarded as measures touching citizens' everyday lives and, as such, creating European identity among them. Again, rights and identity were intertwined and again, focus was on citizen's mobility.

[15] O'Leary 1996.

In the second report of the committee (Adonnino 1985, 19-20), attention was paid also to political rights, already mentioned in the discussions in the 1970s.[16] People's Europe reports list practically all the rights which were later adopted in the citizenship article of the Maastricht treaty.

When Union citizenship was officially introduced in the Maastricht Treaty (1992), rights were given as its contents. Union citizenship is justified in the treaty by reference to citizens' interests and rights: one goal of the Union is 'to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union' (Treaty on European Union, Article B). The list of citizens' rights is the main contents of the citizenship article of the treaty.[17] Maastricht treaty included both new and pre-existing rights[18] and in the treaty they have been collected within a new frame of Union citizenship.

In Article 8 regarding citizenship (Treaty on European Union), EU-citizens are given the right to move and reside freely within the territory of the Member States. They are also given the right to

[16] O'Leary 1996, p. 18; Maas 2007, p. 31.

[17] Rights are the essential contents of citizenship also in the proposal on Union citizenship made by the Spanish representatives in the inter-governmental negotiations preceding the Maastricht treaty. In the proposal, the starting point of rights is right to full freedom of mobility, right to choose the place of residence and right to political participation based on the place of residence. In the Spanish memorandum, right to political participation means guaranteeing the freedom of expression, association and assembly. Full participation at the place of residence was to be included in political participation gradually. (O'Leary 1996, 26.)

[18] Jessurun d'Oliveira, Hans Ulrich, "Union citizenship: Pie in the sky?" In: Allan Rosas & Esko Antola (ed.) *A citizens' Europe. In search of a new order*. London, Thousand Oaks, New Delhi: Sage Publications, 1995, p. 69.

protection by the diplomatic or consular authorities of any Member State in the territory of a third country in which the Member State of which they are nationals is not represented. The article also gives the right to petition the European Parliament and the right to apply to the Ombudsman to Union citizens. The purpose of these articles is to ensure that the rights are realised in practice.[19] A further measure for assessing the practical application of Union citizenship is Citizenship Reports, which the Commission must make every three years. (Treaty on European Union.)

Political rights are also included in the Maastricht-citizenship. EU-citizens residing in a Member State of which they are not nationals have the right to vote and to stand as a candidate both in municipal elections and in elections of the European Parliament in the Member State in which they reside. These rights are given under the same conditions as nationals of the given country of residence and without citizenship in it, which means that they are based on Union citizenship. Even before the Maastricht Treaty, electoral rights in some Member States may have been given based on regular residence[20] but the Maastricht Treaty embodied this provision in law, so that a common policy should be implemented.

The history of Union citizenship can be seen as a series of suggestions for facilitating mobility and for solving problems related to it in the domains of both political rights and everyday life in order

[19] O'Leary 1996, p. 26.
[20] Jessurun d'Oliveira 1995, p. 71–72.

for citizens to feel that they live in a united Europe. Even in the light of electoral rights, a Union citizen is seen as mobile, as they give citizens chances for political activity outside the country in which they are nationals. This kind of pragmatic framing formulates citizenship as a narrow and non-contradictory concept referring primarily to a private attribute.

Electoral rights

Even if discussions on citizens' rights in the 1970s and still in the 1980s were focused on rights facilitating movement and economic activity, political rights were also on the agenda. In the Tindemans report (1976), for instance, electoral rights outside one's home country were suggested. The motivation for this was the idea that in each Member State, nationals of another Member State must have equal treatment with the nationals of the country in question. These rights were regarded as being based on membership in the European community.[21] Also in a report by the European Commission (1975) called "Towards European Citizenship", voting rights of nationals of another member country and qualification for public service in the country of residence, as well as political rights, were on the agenda alongside passport union. The report even

[21] O'Leary 1996, p. 18.

speculated about electoral rights in the national elections as well as about access to high political positions.[22]

Electoral rights in European parliament elections were discussed in the second report of the Committee on a People's Europe (Adonnino 1985). Electoral rights in the local elections in another Member State were considered an important characteristics of the 'People's Europe'. In the report, the right to appeal to parliament and the possibility to consult the Ombudsman were also mentioned. According to the report, citizens' participation as well as their understanding of community institutions and their political processes were to be increased by enhancing the transparency of the community administration. Through the political rights, a conception of a political citizenship was present in the report. This was seen also in the titles of the rights chapter of the report, in which a citizen was defined as a participant in the political process both at the European level and at the local level. (Adonnino 1985, 19–20.) The values mentioned in the Copenhagen identity declaration (1973) – representative democracy, rule of law, social justice and human rights – were presented as the background factors for developing citizens' rights.

In the later documents regarding EU-programmes on citizenship, electoral rights are very little discussed. Most discussion about them can be found in the opinion by the Committee of Regions (2003) regarding the programme on Active European Citizenship. In

[22] Maas 2007, p. 31–32.

the opinion, the right to vote and eligibility in the European parliamentary election is included in 'the European dimension' of citizenship. According to the opinion, 'the primary task of any European citizenship programme is to directly or indirectly serve to make citizens aware of the European dimension of their citizenship including their right to vote and stand as a candidate in elections of the European Parliament', as well as to make citizens aware of the fact that it also concerns those living in another member country. This task is seen as important in the opinion and very concrete means are suggested by which the citizens in the new Member States, in particular, can be informed about the electoral rights. (Committee of Regions 2003, 47–48; 50.) In the proposal of the Europe for Citizens programme (Commission 2005a, 2), awareness and usage of rights are mentioned as one solution to the low voter participation in the European parliamentary election. In spite of this, the focus of the programme is defined as themes around citizens' participation in integration and strengthening sense of belonging and identity. One would assume that the 'task of any European citizenship programme' (Committee of Regions 2003, 47) would indeed regard rights but this is not the case in the three programmes analysed here.

It is surprising that even though Union citizenship includes electoral rights in the local elections in the country of residence in the Treaty of Maastricht, they are not discussed in the documents on citizenship programmes. Electoral rights in local elections, admittedly, may not necessarily be the most relevant aspect of the Union citizenship. It has been suggested that Union citizens should

have right to vote also in the national elections of their country of residence.[23] The European Economic and Social Committee (2005, 32) makes a rather bold suggestion in its opinion on the Europe for Citizens programme in advocating an 'election of the representatives of the people on the same day in all countries i.e. an election that would involve all EU Member States'. This is seen as a way 'to attach specific rights and duties to this citizenship'.

Citizens' rights are the cornerstone of democracy, and democracy, and the lack of it, are often discussed both regarding European Union and other levels of government. In the rights discussions of the EU documents, democracy is seldom mentioned. In the documents concerning the Fundamental Rights and Citizenship programme, democracy is referred to in the context of informing citizens about their rights based on the Charter of Fundamental Rights as well as the Union citizenship. An aim of the programme is 'to encourage them to participate actively in the democratic life of the Union' (Commission 2005b, 33; Decision 2007, 35). This aim implies that democracy requires both structures and citizens' participation. It can also be interpreted as an attempt to make citizens responsible for the functioning of democracy. The interconnectedness of citizenship, rights and democracy is brought forth already in the introduction of the framework programme on

[23] Jessurun d'Oliveira 1995, p. 73; Claudia Wiesner, "Democratic legitimacy, democratisation and democratic identity of the European Union – Old questions, new challenges" *Redescriptions, Journal of the Finnish Centre of Excellence on Political Thought and Conceptual Change*, Vol. 12 (2008), p. 119.

Fundamental Rights and Justice, according to which 'special focus will be put on the fundamental rights stemming from the citizenship of the Union to encourage democratic participation.' (Commission 2005b, 8, 33).

A highly democratic suggestion is made by the Economic and Social Committee (2005, 33) in its opinion regarding the Europe for Citizens programme. Discussion of rights and duties entitled by Union citizenship in relation with Member State citizenship is called for in the opinion. These various rights should ultimately be voted upon 'in a single European poll by universal suffrage'. What is exceptional in this suggestion is that it concerns the democratization of the EU itself as well as citizens acting as decision makers. At present, Union citizenship does not contain any duties, although the Economic and Social Committee (2005, 32) proposes that rights of the Union citizenship "must be accompanied by a number of duties".

What is also unusual in this opinion is that, according to it, '[t]he option to define and trial economic, social, political, environmental and other rights that are specific to active European citizenship, particularly as regards solidarity and security (civil protection is one that springs to mind), should be discussed'. Hence rights are not described as pre-defined, ready or self-evident but space for invention is left. Rhetoric referring to experimentation and research creates an impression that Union citizenship is an innovation, which is developed here and now.

Walters and Haahr (2005, 80–81) recognize three ways of talking about democracy. They connect one of them, 'the discourse

of justice', to citizenship: citizens practising their rights can set juridical limits to EU-government. In my research material, however, rights are connected to citizenship only briefly and nor is citizenship connected closely to democracy in these documents. Citizenship is not clearly connected to democracy in the Maastricht Treaty or in earlier discussions in the history of Union citizenship, either. Jessurun d'Oliveira (1995, 73–74) interprets the electoral rights included in the Union citizenship as a sign of an attempt to dissolve identities and stateness of the Member States rather than as a way of increasing democracy at the EU-level.

According to Walters and Haahr (2005), rights can be understood as a technology of politization, through which citizens are given an equal status for participating in using power. In the EU documents, however, rights are little connected to citizens' use of power. Electoral rights are one channel for citizens' use of power but they are discussed still less than rights in other senses – despite the fact that in the founding treaties, electoral rights are included in the Union citizenship. Elections are presented as an apolitical issue, whose links with decision making are not considered. The scarcity of discussion of electoral rights produces an apolitical conception of citizenship.

The scarcity of discussion of political rights creates an understanding of citizenship, in which power usage is not central. Critiques claiming that the political rights given to Union citizens in

the founding treaties make possible only the narrow kind of power use[24] seem justified in the light of the documents analysed here. The lack of discussion of local elections contributes to emphasizing the Europeanness of citizenship. Electoral rights in both European parliament and in local elections concern a mobile citizen: a person who is a national of one Member State and a resident in another. The root of the Union citizenship – freedom of mobility – is thus present in the electoral rights of the Maastricht-citizens.

Fundamental rights

Fundamental rights are discussed in the documents concerning the three citizenship programmes slightly more than electoral rights. They are in the focus especially in the documents concerning the Fundamental Rights and Citizenship programme. In the proposal regarding this programme, Commission (2005b, 32) sets the citizenship article of the Maastricht Treaty as well as the Charter of Fundamental Rights, signed at the Nice council in 2000, as the foundations for the EU-policies dealing with fundamental rights. In the Charter of Fundamental Rights, no new rights are enacted but already existing rights are gathered together from EU treaties and

[24] Maija Setälä, Review on books Gustavsson, Karlsson & Persson (ed.) The illusion of accountability in the European Union and Eriksen: The unfinished democratization of Europe. *Politiikka* 4, (2009) , p. 316–318;
J.H.H. Weiler, *The constitution of Europe. 'Do the new clothes have an emperor?' and other essays on European integration*. New York: Cambridge University Press, 1999, p. 333.

law. In the Lisbon treaty in 2007, the Charter of Fundamental Rights was given the same juridical status as founding treaties.

The Charter of Fundamental Rights consists of an introduction and 54 articles. The articles are divided into seven chapters, entitled "Dignity", "Freedoms", "Equality", "Solidarity", "Citizens' Rights", "Justice" and "General Provisions". Union citizenship is mentioned in the introduction chapter, according to which the Union 'places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice' (Charter of Fundamental Rights 2000, 8). In the EU documents, the Charter of Fundamental Rights is referred to as an indicator of citizens' central position in the integration. The rights of the Union citizenship are included in the chapter V of the charter. In addition to the rights listed in the Maastricht Treaty, the right for good governance and the right for access to documents, introduced in the Treaty of Amsterdam (1997), are listed. (Charter of Fundamental Rights 2000, 18–19.)

The Charter of Fundamental Rights was included in the Constitutional Treaty in 2004. This is considered important in the documents concerning the Fundamental Rights and Citizenship programme, and is used as a motivation for the need of the programme (Commission 2005b, 4; 32) – although the Constitutional Treaty was never ratified. Another justification for the programme is found in the 'accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms' (Commission 2005b, 4, 32; Decision 2007, 33). These are presented

as steps forward, which mean, according to the Commission (2005b, 32), 'reinforcement and operationalisation of the fundamental values which are at the heart of the European project'. Based on these treaties, 'the Union will be legally obliged [---] to ensure that they [rights and values] are effectively promoted in all policy areas' (Commission 2005b, 4, 32; Decision 2007, 35). One aim of the Fundamental Rights and Citizenship programme is to find out what results these steps have and to examine the situation and the respect of the fundamental rights in the EU and in the Member States (Commission 2005b, 42; Decision 2007, 35).

According to the Fundamental Rights and Citizenship programme, the Charter of Fundamental Rights 'reflects the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the social charters adopted by the Community and by the Council of Europe and the case-law of the Court of Justice of the European Communities and of the European Court of Human Rights' (Decision 2007, 33; Commission 2005b, 39). This background, also mentioned in the charter itself (2000, 8), is represented as sources of rights, to which EU is attached. At the same time the status of the EU as a defender of rights is enhanced.

One of the general aims of the specific programme on Fundamental Rights and Citizenship is to develop a 'European society', which is based on respect for fundamental rights and the

rights derived from the Union citizenship. Union citizenship is described as 'destined to be the fundamental status of nationals of the Member States'. (Commission 2005b, 41; Decision 2007, 35.) According to the programme proposal on Fundamental Rights and Citizenship, attention must be paid to 'the rights deriving from citizenship of the Union, recognised as fundamental rights by the Charter' (Commission 2005b, 33).

Fundamental rights are linked, first, to the juridical status of citizens and the activities of authorities regarding justice. In this context fundamental rights mean such civil rights and – to some extent – social rights that are needed when residing and working in another Member State. In this case – following the discussions of the 1970s – rights are used for facilitating mobility and everyday life in the context of it rather than for promoting political activity. Mobility, however, makes the questions of who is entitled to which rights under which conditions still more complicated, and these questions are not discussed in the documents even though mobility has been the main context of rights in the history of EU-integration. In the Fundamental Rights and Justice programme, rights refer mainly to those rights listed in the Charter of Fundamental Rights. Political rights form only a small part of them but, arguably, other rights can be seen as making the usage of political rights possible.

The second context for fundamental rights in the Fundamental Rights and Citizenship programme is civil society. Strengthening the civil society and encouraging dialogue on fundamental rights through it is one of the general objects of the Fundamental Rights

and Citizenship programme (Commission 2005b, 41–42; Decision 2007, 35). The purpose is 'to support NGO and other bodies from civil society to enhance their capability to participate actively in the promotion of fundamental rights, the rule of law and democracy' (Commission 2005b, 34, 42; Decision 2007, 35). Supporting civil society and promoting networking are aimed at in the programme, since 'NGOs and other civil society actors play an important role in promoting and protecting fundamental rights throughout the European Union and in helping people to get to know their rights and to exercise them fully' (Commission 2005b, 33; Economic and Social Committee 2006, 4). 'The support of civil society in respect of fundamental rights' will cover both new and old Member States (Commission 2005b, 8, 33). Civil society organisations are seen as promoters of fundamental rights in both of them (Economic and Social Committee 2006, 4), and the Commission (2005b, 33) emphasises that it must be ensured that 'the level of action and commitment from those entities is equivalent in all Member States'. On the other hand, the activities of civil society constitute a right in itself, relating to freedoms of assembly and expression, for instance.

Combining civil society and fundamental rights in the objectives of the specific programme is based on the background that the entire framework programme on Fundamental Rights and Justice is re-arrangement of already existing activities. According to the Commission's (2005b, 8, 33) proposal, the purpose of the specific programme is to 'develop the two existing preparatory actions on the

protection and promotion of fundamental rights and on the support to civil society'.

The third area, to which fundamental rights are attached, is '[t]o fight against racism, xenophobia and anti-Semitism' (Commission 2005b, 4, 41–42; Decision 2007, 35), which is one of the general aims of the specific programme on Fundamental Rights and Citizenship. One of the specific objectives of the programme is to support interfaith and multicultural dialogue (Decision 2007, 35; Commission 2005b, 4). This kind of dialogue is seen as a means for fostering understanding and mutual knowledge, fighting against discrimination as well as promoting mutual understanding and peace (Commission 2005b, 4, 33; Decision 2007, 34) and particularly as protection for fundamental rights and citizens' rights (Commission 2005b, 4; Decision 2007, 34).

With the aims concerning interfaith and multicultural dialogue as well as the fight against racism, xenophobia and anti-Semitism, diversity is taken up. Linking rights and citizenship with this thematic implies that their connections with diversity and equality are recognized. These aims are an example of using the category of rights for governance. In a more general sense, programmes like this contribute to governance of diversity practised in different communities.

In the Decision (2007, 34) on the programme on Fundamental Rights and Citizenship, all these themes are summarized in a nutshell, as 'support to civil society associations, the fight against racism, xenophobia and anti-Semitism, the protection of fundamental

rights and the protection of the Rights of the Citizens, through an interfaith and multicultural dialogue' and are set as objectives of the programme.

Europe as an Area of freedom, security and justice

Part of the protection of fundamental rights in the EU-documents is the construction of the area of freedom, security and justice. The framework programme on Fundamental Rights and Justice, which includes the specific programme on Fundamental Rights and Citizenship, starts with a line drawn in the history of integration from one type of area construct to another.

> 'European integration has moved forward primarily in the economic sphere, with the setting up of a Single Market and a single currency. The establishment of an integrated, frontier-free economic area was, as foreseen by the Amsterdam Treaty, complemented by the creation of an area of freedom, security and justice. This area now needs to be further developed and strengthened.' (Commission 2005b, 3.)

The area of freedom, security and justice is represented as complementary to the economic area. Also in the documents concerning the Active European Citizenship programme (Commission 2003, 5), this area is seen in a similar relation to the

economic area. In the framework programme on Fundamental Rights and Justice, the area of freedom, security and justice is set as a common ultimate goal of all the specific programmes (Commission 2005b, 10). It is emphasised as one of the most important priorities of the European Union (Commission 2005b, 12).

In the first article of the Commission's (2005b, 41) programme proposal on Fundamental Rights and Citizenship, it is claimed that the specific programme will strengthen the area of freedom, security and justice. After this, however, the area is not mentioned in the proposal or in other documents concerning the specific programme. Still the area is implicitly present in them, since '[a]ll the objectives [of the specific programmes] are consistent with the overall aim of the general programme 'Fundamental Rights and Justice' to support the development of an area of freedom, security and justice.' (Commission 2005b, 34).

These aims are pursued in the specific programme on Fundamental Rights and Citizenship (Commission 2005b, 36) through numerous means related to knowledge production as well as through financial support for non-governmental and other organizations, for the Association of the Council of States and Supreme Administrative Jurisdictions of the European Union and for 'specific projects of Community interest'.

In the introduction of the framework programme of Fundamental Rights and Justice (Commission 2005b, 3), the relations of freedom, security and justice to the EU-integration are clarified. Freedom, security and justice are, first of all, 'core values

which constitute key components of the European model of society'. Referring to an earlier document by the European Commission (Commission of the European Communities 2004), it is stated that the area of freedom, security and justice is 'an indispensable building block of the European Union, at the heart of the political project for an enlarged Union'.

This clarification is continued in the introduction (Commission 2005b, 3) through a citation from another earlier document (Commission of the European Communities 2002), according to which freedom is 'the unifying principle, the linchpin of the European project', but security and system of law and justice recognised by the people are needed in order to guarantee 'the exercise of freedom and respect for democratic values'. The area of freedom, security and justice is seen in the citation as a guarantee for the principles of democracy and respect for human rights. These principles, defined in the Charter of Fundamental Rights, are called 'an essential element of European citizenship' in the citation. The recognition of these principles is 'the cornerstone of integration'.

Freedom, security and justice are further explained in the introduction of the framework programme on Fundamental Rights and Justice.

> 'Whilst the principle of free movement allows individuals and businesses to pursue their civil and commercial interests in other Member States, it also requires measures

> in the criminal law field to ensure that there are no safe havens for crime and criminals. Indeed, individuals and businesses should not be prevented or discouraged from exercising their rights because of the incompatibility or complexity of legal and administrative systems in the Member States.' (Commission 2005b, 4–5.)

In the area of freedom, security and justice, "freedom" means freedom to move and to practise economic activities, "security" means that criminals will be caught, and "justice" means harmonisation of juridical systems. The main topic of the framework programme of Fundamental Rights and Justice is juridical systems and authorities rather than citizens' active usage of rights. Also in the programme on Active European Citizenship (Commission 2003, 5), '[a] common policy on the application of European law, including the case-law' is seen as an important element in forming an area of freedom, security and justice.

In the core of the area of freedom, security and justice, lies freedom, understood as freedom for mobility. The need for measures called security and justice is deduced from this freedom.[25] In the documents concerning the Fundamental Rights and Citizenship

[25] Among the four specific programmes included in the framework programme on Fundamental Rights and Justice, programmes regarding the fight against violence and drugs as well as criminal justice focus on the security aspect of the area construct. Programme on Fundamental Rights and Citizenship and that on civil justice concentrate on the justice aspect of the area construct.

programme, a need to control mobility, as a counter balance for freedom of mobility, is taken up. Already in the proposal concerning the programme on Active European Citizenship, Commission (2003, 2) includes a common policy on asylum in building an area of freedom, security and justice.

The relations between freedom and security are defined in a similar way in an internet portal concerning justice and home affairs. According to it, "security" means protecting citizens against international criminality and terrorism as well as protecting the fundamental rights. All this is needed for the citizens to be able to use their freedom of mobility. Citizens' security is connected in the portal to governing immigration. According to the portal, citizens' security is threatened by international factors external to EU, and internal threats are not mentioned. (Justice and home affairs.)

Walters and Haahr (2005, 73) interpret discourses on risks, threats, crimes and immigration as technologies of differentiation, with which membership in the European polity is regulated. Discursive and cultural demarcation associated with this is, according to them, production of social difference, which is used for restricting the Union citizenship only for the Member State nationals.

This kind of risk-talk can be found in the framework programme on Fundamental Rights and Justice. In its opinion concerning the specific programme on Fundamental Rights and Citizenship, Economic and Social Committee (2006, 1) criticizes that the balance between freedom, security and justice has not been reached, because the legislation focuses too much on security. The

Committee refers to its earlier opinion (European Economic and Social Committee 2006), according to which it is important to reach a 'fair balance between the three dimensions [of freedom, security and justice] [...] so as not to encroach on the fundamental values (human rights and civil liberties) and democratic principles (rule of law) shared throughout the Union.'

Freedom, security and justice defined as this kind of principles, area construct and policy sector are closely linked with citizenship in the documents (Economic and Social Committee 2005, 33; Commission 2005b, 3, 5). The fact that rights are framed in this way and that the European citizenship is given this kind of foundation means that the most important right of the Union citizen is freedom of mobility.

Citizens on the move

The interpretation of citizenship as mobility can be supported by analysing two other area constructs developed in the documents' discussions on rights. In the framework programme on Fundamental rights and justice, 'European area of justice' is produced. This area construct refers to co-operation in civil and commercial law matters and in criminal law so that the borders between countries would not harm free movement and individuals and businesses using their rights (Commission 2005b, 4–5).

The 'European area of justice' is juxtaposed with citizenship in the Commission's (2005b, 5) proposal, since, according to it, each of

the four specific programmes 'will reflect the objectives of a policy which will, in association with the three others, allow for the development of a European citizenship and a genuine area of Justice'.

Another area construct mentioned in the framework programme of the Fundamental Rights and Justice is 'Europe for citizens', the creation of which is said to require that fundamental rights are respected and promoted (Commission 2005b, 4–5). European area of justice is represented as a condition for the Europe for citizens.

> 'The creation of a Europe for citizens also implies the establishment of a European Area of Justice, based on the principle of mutual recognition and confidence-building: borders between countries should no longer constitute an obstacle to the settlement of civil and commercial law matters or to the bringing of court proceedings and the enforcement of decisions.' (Commission 2005b, 4.)

The area construct of Europe for citizens emphasises that citizens move in EU-Europe (as workers or as participants in the EU-programmes), whereas the European area of justice embodies both facilitating this mobility by uniting systems and controlling the mobility in order to prevent crimes.

All the three area constructs concerning rights intertwine with each other: they all are about the right for free movement and

governing this right. In the context of these area constructs, citizenship is understood above all as moving. This kind of discussion on rights does not promote citizenship as political agency.

The Europe for citizens, the European area of justice and the area of freedom, security of justice are linked in the documents not only with each other but also with the economic area. This link manifests how mobility freedoms as the core principles of integration are based on economic freedoms and the fulfilling of the common market area.[26]

In the treaty of Rome, the context of the freedoms is economy. Freedoms relate to the freedom of economy, and the workers' mobility rights have been dependent on economic activity. In the 1960s, the concept of citizen was used in this context – that is in the discussions on economic mobility rights. In these discussions, citizenship was not seen as citizens' usage of power.[27]

A step towards detaching rights and free movement from economic activity was according to O'Leary (1996, 19–20) taken in the Commission's draft proposal on directive of residence in 1979.

[26] The area of freedom, security and justice was further formulated in the Stockholm Programme (2010), which contains also other area constructs such as citizens' Europe and Europe of Rights. The Stockholm Programme has been studied for instance from the perspectives of security policy and immigration. E.g. Elspeth Guild, and Sergio Carrera, "Towards the Next Phase of the EU's Area of Freedom, Security and Justice: The European Commission's Proposals for the Stockholm Programme" *CEPS Policy* (2009) No 196; Christian Kaunert, and Sarah Léonard, "After the Stockholm programme: an area of freedom, security and justice in the European Union?" *European Security* (2010) 19:2, 143-149; Dora Kostakopoulou, "An open and secure Europe? Fixity and fissures in the area of freedom, security and justice after Lisbon and Stockholm" *European Security* (2010) 19:2,151-167.
[27] O'Leary 1996, p. 17.

Yet still in the first report of the People's Europe -committee (Adonnino 1985, 7, 10, 12–14), the framework of the rights is workers' freedoms of mobility. The suggestions made in the report concern the introduction of a European passport, workers' taxation, recognition of diplomas or other examinations and equivalence of professional qualifications. The suggestions of the second report, too, concern mobility (Adonnino 1985, 19–21).

The expression that the area of freedom, security and justice is seen as 'complementing' the economic area (Commission 2005b, 3) can be understood in several ways. Is the area of freedom, security and justice given the task to boost the economic integration or to bring some counter balance to the economic integration or to compensate those problems that can be caused by creation of the economic area without inner borders? In any case, this link implies that Union citizenship produced in the documents means membership in an economic community.

With the help of rights, economy is constructed in the documents – in a similar way as in the discussions on citizenship since the 1970s – as a field of citizens' activity and particularly free movement. In the programme on Active European Citizenship (Commission 2003, 5), '[e]ffective and uniform application of Community law' is considered necessary for 'the proper functioning of the internal market' and for citizens, consumers and undertakings to be able to 'assert all their rights under the Community legal order before any national court'. Practices regarding justice must be unified in order to unify the market.

In the framework programme on Fundamental Rights and Justice (Commission 2005b, 93), freedom, security and justice are said to be critical from the perspective of free movement of people, goods, services and capital. The creation of economic and monetary union and the abolition of internal borders are represented as an inevitable process which has already taken place and which somehow by itself takes up questions on freedom, security and justice, which the programmes aim at addressing. Discussion on the area of freedom, security and justice shows that the economic integration is seen to require various control measures, and these control measures have been named as security and justice.

Promoting and regulating mobility

"Freedom" is understood narrowly as freedom of mobility in the EU documents' discussions on rights and, particularly, on the area of freedom, security and justice. This stems from freedom of mobility being a key principle of EU-integration, on which Union citizenship has been built from the beginning.[28] In the integration discussions of the 1970s, citizenship was represented as a new practice for facilitating moving and crossing borders, juxtaposing it with border formalities, customs issues and passport reforms without taking into consideration its whole complexity.

[28] E.g. Rosas 2005, p. 1257.

The four main freedoms of integration – free movement of goods, persons, services and capitals – are defined in the treaty of Rome and in the subsequent founding treaties. Walters and Haahr (2005, 43–48) compare the Rome treaty with the United States Declaration of Independence (1776) and with the French Declaration of the Rights of Man and of the Citizen (1789). It is interesting that, according to them, freedom is understood in a narrow and instrumental way in the Treaty of Rome, whereas in the United States' Declaration, it is a fundamental right for all individuals and in the French Declaration it is also associated with political activity.

When Union citizenship was founded, the first right in the citizenship article was freedom of mobility. Thus Union citizenship is a status promoting and regulating mobility.[29] Freedom of mobility has not usually been considered as a political right in democratic systems.[30] As an essential component of the economic freedoms of the European market area, it has been elevated to the core of the Union citizenship and broadened to apply to citizens' movement in general. Union citizenship has been developed as a special status for those who have moved from one Member State to another and as a way to increase mobility over borders.[31]

[29] Enrica Rigo, *Rajojen Eurooppa*. Finnish translation Antti Paakkari, Taina Rajanti, Miika Saukkonen & Eetu Viren. Helsinki: Like, 2009, p. 108.
[30] Jessurun d'Oliveira 1995, p. 65–66.
[31] In the case law of the European Court of Justice, Union citizenship has, however, been interpreted as a status of both citizens who move and citizens who do not, and thus the Union citizenship has been detached from the idea of free movement. See Koen Lenaerts, "The concept of EU citizenship in the case law of the European Court of Justice" *ERA Forum* (2013) 13:569–583.

Enacting freedom of mobility as the first right of the Union citizen can be interpreted as producing freedom and governance through freedom.[32] Producing certain forms of freedom and obligating citizens to exercise them is at present a typical way of governing.[33] Promotion of mobility as citizens' right in the EU documents can be seen as this kind of governance. In them, mobility is presented as a positive privilege, which citizens are, nevertheless, almost obliged to.

Rigo (2009, 108, emphasis in original) sees mobility as a primary field and form of governance regarding citizenship. According to her, 'the primary field of governance [of European citizenship] is *mobility*'. This is governance, in which discursive space is utilised so that if borders appear to be obstacles for citizens' mobility, new practices are invented, such as unified passports and European visa.[34]

The area constructs produced in EU documents, most explicitly the area of freedom, security and justice, are examples of promoting the right kind of mobility within the EU-area. At the same time, they are examples of the importance of borders and how defining, crossing and transferring borders has been central in the EU-integration[35] and still is.[36]

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[32] Rose 1999.
[33] See also Walters and Haahr 2005, p. 13.
[34] Walters and Haahr 2005, p. 61.
[35] Ibid, p. 91–113.
[36] Luiza Bialasiewicz, "Europe as/at the border: Trieste and the meaning of Europe" *Social and cultural geography* 10(3) (2009), p. 325–342.

Drawing and crossing borders

The area of freedom, security and justice is part of governance of freedom of mobility in EU integration. Its background is in the Schengen Treaty of 1985 and 1990, which entered into force in 1995 (Schengen acquis 2000). According to the treaty, passenger checks at internal borders between the signatory countries are abolished, practices concerning external borders are unified and police and judicial cooperation are enhanced. The Schengen co-operation and the area of freedom, security and justice were attached to the founding treaty of the Union in the Treaty of Amsterdam in 1997. In the Treaty of Lisbon (2007, 47), the area of freedom, security and justice is listed as one of the eleven main fields on which shared competence between the Union and the Member States is applied.

In the treaties, the area of freedom, security and justice has been taken as a superordinate term, with which many measures, above all measures regulating mobility and borders, are framed. Security and justice are forms of governing mobility, which are both used for supporting the right kind of freedom of mobility. They both promote freedom of movement in their own ways: security by strengthening and controlling external borders and justice by removing differences which could harm mobility.

Free movement and borders are key words of the area of freedom, security and justice in the treaties of Schengen and Amsterdam as well as in the framework programme on Fundamental

Rights and Justice. Borders have become the object of a new kind of interest and study due to the European neighbourhoods programme.[37] Demarcation related to European Union includes practices of power, which touch the individual level and which concern both Union citizens and others.

Also in the founding process of Union citizenship, demarcation was a fundamental issue. People and mobility can be governed better than earlier with the category of Union citizenship. When Union citizenship is restricted to apply only to Member State nationals, it appears as one of the many ways with which borders are transferred from inside of the Union to the external edges of it.

The fact that for many people in the world, moving is not a privilege but a necessity determined by circumstances, is not mentioned in the documents. The Commission's (2003, 2) programme proposal on active European citizenship is an exception. According to it, area of freedom, security and justice is supposed to be 'open to those who, forced by circumstances, legitimately seek protection in the European Union'. Because the area of freedom, security and justice means strengthening the external borders of the EU, this more problematic dimension of mobility is nevertheless implicitly present in the discussions on the area.

[37] See e.g. Special Section: EU neighbourhood geopolitics, *Geopolitics* 16(1) (2011), p. 121–210.

Mobility and rights do, with some restrictions, concern non-EU-citizens. The European Economic and Social Committee (2005, 32) is most explicit about this in its opinion on Europe for Citizens programme. It emphasises 'the urgent need to define an open European citizenship, containing specific rights and open to all regularly settled or long-term residents of the European Union'. This suggestion of redefining is a rare exception in the material, in which the borders of Union citizenship are drawn according to Member State nationality.

The idea that other people than Union citizens would also have right to the area of freedom, security and justice and that they would have rights for mobility and other rights is significant regarding Union citizenship and its spatiality. This idea opens up broad questions about Union citizenship, rights and Europe as an area construct. Rigo (2009, 103) argues that mobility of posted workers is as significant and strategic a goal as citizens' free movement. According to her, it is important to analyse Union citizenship from the perspectives of those, to whom it does not apply.

Conclusions: The silence on rights of Union citizens

In the documents concerning the three citizenship programmes included in the material analysed in this article, there is a contradiction to be seen between informing and silence. Even though informing citizens about the rights is emphasised in documents concerning all three citizenship programmes (Committee of regions

2003, 47; Commission 2005a, 2; Economic and Social Committee 2005, 31; Decision 2007, 33), there is eventually very little discussion on rights in them.

The first specific objective in the Fundamental Rights and Citizenship programme is 'to inform all persons of their rights including those derived from the EU citizenship' (Commission 2005b, 40, 42; Economic and Social Committee 2006, 4). This should be done 'both through general information campaigns and in response to individual requests' (Commission 2005b, 5). The motivation for increasing awareness of rights is to bring 'all persons close to the European project by encouraging an active citizenship' (Commission 2005b, 40) and encouraging citizens 'to participate actively in the democratic life of the Union' (Commission 2005b, 42; Decision 2007, 35). The suggestions made for aiming at these objectives do not, however, regard rights but rather measures such as town twinning and cooperation of organizations in different Member States.

What should be discussed according to the documents is not really discussed in the documents themselves. Rights vocabulary is used almost only in the documents concerning the specific programme on Fundamental Rights and Citizenship. The discussion on rights focuses on mobility instead of other aspects of rights. For instance electoral rights are discussed extremely little, even though in the founding treaties and the negotiations before them, electoral rights are attached to Union citizenship. Other political rights are not developed, either, as participation in decision making and in law

making are hardly mentioned in the rights discussions of the documents.

One might expect that in the citizenship programmes, there would be discussion on how rights attached to Union citizenship could be promoted and realised, but the programmes analysed here do not appear to be the implementation of the treaties and the citizenship defined in them. Citizenship as bearing rights may be a narrow and passive conception of citizenship, but it is nevertheless a prerequisite for a more active citizenship, which is called for even in the names of the EU documents. Are rights then something which is only discussed in the treaties and other high level documents, but not at the implementation level of the Union citizenship?

As instruments for funding, the programmes have practical influence in what kind of activity is promoted. There is no doubt that many of the projects funded by the programmes may promote citizenship in an active, democratic and political form. According to the European commission's (2010, 12) sixth citizenship report, one of the priorities of funding through the Fundamental rights and citizenship programme is "to promote information and civic education initiatives on the active participation of EU citizens in the democratic life of the Union, and in particular, participation in European Parliament and municipal elections" (European commission 2010, 12). Civic education or participation in democratic life are examples of more concrete substance of promoting citizenship, but the documents regarding the programme do not discuss them. Instead, PR campaigns about the EP elections

are mentioned in the commission's (2005b, 5) proposal for the programme.

If the concrete ideas about implementation of citizens' rights are missing in the three citizenship programmes analysed here – although the programmes are seen as important by the Commission of the European communities (2008, 4, 10) itself – it is possible that Union citizenship is implemented through other arenas. The fourth citizenship report of the European Commission (2004, 5) mentions education, training and youth as important areas: "Community action in the fields of education, training and youth contributes to ensuring that citizens are enabled to participate actively in European democratic life and society".

Citizenship as mobility is given so much attention in the documents that other aspects of citizenship are hidden. Especially in the light of the area construct of freedom, security and justice, Union citizenship is understood above all as citizenship of a mobile person and as a status guaranteeing freedom of movement. Conception of free movement as the core of citizens' rights keeps up the citizenship discussions in the history of integration. In these discussions, a status was formulated for citizens, which could enhance freedom of mobility and facilitate residence in another Member State and, through them, an equal status. Emphasising the freedom of mobility connects Union citizenship with the economic sphere and formulates it as membership in an economic community and as economic citizenship. Articulating the area of freedom, security and justice as complementing the economic area contributes to this.

The central position given to freedom of mobility and its connection with the economy link the Union citizenship formulated in the rights discussions to the liberalist tradition. In the discussions on removing the differences between different systems and practices concerning fundamental rights and justice, the focus is on removing obstacles of mobility, in order to facilitate citizens' activity, particularly economic action as well as activity of the internal market. This refers to a liberalist conception according to which states must secure individual freedoms. The emphasis is on negative freedom, freedom from something, rather than on encouraging active use of rights.

No other problems are identified in the documents to which rights could be a solution. Rights are not seen as a channel for change. This strengthens the impression that rights are not meant to be citizens' tools for using power. Understanding citizenship rather as a status than practice refers to a liberalist understanding of citizenship. The few discussions on rights focus on juridical systems, which contributes to this understanding. Over its history, Union citizenship has not meant using power, but a status, an equal position.[38]

[38] An easy explanation for the liberalist flavour of the documents' discussions on rights can be found in the close relationship between EU-integration and liberalism. Walters and Haahr (2005, 28–31, 43–64) examine the forming of Coal and steel community and Monnet's actions as liberalist high-modernism and forming of common market as liberal and neoliberal governance and as ordo-liberalism, but they recall that these are not the only political rationalities that have been used in governing integration.

In the documents' discussions on rights, the subject is usually, for instance, the European Commission or the proposed programme, while citizens are seen as targets. A passive form with no visible subject is also common. In the proposal for the Citizens for Europe programme (Commission 2005a, 28), this tendency is critically reflected. The Commission's measures aimed at informing citizens about fundamental rights and the need of active citizenship are described as top-down activity, whereas the Europe for Citizens programme is claimed to have 'a more bottom-up and participative focus'. This kind of scrutiny is exceptional in the documents included in my material. In them, usually, citizens are almost self-evidently targets of the activities, and no attention is paid to the questions concerning what kind of power positions, agencies and spaces of action are produced through the proposed programmes.

The scarce discussions on rights and the light contents of it in the EU documents create an impression that the rights in them do not entitle or at least do not activate citizens to anything else but moving. This prompts the question of why rights and discussion on them are needed. Especially regarding the area construct on freedom, security and justice, rights can be interpreted as instruments of governance. Walters and Haahr (2005, 63) remark that in the EU integration, workers' rights, for instance, can become objects of governmental action and a sphere of calculation and governance. In the documents analysed here, rights are not represented as resources for the citizens to use. Instead, the discussion of rights resembles neo-liberal governance which aims at getting citizens' resources for the use of

public administration. This can be heard in the documents' rhetoric of responsibilization[39], with which citizens are almost obliged to move in order to promote integration.[40]

Rights are an example of how the same issue can be used for both strengthening citizens' chances to act and for governing citizens. It exemplifies the understanding of citizenship as a two-way channel of power: citizens are at the same time users of power and objects of power. Dean (1994, 164) formulates a mutual relationship between power usage and rights in liberal democracies. According to him, broadening the use of power was a pre-condition for the forming of such a subject, which had rights and freedoms. At the same time, for him, a free citizenry was a pre-condition for dissemination of techniques of governance and normalizing practices. According to Dean, it can even be said that in liberal democracies, citizens' rights are only a masquerade of the complex process, through which citizens are already formulated with disciplinary mechanisms targeted at them.

[39] Rose 1999, p. 74.

[40] Generally discussion of duties is scarce in the EU documents, which also reflects liberalist conceptions of citizenship. On the reverse side of rights, one can nevertheless read of some duties. Discussions of mobility are a case in point. The relationship between rights and duties is discussed most explicitly in the opinion given by the Economic and Social Committee (2005, 32) on Europe for Citizens programme. According to this opinion, the EU should aim at attaching 'specific rights and duties to this citizenship' in order to promote participation. Instruments mentioned in the opinion are 'the European non-military service for young people [---] a personal contribution — however small — to the European budget (admittedly a thorny question), and/or election of the representatives of the people on the same day in all countries, i.e. an election that would involve all EU Member States'.

Arguably, rights give Union citizens a certain kind of freedom, but they can also be used for formulating citizenship and for governing it and the entire integration. In addition to rights, the area construct of freedom, security and justice is also used for this in the EU documents. Walters and Haahr (2005, 111) aptly call 'Schengenland' 'worksite of new subjectivities'.

The EU documents' governance through rights is liberal governance based on voluntarism. In the documents analysed, and in the broader EU integration, citizens are governed literally through freedom[41], as they are granted freedoms, the usage of which is then guided and regulated. In the citizenship documents analysed in this article, rights regarding Union citizens can be seen as a field of governance above all in governance of movement. The area of freedom, security and justice, for instance, is about regulating the freedom of mobility and drawing borders and thus also about governing non-EU-citizens. Citizenship is simultaneously a claim for freedom and restricting freedom[42], and the freedom of some is the lack of freedom of others.

Third country nationals are also governed through the freedoms granted to Union citizens. Rose (1999, 10) argues that force and control must be justified by freedom. For instance crime prevention must be justified by the idea that restricting the few is the pre-

[41] About the idea of governance through freedom, see Rose 1999, p. 69-95.
[42] Étienne Balibar, "Esipuhe: Oikeus alueeseen" (Preface: Right to area). In: Rigo, Enrica: *Rajojen Eurooppa*. Finnish translation Antti Paakkari, Taina Rajanti, Miika Saukkonen & Eetu Viren. Helsinki: Like, 2009, p. 36.

condition for the freedom of the many. This kind of justification is used in the documents' discussions regarding the area of freedom, security and justice, in which it is argued that freedom of mobility requires joint action in controlling criminality and external borders.

Both Union citizenship and the area of freedom, security and justice are innovations, through which EU can use power in the nation states' traditional fields of action. Border control and (criteria and access for) citizenship 'are regarded as part of the central rights and tasks of states'.[43] As a result of the Union citizenship and the Schengen-process, both of these tasks have been transferred to the European Union. The EU, for its part, obliges Member States, particularly at its external borders, to take care of the border control according to EU-policies. It also engages the neighbour countries in this task so that the excluded are included in constructing the 'fortress Europe'.

Conceiving of Union citizenship in the almost non-existent rights discussions of the EU documents on citizenship can be seen as governance related to population, whereas the area constructs in the documents can be seen as governance related to territory. Both of them are used for promoting integration and for governing diversity. The two sides of citizenship – subject and object of power – are not in balance in these discussions. Rights are used for governing citizens rather than for encouraging them in using power. They are

[43] Pasi Saukkonen, *Politiikka monikulttuurisessa yhteiskunnassa*. Helsinki: WSOY, 2007, p. 214.

also used for governing the integration and demarcating EU-citizens from others. Thus a depolitized understanding of citizenship is produced in the EU documents on citizenship. If rights are silenced in the documents regarding citizenship and – moreover – regarding rights, it can be asked, whether it is more important in Union citizenship to have the category of citizenship invented according to the needs of the administration than the rights given as its contents' in the founding treaties.

Primary sources

Commission (2003) Proposal for a council decision establishing a community action programme to promote active European citizenship (civic participation) com(2003)276. *Official journal of the European union* C76 25.3.2004 p. 18.

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2003:0276:FIN:EN:PDF

Accessed 4.12.2014.

Commission (2005a) Proposal for a decision of the European parliament and of the council establishing for the period 2007-2013 the programme "Citizens for Europe" to promote active European citizenship. com(2005)116. *Official journal of the European union* C172 12.7.2005.

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0116:FIN:EN:PDF

Accessed 4.12.2014.

Commission (2005b) Proposal for a council decision establishing for the period 2007-2013 the specific programme "Fundamental rights and citizenship" as part of the general programme "Fundamental Rights and Justice" com(2005)122. *Official journal of the European union* C211 30.8.2005.

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005PC0122(02)&rid=5

Accessed 4.12.2014.

Committee of the regions (2003) Opinion of the Committee of the Regions on: — the 'Proposal for a Council decision establishing a Community action programme to promote active European

citizenship (civic participation)' *Official journal of the European union* C73 March 23. p. 46–50.

Decision (2004) Council decision of 26 January 2004 establishing a Community action programme to promote active European citizenship (civic participation)

(2004/100/EC). *Official journal of the European union* L30 February 4. p. 6–14.

Decision (2006) Decision No 1904/2006/EC of the European Parliament and of the Council of 12 December 2006 establishing for the period 2007 to 2013 the programme Europe for

Citizens to promote active European citizenship. *Official Journal of the European union*

L 378 December 27. p. 32–40.

http://ec.europa.eu/citizenship/pdf/lexuriserv_en.pdf

Accessed 4.12.2014

Decision (2007) Council decision of 19 April 2007 establishing for the period 2007-2013 the specific programme 'Fundamental rights and citizenship' as part of the General programme 'Fundamental rights and justice'. *Official journal of the European union* L 110 27.4.2007 p. 33-39.

Economic and Social Committee (2005) Opinion of the European Economic and Social Committee on the 'Proposal for a Decision of the European Parliament and of the Council establishing for the period 2007-2013 the programme 'Citizens for Europe' to promote active European citizenship' *Official journal of the European union* C 28, 3.2.2006 p. 29–34.

Economic and Social Committee (2006) Opinion of the European Economic and Social Committee on the [---] 'Proposal for a Council

Decision establishing for the period 2007-2013 the specific programme 'Fundamental rights and citizenship' as part of the General programme 'Fundamental Rights and Justice'' *Official journal of the European union* C 69 21.3.2006 p. 1–4.

Other research sources

Adonnino, Pietro, "A People's Europe: Reports from the ad hoc Committee" Bulletin of

the European Communities, Supplement 7/85.

http://aei.pitt.edu/992/1/andonnino_report_peoples_europe.pdf

Accessed 4.12.2014

Charter of Fundamental Rights of the European Union (2000) *Official Journal of the European Communities* C 364. 18.12.2000. p. 1–22.

http://www.europarl.europa.eu/charter/pdf/text_en.pdf

Accessed 4.12.2014

Commission of the European Communities (2002) A Project for the European Union. COM(2002) 247 final. 22.5.2002.

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2002:0247:FIN:EN:PDF

Accessed 4.12.2014.

Commission of the European Communities (2004) Building our common future. Policy challenges and budgetary means of the enlarged Union 2007–2013. COM(2004) 101 final/2. 26.2.2004.

http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2004:0101:FIN:EN:PDF

Accessed 4.12.2014.

Commission of the European Communities (2008) Fifth report on citizenship of the Union, com(2008)85 final. 15.2.2008.

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0085:FIN:en:PDF

Accessed 4.12.2014.

Dokument über die Europäische Identität (1973) Konferenz der Staatsbzw. Regierungschefs in Kopenhagen. 17.12.1973. *Bulletin der Europäischen Gemeinschaften* 12-1973.

European Commission (1975) Towards European citizenship. *Bull. EC.* Supplement 7/75. Cit. Maas, Willem 2007, 31.

European Commission (2011) Proposal for a council regulation establishing for the period 2014-2020 the programme "Europe for Citizens". com(2011)884. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0884:FIN:EN:PDF

Accessed 4.12.2014

European Economic and Social Committee (2006) Opinion on the Communication from the Commission to the Council and the European Parliament: The Hague Programme: Ten priorities for the next five years — The Partnership for European renewal in the field of Freedom, Security and Justice (COM(2005) 184 final – Rapporteur: Mr Pariza 15.12.2005 (OJ C 65, 17.3.2006).

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2006.065.01.0120.01.ENG

Accessed 2.12.2014

The European Parliament and the Council of the European Union (2013) Regulation (EU) No 1381/2013 of the European Parliament

and of the Council of 17 December 2013 establishing a Rights, Equality and Citizenship Programme for the period 2014 to 2020.

http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1397223391719&uri=CELEX:32013R1381

Accessed 2.12.2014

EP. Working Documents 1977–1978. 25.10.1977. Scelba report. Doc. 346/77, 19. Cit. O'Leary, Síofra 1996, 19.

Justice and home affairs.

http://europa.eu/pol/justice/index_en.htm

Accessed 4.12.2014

The Schengen Acquis as referred to in Article 1(2) of Council Decision 1999/435/EC of 20 May 1999. *Official Journal* L 239 , 22.9.2000. p. 19–62.

http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2000:239:SOM:EN:HTML

Accessed 4.12.2014.

The Stockholm Programme – An Open and secure Europe serving and protecting citizens. *Official Journal of the European Union* C115 4.5.2010.

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:115:0001:0038:EN:PDF

Accessed 4.12.2014.

Tindemans, Leo (1976) Die Europäische Union. *Bulletin der Europäischen Gemeinschaften*, Beilage 1/76.

Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts (1997) *Official journal of the European communities* C 340, 10.11. 1997.

http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:1997:340:SOM:EN:HTML

Accessed 4.12.2014.

Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007. *Official Journal of the European Union* C 306. 17.12. 2007.

http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:EN:HTML

Accessed 4.12.2014.

Treaty on European Union, signed at Maastricht on 7 February 1992. *Official Journal* C 191, 29 July 1992.

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:1992:191:FULL&from=EN

Accessed 4.12.2014

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