in the strategy have become operational. Over 400 Roma have been hired as experts, the responsibilities of these experts have been clarified, and all 42 local Roma offices have elaborated Action Plans for the 2001–2004 period.

I know of at least one Roma 'expert', appointed to a senior post under the terms of Romania's Roma Strategy, who had no previous work experience of any kind. In another case, I was told of a Roma adviser to a County Prefect who had been told not to try to see his boss unless the Prefect specifically summoned him. The adviser's numerous and elaborate proposals, for tackling the problems of the local Roma went unheeded. A meaningful evaluation of the implementation of the Roma Strategy in Romania would have had to consider not simply whether Roma experts had been appointed across the country, as provided for by the Strategy, but the background and qualifications of those appointed, as well as the extent to which the advisers have been permitted to initiate or influence the formation of policy. These issues are not even touched upon in the Commission's subsequent Regular Report on Romania, for 2003.

4.2. Financial Incentives and Funding for Roma-Related Projects in the CEE Region

In addition to standard setting and monitoring the performance of candidate countries, the EU has used financial incentives to encourage these states to comply with EU objectives, including the adoption of appropriate measures to improve the situation of Roma minorities in the CEE region. Thus, financial assistance to a candidate country, in accordance with the PHARE Programme or other schemes of EU-funded assistance, can be suspended if a state is in breach of its obligations under EU instruments.[66] As noted above, for several CEE states—Bulgaria, the Czech Republic, Hungary, Romania and Slovakia—such obligations included the adoption of far-reaching measures to improve the situation of their Roma minorities.[67]

The scale of financial assistance from the EU to candidate countries, in order to prepare them for EU membership, has been impressive. For example, for the period 1995–1999, grants under the PHARE Programme amounted to almost 6.7 billion Euros.[68] For the period 2000–2006, the total value of grants available under the PHARE Programme, for infrastructure and other projects, represents 1.5 billion Euros annually.[69] Potentially, at least, this has served as a strong incentive

[66] This is spelt out in the 1998 Accession Partnerships drawn up by the European Commission for the then candidate countries. The revised Accession Partnerships, of 2001, reaffirm this principle of conditionality.

[67] These obligations are specified, for example, in the various Accession Partnerships.

[68] *European Union Support for Roma Communities in Central and Eastern Europe*, above n. 52, p. 6.

[69] *Id.*

to candidate countries to discharge their obligations under EU instruments, including the requirement to improve the situation of the Roma in various ways.

Funds from the PHARE Programme have also been allocated to projects that are directly concerned with improving the situation of the Roma in the CEE states. Funding for Roma-related projects rose from 11.7 million Euros in 1999 to 31.35 Euros in 2001.[70] For example, in 2001, a grant of 1,700,000 Euros was awarded for a project concerned with improving educational provision to the Roma in Slovakia, while a further grant of 8,300,000 Euros was made to secure improvements in the infrastructure in Roma settlements in Slovakia.[71] In the same year, a grant of 7,000,000 Euros was awarded to promote access to education for disadvantaged groups, particularly the Roma, in Romania.[72]

Significant, though smaller, sums have also been allocated by the EU to NGO-focused projects, in accordance with the LIEN and ACCESS Programmes that have benefited the Roma.[73] The European Initiative for Democracy and Human Rights has also funded various projects for the Roma in the CEE states. Finally, mention should be made of the EU's SOCRATES and Youth for Europe Programmes. Each of these has given extensive support to Roma projects.[74]

Yet, despite the variety and evident usefulness of these EU programmes, they have broadly failed to tackle the multiple and deep-seated problems confronting the mass of the Roma of the CEE region. The scale of financial support for Roma-related projects under the single largest EU scheme, the PHARE Programme—11.7 million Euro in 1999, rising to 31.35 million Euros in 2001—has not been sufficient to meet the massive educational, housing, health care and other needs of up to six million Roma in the CEE region. A far more ambitious level of funding and of assistance is necessary to address the wide-ranging concerns of the Roma people.

5. Conclusions

The eastward enlargement of the EU, in May 2004, has represented a decisive moment in European history, bringing to an end the division of the continent that was formalized in the aftermath of World War II. However, from the perspective of the Roma of Central and Eastern Europe, it may seem as if the *territorial division* of the continent has been replaced by the erection of new 'borders' that are essentially social, cultural and economic in character, rather than geographical.[75] As described

70 *Ibid*, at 7.
71 *Ibid*, at 22.
72 *Ibid*, at 20.
73 For details see, e.g. *ibid*, at 9.
74 *Ibid*, at 10–11.
75 As yet, the old territorial borders remain largely in place, in addition to the new ones. As indicated above, n. 6, most EU member states have introduced transitional arrangements restricting the entry of persons from accession states.

in Parts II–III of this chapter, the collapse of communist administrations in the CEE countries has led to the partial exclusion—social, economic and political—of an estimated six million Roma. Despite commendable efforts, whether in terms of standard setting, monitoring or the provision of financial incentives and assistance, the EU has not succeeded in reversing the severe marginalization of Roma in the CEE region. In particular, the scale of material support provided by the EU, to improve Roma social integration, education levels, housing and infrastructure, has been completely inadequate. As emphasized by World Bank economists, in a report published in June 2003, the Roma of Central and Eastern Europe remain in a state of crisis.[76]

Paradoxically, the accession of several post-communist states to the European Union, in May 2004, may actually have made matters worse. In particular, these states are no longer subject to the stringent monitoring of their minorities policies that they experienced as candidate countries. In addition, having achieved their goal of EU membership, accession countries may prove less susceptible to political or other pressures with respect to their treatment of Roma minorities. The rhetorical and overblown claims of Article 2 of the Treaty of European Union, in which member states pledge "to maintain and develop the Union as an area of freedom, security and justice", are likely to prove hollow and illusory for the mass of the Roma in accession states.

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[76] See Ringold, Orenstein, Wilkens, above n. 2.

16. A Europe of Variable Geometry: Still a Winning Model?

*Lauso Zagato**

1. Introduction

The tragic scenes of exodus from Africa, which perturb the current debate on the future of Europe, strongly recall the dominant (but perhaps too hastily forgotten) apocalyptic predictions of a decade ago with regard to the anticipated waves of mass migration from Eastern and South-East Europe, from the Central Asian republics of the former Soviet Union and furthermore, from the endless hinterland of Southern Asia. Such predictions did not come true. It is unanimously agreed that the situation evolved differently, thanks to the decisive role played by the EU. It is, therefore, useful to analyse in detail the complex process of subdivision and re-composition in a hierarchy of State and sub-State entities on a primarily (but not exclusively) territorial basis and to examine the sophisticated system of legal instruments utilized by the EU institutions to win a difficult match. The most tangible trophy of this victory is the recent enlargement.

This research, however, is not inspired by futile optimism. Indeed it will become clear through analysis that it is not possible to confront other "geographical fronts" of the global movement of populations with similar panoply of instruments. A more complex task will be to offer some introductory reflections on the relationship between a Europe of variable geometry and a Europe of rights in the context of the new EU, as well as to indicate the contradictions on the horizon marked out by the Constitutional Treaty.

2. The Legal Instruments of Enlargement

It is imperative to start by taking time to survey, in brief, the panoply of legal instruments which the Europe of variable geometry makes use of. The reason for this is not to list a pointless catalogue of sources and acts, but to enable us to understand better how it has been possible for such a Europe to take shape and know what its working mechanisms are.

In the first place, the development of a relationship between the EU and the Central and Eastern European Countries (CEEC) throughout the 1990s materialized specifically by recourse to a wide range of Treaty provisions. On the one hand, it stands out that even the Treaty of Nice did not bring together external

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Wojciech Sadurski et al. (ed.), Spreading Democracy and the Rule of Law?, 357–378.
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competences[1] under a single Title.[2] On the other hand, provisions relevant for the purposes of enlargement do not only concern external relations, but, on the contrary, also substantially pertain to other fields, including in particular Economic and Social Cohesion (Title XVII, Articles 158–162) and the Area of Freedom, Security and Justice (AFSJ).[3] This has given rise to uncertainties and confusion, thus contributing to the strong discretionary element that, as we shall see, has characterised the policy of the EU-apparatus towards the candidate countries right up to the eve of enlargement.

Only the Europe Agreements (EA), stipulated in the 1990s between the EU and its Member States on one hand, and the single CEEC on the other,[4] are international agreements concluded in solemn form. However, we should also add the Stabilization and Association Agreements (SAA) concluded or currently being concluded with the West Balkan States (WB).[5] As is well known, the single EA initially envisaged the establishment of a common market between the EU and the individual candidate countries for 2004, not the entry of those States into the EU.

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1 Among recent contributions on this issue: Enzo Cannizzaro (ed.), *The European Union as an Actor in International Relations* (The Hague: Kluwer Law International 2002), pp. 1–345; Enzo Cannizzaro, "Le relazioni esterne della Comunità dopo il Trattato di Nizza," *Diritto dell'Unione Europea*, VII (2002), pp. 182–191; Luigi Daniele (ed.), *Le relazioni esterne dell'Unione europea nel nuovo millennio* (Milano: Giuffré 2001), pp. 1–359; Alan Dashwood, "External Relations Provisions of the Amsterdam Treaty," *Common Market Law Review*, 35 (1998), pp. 1019–1045; Ian McLoad, I.A. Hendry and Stephen Hyett, *The External Relations of the European Communities* (Oxford: Oxford University Press 1998), pp. 1–432; Antonio Tizzano, "Note in tema di relazioni esterne dell'Unione europea," *Diritto dell'Unione Europea*, III (1998), pp. 464–491; Ramses A. Wessel, "The Inside Looking Out: Consistency and Delimitation in EU External Relations," *Common Market Law Review*, 37 (2000), pp. 1135–1171.

2 On one hand, external competences are divided between the EC Treaty and the TEU (Title V: Foreign and Security Policy). On the other hand, the EC Treaty provisions relating to external competences are scattered in different Titles of the Treaty. Only the Treaty Establishing a Constitution for Europe—if and when it comes into force—provides for a unified structural settlement of the matter (Part III Title V, Articles III-193 to III-231, of the Draft Treaty).

3 The provisions relating to the AFSJ are divided between the EC Treaty (Title IV: Visas, asylum and immigration) and the TEU (Title VI: Justice and Home Affairs).

4 On mixed agreements as the normal practice in the EU external relations system and for an extensive bibliography, see Stefano Nicolin, "Modalità di funzionamento ed attuazione degli accordi misti," in Luigi Daniele (ed.), *Le relazioni esterne dell'Unione europea*, *op. cit.* n. 1, pp. 177–213.

5 Only the SAA with Macedonia and Croatia have been concluded, for the moment. See Stabilisation and Association Agreement between the European Communities and their Member States, on one side, and the former Yugoslav Republic of Macedonia (the Republic of Croatia), on the other, done in Brussels, 26 March 2001 (9 September 2001). See also the Communication from the Commission to the Council and the European Parliament, 21/05/2003, *The Western Balkans European Integration*.

It was only later, at the Copenhagen Summit of 1993, that the EU set in motion the enlargement process, thus accepting the request to do so from the countries of Central and Eastern Europe.[6] No new International Agreement was concluded, however. In other words, the EU did not undertake formal commitments: even the Copenhagen Declaration, with its pronouncement of the famous three criteria for enlargement, is a purely *unilateral* act, issued by the Union through the Council, which does not commit the Union itself to accepting the membership request of the associated countries, even where the latter effectively comply with the said criteria.

What took place, rather, in the years that followed, was a series of converging acts effectuated internally by each legal system, especially in relation to the third Copenhagen criterion (implementation of the Community *acquis*).[7] On one hand, we find the EU making use of a wide range of non-binding instruments (White Paper, Agenda 2000) and binding instruments. A particularly important instance of these is Regulation 622/98[8] establishing the Accession Partnerships and the ensuing Partnerships decided in relation to the relevant CEEC (thus, despite the name, these are unilateral instruments of the Union!); these instruments envisage an elaborate system of punishments and rewards that the EU Council may apply at its discretion depending on the progress or lack of it made by each CEEC along the way. On the other hand, we find the relevant CEEC beginning to issue a stream of acts within its national legal system that are mainly binding in character, so as to ensure the implementation of the Community *acquis* envisaged by the Community instruments as an indispensable precondition for membership. This is done over a certain period of years following the stages set by the *Accession Partnerships*. This

[6] On the first phase of the EA: Elisa Baroncini, "Gli accordi europei di associazione con i paesi dell'Europa centrale ed orientale," *Nuove Leggi Civili Commentate*, XIX (1996), pp. 130–151; Marc Maresceau, "Les Accords Europeens: Analyse générale," *Revue du Marché Commun et de l'Union Européenne*, 369 (1993), pp. 507–515; Marc Maresceau and Elisabetta Montaguti, "The Europe Agreements Compared in the Light of Their Pre-Accession Reorientation," *Common Market Law Review*, 32 (1995), pp. 1327–1367; Lynn Ramsey, "The Implications of the European Agreements for an Expanded European Union," *International and Comparative Law Quarterly*, 44 (1995), pp. 161–171; Antonio Toledano Laredo, "L'Union européenne, l'ex-Union soviétique et les Pays de l'Europe centrale et orientale: un aperçu de leurs accords," *Cahiers de droit européen*, XXX (1994), pp. 543–562.

[7] See Graham Avery and Fraser Cameron, *The Enlargement of the European Union* (Sheffield: Sheffield Academic Press 1998), pp. 19–48; David Katz, "Les 'critères de Copenhague," *Revue du Marché Commun et de l'Union Européenne*, 440 (2000), pp. 483–486; Richard Poláček, "Le débat élargissement-approfondissement dans la perspective de l'élargissement de l'Union européenne aux Peco," *Revue du Marché Commun et de l'Unione Européenne*, 425 (1999), pp. 112–120; Milada A. Vachudovà, "EU Enlargement: An Overview," *East European Constitutional Review*, 9(4) (Fall 2000), pp. 64–69.

[8] Council Regulation No. 622/98 of 16 March 1998, on assistance to the applicant States in the framework of the pre-accession strategy, and in particular on the establishment of Accession Partnerships, Official Journal L 85, 20/03/1998.

practice evolves "freely", in order to earn the reward (passage to the next phase of the accession process) and avoid the punishment set by Article 4 of Reg. 622/98: formally, then, each of these States acts freely and has given no undertaking regarding the complete implementation of the *acquis communautaire* in its own legal order.[9]

On the international plane, it is obviously a case of an *agreement by conclusive conduct* between the two parties, a perfectly legitimate and operative accord thanks to the principle of freedom of form of international agreements. In fact, this is a type of accord that has met with a recent revival on the international scene; this revival may be linked in theory to the spread of *positive sanctions* as an instrument in relations between international subjects.[10]

We still need to inquire what the relationship is between this second agreement and the earlier accord (the Europe Agreement), incorporated within the legal orders of all the international subjects involved, according to the specific procedures of each. Each individual Europe Agreement not only remained in force, but further, became subsumed within the new pre-accession strategy, as is shown by the Partnership Agreements (PA), each of which peremptorily states in the introduction that the Europe Agreement in question continues to form the basis of the relationship between the EU and the candidate country. This amounts to saying, then, that the text of each Europe Agreement was tacitly amended by agreement between the Parties, according to a practice recognized by the international legal order.[11] The diversity of structure among the various generations of Europe Agreements carries weight in confirming the position stated above. Particularly in the most recent Europe Agreements (those with the Baltic States and Slovenia), there are

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9 Michael Blecher, "Aspetti istituzionali dell'allargamento EU verso est e principali strumenti di assistenza e sostegno dei Paesi candidati," in Marco Polo System (a cura di), *Il GEIE nella prospettiva di Agenda 2000* (Proceedings of the Seminar Held in Venice at the Fondazione Querini Stampalia, 28 September 2001), pp. 8–15; Kristyn Inglis, "The Europe Agreements Compared in the Light of the Pre-Accession Reorientation," *Common Market Law Review*, 37 (2000), pp. 1173–1210; Gilles Joly, "Le processus d'élargissement de l'Union européenne," *Revue du Marché Commun et de l'Union Européenne*, 457 (2002), pp. 239–246; Marc Maresceau, "From Europe Agreements to Accession Negotiations," in Mario Ganino and Gabriella Venturini (eds.), *L'Europa di domani: verso l'allargamento dell'Unione* (Milano: Giuffré 2002), pp. 15–37; Phedon Nicolaides et al., *Guide to the Enlargement of the European Union. A Review of the Process Negotiations, Policy Reforms and Enforcement Capacity* (Maastricht: European Institute of Public Administration 1999), pp. 1–103; Karen E. Smith, "The Conditional Offer of Membership as an Instrument of EU Foreign Policy: Reshaping Europe in the EU's Image," *Marmara Journal of European Studies*, 8 (2000), pp. 2–15.

10 Lauso Zagato, "Qualche riflessione (e alcuni cattivi pensieri) sul processo di allargamento," in Marco Polo System (ed.), *Il GEIE nella Prospettiva di Agenda 2000*, pp. 16–29. On positive sanctions, see Bernardo Cortese, "International Economic Sanctions as a Component of Public Policy for Conflict-of-Laws Purposes," in Picchio Forlati and Sicilianos (eds.), *Economic Sanctions in International Law* (Leiden/Boston: Martinus Nijhoff 2004).

11 Zagato, *op. cit.* n. 10, p. 17.

innovative elements that can only be explained in the framework of the prospect of *accession*, and not mere *association*.

A further development has taken place with the Stabilisation and Association Agreements (SAA): in this case, the enhanced approach typical of the final phase of the relationship with the CEEC has become the basis of the relationship with the five new countries. These States are asked to proceed immediately, *inter alia*, to a far more radical legislative alignment than the one on which the Europe Agreements are based, and with no prospect of entry into the EU in the medium term (except perhaps for Croatia).

We still have to focus on the instruments enacted by the EU to ensure implementation of the *acquis communautaire* on the part of the candidate countries. In the first place, the PHARE programme is prominent[12]: At the outset, this was used by the Commission for funding reform projects in a vast range of sectors, from restoration of sewerage systems to law reform. In other words, it was meant to ensure technical assistance for the transformation process, with no prior indication whatever that in future the countries in question would be admitted to full membership of the European Union. To give an example, legislative reform in the CEEC was carried forward in that period under the auspices of PHARE, but initially such reform did not coincide at all with straightforward implementation of the Community *acquis*. PHARE responded, rather, to the demands of the governments of the countries in transition without being tied to the framework of an association agreement and without a compulsory scheme of priorities. Strong criticism was rightly provoked by the dissipating effect of this type of assistance, unfortunately leading in the first place to a bureaucratisation of the programme.[13]

Starting with the Accession Partnerships, the entire range of Community assistance has been coordinated by the Commission: the reorientation of PHARE thus took place, accompanied by the launch of the ISPA and SAPARD programmes.[14] Since then, PHARE has been remodelled on the basis of the third Copenhagen criterion, that is to say, implementation of the Community *acquis* by the candidate countries. The programme has become the fulcrum of assistance for developing institutional capability to give effect to the principles of the European legal order,

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[12] Council Regulation (EEC) No. 3906/89 of 18 December 1989 on economic aid to the Republic of Hungary and the Polish People's Republic, Official Journal L 375, 23/12/1989.

[13] Blecher, *op. cit.* n. 9, p. 10.

[14] See Council Regulation No. 1266/1999 of 21 June 1999 on coordinating aid to the applicant countries in the framework of the pre-accession strategy and amending Regulation No. 3906/89, Official Journal L 161, 26/06/1999; Council Regulation No. 1267/1999 of 21 June 1999 establishing an Instrument for Structural Policies for Pre-accession (ISPA), Official Journal L 161, 26/06/1999; Council Regulation No. 1268/1999 of 21 June 1999 on Community support for pre-accession measures for agriculture and rural development (SAPARD) in the applicant countries of central and eastern Europe in the pre-accession period, Official Journal L 161, 26/06/1999.

since it is in this domain that the greatest problems of all the candidate countries lie. After the SAA, implementation of the *acquis communautaire*, meant as full legislative alignment with Community law is also the object of the Community Assistance for Reconstruction, Democratization and Stabilization programme (CARDS) addressed to the West Balkan States (WB).[15]

Also among the array of instruments to which the European Union has had recourse are instruments implementing the EU policy for *economic and social cohesion*,[16] and in particular, the INTERREG III programme, aimed at ensuring a "cross-border, transnational and interregional cooperation intended to encourage the harmonious, balanced and sustainable development of the whole of the Community". To complete the picture, another Community policy should be mentioned, one characterized both by the wide involvement of public and private subjects and by its growing concern with the States of Eastern and South-East Europe, candidate countries in the near or more distant future: reference here is to the policy for research and technological development, in particular in the light of the Fourth Framework Programme.[17] This Programme gives unusual scope for the participation of public and private bodies of the States affected by the programmes indicated above, especially as far as universities are concerned.

As regards in particular the area of freedom, security and justice (AFSJ),[18] it must be underlined at once that the commitments undertaken by candidate countries in relation to external border controls, asylum and immigration "go far beyond the

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[15] Council Regulation No. 2666/2000 of 5 December 2000 on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia, Official Journal L 306, 07/12/2000.

[16] Council Regulation 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds, Official Journal 161, 26/06/1999. Article 20 paragraph 2 specifies that under the INTERREG Initiative "due attention should be given to cross-border activities, in particular in the perspective of enlargement, and for Member States which have extensive frontiers with the applicant countries, as well as to improved coordination with the PHARE, TACIS and MEDA programmes. Due attention shall also be given to cooperation with the outermost regions". See: Council Regulation (EC, Euratom) No. 99/2000 of 29 December 1999 concerning the provision of assistance to the partner States in eastern Europe and Central Asia (TACIS), Official Journal L 12, 18/01/2000 and Council Regulation No. 2698/2000 of 27 November 1999 amending Reg. 1488/96 on financial and technical measures to accompany the reform of economic and social structures in the framework of the Euro-Mediterranean partnership (MEDA), Official Journal L 311, 12/12/2000.

[17] Decision No. 1513/2002/EC of the European Parliament and of the Council of 27 June 2002 concerning the sixth framework programme of the European Community for research, technological development and demonstration activities, contributing to the creation of the European Research Area and to innovation (2002–2006), Official Journal L 232, 29/08/2002.

[18] See: Joanna Apap, "Questioni pratiche e probabili conseguenze derivanti dall'ingresso nell'area Schengen: allargamento e area di libertà, sicurezza e giustizia, alla ricerca di un miglior equilibrio," *Diritto, Immigrazione e Cittadinanza*, V (2003), pp. 3–26; Christina

mere adoption of the EU *acquis*", with consequent, grave concerns relative to observance of those standards of human rights protection, which the EU declared in the Copenhagen Criteria to be a basic condition for enlargement.

3. A Citizenship of Variable Geometry and the Role of the Court of Justice

The concept of Community citizenship, as we all know, is evolving fast. This is particularly due to the activism of the Court of Justice, which has repeatedly intervened in recent years[19] to expand the content of the right of citizenship. Thus, albeit with innumerable precautions, the Court is leaning towards removing certain rights from the ties dictated by "economism" still present in the Treaty text at Articles 39, 43 and 46,[20] specifically the rights of Member States' citizens to freedom of movement, residence and establishment in other Member States.

Rather than getting to the heart of the concept of European citizenship, our concern here is to observe how the rights granted to non-EU citizens within the European Union act in relation to that concept. These are rights deriving from the various agreements concluded by the EU with the respective home States. The inner circle is made up of citizens of EEA countries[21]: both natural and legal persons

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Boswell, "The 'external Dimension' of EU Immigration and Asylum Policy," *International Affairs*, 79 (2003), pp. 619–638; Charles Elsen, "Le Conseil européen de Thessalonique," *Revue du Marché Commun et de l'Union Européenne*, 471 (2003), pp. 516–518; Paolo Mengozzi, *Istituzioni di Diritto Comunitario e dell'Unione Europea* (Padova: Cedam 2003), p. 298 *et seq.*; Bruno Nascimbene, "Il 'Libro Verde' della Commissione su una politica comunitaria di rimpatrio degli stranieri irregolari: brevi rilievi," *Rivista italiana di diritto pubblico comunitario*, XIII (2003), pp. 445–449; Bruno Nascimbene (ed.), *Expulsion and Detention of Aliens in the European Union Countries* (Milano: Giuffré 2001); Massimo Condinanzi, Alessandra Lang e Bruno Nascimbene, *Cittadinanza dell'Unione e libera circolazione delle persone* (Milano: Giuffrè 2003), pp. 219–277; Catherine Phuong, "Enlarging 'Fortress Europe': EU Accession, Asylum, and Immigration in Candidate Countries," *International and Comparative Law Quarterly*, 52 (2003), pp. 641–663.

19 See: Case C-85/96, *María Martínez Sala* v. *Freistaat Bayern*, [1998] ECR. I-2691; Case C-274/96, *Criminal proceedings against Horst Otto Bickel and Ulrich Franz*, [1998] ECR I-7637; Case C-184/99, *Rudy Grzelczyk* v. *Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve*, [2001] ECR I-6193; Case C-224/98, *Marie-Nathalie D'Hoop* v. *Office national de l'emploi*, [2002] ECR I-6191; Case C-413/99, *Baumbast*, [2002] ECR I-7091.

20 With reference to the three Directives of 28 June 1990 (in Official Journal L 180, 13/07/1990): 90/364/EEC on the right of residence, 90/365/EEC on the right of residence for employees and self-employed persons who have ceased their occupational activity and 90/366/EEC on the right of residence for students. On the role played by the ECJ in the evolution of the concept of European Citizenship, Mengozzi, *op. cit.* n. 18. See also Condinanzi, Lang and Nascimbene, *op. cit.* n. 18, p. 26 *et seq.*

21 Agreement on the European economic Area, done at Oporto on the second day of May in the year 1992 (Official Journal L 1, 3 January 1994).

coming from Iceland, Liechtenstein and Norway and are fully entitled to the rights of freedom of movement and establishment in a Member State in relation to the performance of economic activities (whether for wages or not), which until recently constituted the limits of the right of freedom of movement enjoyed reciprocally by citizens of Member States. A corresponding situation exists in relations between the EU and Swiss citizens.[22]

Apart from nationals of the States just mentioned, only citizens of Turkish nationality—and to a very small extent those of the Maghreb countries—enjoy directly applicable rights on which an action can therefore be founded directly before a national Court in the Union, following the Association Agreement of 1963 as integrated by certain decisions of the Association Council, in particular Decision 1/80.[23] Such rights mainly concern the prohibition of discrimination[24] and the right for families to be reunited (though there are some very serious restrictions, especially concerning the wife's status). Alone among migrant workers, the Turkish citizen also has the right to remain in the Member State where he has performed regular work for four years, and to have unimpeded access to the labour market of that same country.

For immigrants coming from any other country, it is true that a noteworthy variety of rights exists based on the different agreements stipulated by the EU with the home countries. Nevertheless, the fact remains that such agreements do not confer directly effective rights, even where they include a certain number of provisions that are favourable to immigrants, as in the case of the cooperation agreements with the ex-Soviet Union countries. It was thought that the same applied to the provisions contained in the Europe Agreements.

Instead, the CJEC has taken a stand on the direct effect of the EA, with a substantial set of judgments handed down between late 2001 and January 2002,[25]

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22 See Bilateral Agreements between Switzerland and the EU, done in Luxembourg, 26 June 1999. The Agreements became effective on 1 June 2002 (in Official Journal L 114, 30 April 2002).

23 Agreement Establishing an Association between the European Economic Community ant Turkey, done at Ankara 12 September 1963 (Council Decision 64/732 0f 23 December 1963 in Official Journal 217 of 29 December 1964); see also Decision No. 1/80 of the Association Council of 19 September 1980 on the Development of the Association.

24 In the Association Agreements with Tunisia (done in Tunis, 25 April 1976, in Official Journal 265 of 27 September 1978), with Algeria (done in Algiers, 27 April 1976, in Official Journal 264 of 27 September 1978) and with Morocco (done in Rabat, 27 September 1976, in Official Journal 263 of 27 September 1978) only Article 40 (abolition of any discrimination based on nationality between workers of the Member States and workers of Algeria, Morocco and Tunisia as regards employment, remuneration and other conditions of work and employment) is subject to direct application. See Judgment of the Court of 31 January 1991, C-18/90, *Kziber*, [1991] *ECR* I-199.

25 Judgments of the Court of 27 September 2001: Case C-63/99, *Gloszczuk*, [2001] *ECR* I-6369; Case C-257/99 *Barkoci and Malik*, [2001] *ECR* I-6557; Case C-235/99, *Kondova*,