

Report on academic seminar “Citizens’ (free) movement in the EU’s Neighbourhood”

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Executive Summary

This seminar, organised by the Jean Monnet Centre of Excellence for European Integration and Citizen's Rights (JMCE EUICR) in collaboration with the Irish Human Rights and Equality Commission and co-chaired by Dr Mary Murphy and Prof Dagmar Schiek (both UCC), aimed to air the question of how EU-derived rights enable natural persons' movement between the EU's neighbourhood and the EU. It used Northern Ireland, as part of the UK which again constitutes the EU's new Western neighbourhood, and Ukraine, as part of the EU's Eastern neighbourhood. Both regions also make interesting comparators because the UK strives to distance itself from the EU, while maintaining links for Northern Ireland specifically, and Ukraine has – as late as 2022 – applied for EU membership. The research question of whether citizens can rely on any rights to move between the EU and its neighbourhood although these rights lack the quality of hard EU law could not have been more current.

Panel contributors



Dr Anthony Soares is director of the Centre for Cross Border Studies where he advocates for transnational cooperation at the regional, national and European level. His recent research has focused on the consequences of the UK's withdrawal from the EU on the island of Ireland.

Dr. Oksana Holovko-Havrysheva is an associate professor of European Law at the University of Lviv. She is also the director of the Jean Monnet Centre of Excellence "Western European research Centre for European Studies". Her recent research focused on the EU's neighbourhood policy, especially in Ukraine.





Dr Tatiana Shaban is a post-doctoral researcher at the 'BIG lab', which is a research lab on borders at the University of Victoria. Her research interests are European integration, border governance and Eastern European studies.

Context and Opening of the Seminar

Opening of the event on behalf of IHREC – Deidre Malone

Deidre Malone opened the event on behalf of the hosting institution, Irish Human Rights and Equality Commission (IHREC).

The IHREC is mandated to oversee and report human rights and equality issues on the island of Ireland. In the aftermath of Brexit, the work of the commission relates to Article 2 of Protocol Ireland / Northern Ireland (which may be referred to as “Windsor Framework” from March 2023 as per Decision No 1/2023 of the Joint Committee Established by the Agreement on the Withdrawal of the UK from the EU – OJL 102/61 of 17 April 2023). That Article, which remained unchanged by the debates in early 2023, commits the United Kingdom to ensuring that its withdrawal from the European Union will not negatively impact rights, safeguards, and equality opportunities on the island of Ireland as set out in the Good Friday Agreement.

Furthermore, said provision requires that Northern Ireland maintains regulatory alignment with EU directives combating discrimination on grounds of race and ethnicity, sex, sexual orientation, disability, religion and believe and age. In this context, the Protocol enhances the collaboration of Northern Ireland’s Human Rights Commissions, the Northern Irish Equality Commission and the IHREC, in order to enhance the all-Ireland dimension of protection of rights and equality. Deidre Malone emphasised the importance of this joint work, as their collaboration aims to protect the centrality and quality of human rights on the island of Ireland.

Deidre Malone referred to joint policy recommendations by the three commissions on the potential impact of Brexit on the protection of rights. In light of the findings, the three commissions have recommended firstly, that Northern Ireland should keep pace with EU legislations related to equality and human rights introduced after the 1st of January 2021 and secondly, that the Irish government, Northern Ireland Executives and UK government should collaborate to ensure a higher degree of protection of human rights on the island of Ireland.¹ If implemented, she argued, these recommendations would help avoid a divergence of rights.

¹ Available here : [Policy Recommendations European Union Developments in Equality and Human Rights: The Impact of Brexit on the Divergence of Rights and Best Practice on the Island of Ireland - IHREC - Irish Human Rights and Equality Commission](#)

Concerning movement rights on the island of Ireland, Deidre Malone referred to an earlier work, where both the IHREC and the Northern Ireland Human Rights Commission recommended the Irish government and the UK government to secure a new approach to a new intergovernmental common travel area treaty. Indeed, Deidre Malone stressed the necessity for such a treaty that would formalise common immigration rules, travel rights, residency rights and related rights such as education, social security, work, health, security, and justice.²

Lastly, Deidre Malone referred to the current humanitarian crisis in Europe which is the invasion of Ukraine by Russia. She stressed the necessity for European countries to have a humanitarian response that reflects the needs and reality of the world where crisis and flux are the norm and not, unfortunately, the exception.

[Link to JMCE EUICR – Professor Dagmar Schiek](#)

Professor Dagmar Schiek presented the event in relation to the JMCE EUICR. She referred to the research focus of the centre, which questions whether the EU can regain legitimacy by ensuring that citizens engage with each other by using rights. While rights often relate to litigation, she emphasised the political aspect of rights, which can also be a medium for interaction. Professor Schiek referred to the organisation of the JMCE EUICR, divided into three work packages (WPs) as follows: Rights in the union (WP2), rights in the EU's neighbourhood (WP3) and rights globally (WP 4), with a focus on China. Professor Schiek stressed that this specific seminar, as part of WP 3, will find a continuation in February 2024, again in Dublin at the IHREC, with a seminar comparing how EU anti-discrimination rights are (or are not) effectively promoted in the EU's neighbourhood, using Northern Ireland and Ukraine as examples. ([Upcoming Events | University College Cork \(ucc.ie\)](#))

[Introduction of the event – Dr Mary C. Murphy](#)

Dr. Mary C. Murphy welcomed the speakers and participants of the event. She recalled that the seminar focuses on citizen movement in the EU neighbourhood. However, she expressed how strange it is to consider Northern Ireland as part of the EU's Neighbourhood. She emphasised that the speakers of the event are considering the way in which movement rights manifest themselves, and how rights are operationalised. She welcomed the opportunity provided by the seminar to compare and contrast the difference between EU-derived rights as it applies in Northern Ireland and how it applies in Ukraine.

² Available here: [Discussion Paper on the Common Travel Area - IHREC - Irish Human Rights and Equality Commission](#)

Academic Discussion

Contribution of Dr Anthony Soares

Dr Anthony Soares first presented the Centre for Cross Border Studies (CCBS) where he occupies the role of director. Established in 1999, the aim of the centre is to promote cross-border cooperation on the island of Ireland, but also between the island of Ireland and Great Britain as well as across Europe.

The flagship project of the centre, “Border People”, has been running since 2007 and has established a one-stop cross-border mobility information website. Prior to Brexit, the centre was working around two central policy pillars: EU cohesion policy and the Good Friday Agreement. However, he emphasised how the UK’s withdrawal from the EU has changed their focus and shaped new concerns. For instance, Dr Soares expressed concerns over the consequences that divergence of rights could have on social cohesion in Northern Ireland if those identifying as British would have a different set of rights than those identifying as Irish.

For individuals engaged in cross-border mobility, the membership of the UK and Ireland in the EU had allowed the establishment of a common framework that brought some relief when encountering obstacles such as access to cross-border healthcare, social security benefits and work-related benefits. Dr Soares recalled EU legislations in the matter, such as Article 2 TEU relating to the area of freedom, security and justice and Article 26 TFEU relating to the internal market. He also referred to Article 45(1) on the freedom of movement of workers and Article 45(2) that set the principle of non-discrimination based on nationality. He also highlighted regulation 883/2004 relating to the coordination of social security systems between Member States and directive 2004/38 that established that the right of family reunification.

Dr Soares emphasised that alongside this legal framework on free movement, the EU had developed a range of measures to create an environment conducive to citizen mobility. For instance, by establishing the European health insurance card or the recognition of professional qualifications.

However, Dr Soares stressed how the situation has changed since the UK’s withdrawal from the EU. While it was not always easy, he argued that difficulties encountered by citizens related mainly to the way in which Member States transposed EU legislation. Therefore, there was a divergence between neighbouring member states.

Dr Soares then referred to the aftermath of the UK referendum vote in 2016, where their “Border People” project received calls from people concerned about their ability to continue to cross the border to work, including teachers and health workers. He stressed how much that vote led to anxiety about the future for those living on the island of Ireland. They are now faced with a number of rights frameworks relating to the movement of people; the Good Friday Agreement, the Common Travel Area, the Withdrawal Agreement and its Protocol on Ireland/Northern Ireland that was updated by the Windsor Framework and the Trade and Cooperation Agreement.

To illustrate the confusion felt by citizens, Dr Soares referred to a post on social media, where a resident in Northern Ireland travels to France and asks if they need an international driving permit in addition to a driving licence. He emphasised that prior to Brexit, citizens travelling from Northern Ireland to other EU countries were under the belief that the norm under which they transacted in

most parts of their lives were common to the rest of the EU, so they did not have to undergo any additional bureaucratic procedures. Dr. Soares emphasised that “that rug of certainty has been pulled from under their feet”.

He argued that the EU is no longer perceived as a common space and many residents in Northern Ireland no longer have the automatic right to live or work in the EU with the exception of the Republic of Ireland, where the Common Travel Area and its associated reciprocal arrangement ensure this right for British and Irish citizens.

While the Common Travel Area was originally designed to facilitate the movement of British and Irish citizens between the two States, it gained practical importance since Brexit, as before its operation was largely subsumed within the larger EU framework. Dr Soares then referred to the UK’s introduction of the Electronic Travel Authorisation scheme as part of the Nationality and Borders Act of 2022. He argued that the policy completely disregards the situation of border regions as it threatens the movement rights of non-Irish EU citizens residents in the Republic of Ireland.

As a result, Dr Soares emphasised how the right to freedom of movement is becoming fragmented depending on residency, nationality and whether those rights had been enacted before the end of the transition period.

Dr. Soares continued with a second illustration and referred to the UK government website to request a Frontier worker permit. The first question asks the applicant “Where are you planning to live”. He emphasised that the first question fails to understand the basic concept of what a cross-border worker is. He stressed that it is not only a matter of protecting rights theoretically but also how to access those rights in practice.

Dr Soares stressed how the focus remains on British Irish and non-Irish EU citizens, however, this does not take into consideration another category of individuals who live on the island of Ireland. He called on the Irish and UK governments to recognise the importance of non-EU citizens including refugees and asylum seekers living on the island of Ireland to be able to move freely between the two jurisdictions.

Contribution of Dr. Oksana Holovko-Havrysheva

Dr Holovko-Havrysheva’s contribution engaged with the question of how movements of Ukrainian citizens into the EU and EU citizens into Ukraine are legally safeguarded, with a focus on but not limited to the Deep and Comprehensive Free Trade Agreement as part of the EU-Ukraine Association agreement (EU-Ukraine AA).

She stressed that said agreement developed the cooperation between the EU and Ukraine by notably offering the latter progressive access to the internal market. However, when looking at movement rights in the EU-Ukraine AA, provisions actually are granting rights are few and far between. Dr Holovko-Havrysheva conceded that the personal experience of travelling in Europe over the years has improved considerably, due to the different legal regimes she experienced. It started with the visa application procedures after the collapse of the Soviet Union, which was extremely cumbersome, ending in the current situation where Ukrainian citizens are able to enter the EU and move within the

EU almost freely. However, she questioned “how far the association agreement contributed to that situation”.

Looking at the EU-Ukraine AA, article 17 to 19 refer to the free movement of workers. She highlighted that this is an example for rights to move conditioned on the purpose of movement. Furthermore, chapter 6 relating to the establishment, trade-in service and electronic commerce is also relevant when considering movement rights, again conditioning those rights in relation to the purpose of movement, which in both cases is an economic purpose. Lastly, Dr. Holovko-Havrysheva stressed that movement between Ukraine and the EU since 21 February 2022 also needs to be viewed in the context of the war in Ukraine. She stressed that this novel situation underlined once more the relevance of administration of rights for their actual enjoyment. The realisation of migration depends on the collaboration of border guards, migration offices or any institutions related to migration. It was the war that changed the practices, she stressed.

The EU-Ukraine AA was signed in 2014 and came into force in 2017. It contains a number of obligations related to the cooperation of administrative bodies. Dr. Holovko-Havrysheva stressed how issues related to cross-border cooperation are embedded in the political dialogue. Thus, in the AA we can see a framework, but a fragmented framework. However, she emphasised how the AA contributed to the realisation of the free movement rights of Ukrainian citizens in the EU, opening the opportunities to travel, to work, and to see the wider world beyond the Ukrainian borders”.

Therefore, she stressed that those administrative provisions regulating migration were not put into practice at the beginning of the war. Indeed, due to the high flux of population, people crossed the border without proper documentation. Dr Holovko-Havrysheva stressed that it highlights the relation with the political sphere, and how things change when the political will is there. She stressed that it illustrates how European migration policies functions in time of emergency, reminding us how actual travel out of Ukraine was and remains possible often without or with improvised document, under the pressure of war. She expressed the hope that the experience of war time movement will be used to evaluate which practical procedures worked in relation to matters such as border control, recognition of documents, evaluation of evidence and consulate cooperation, with the aim to make movement of persons smoother.

Before the war, movement rights related to two distinct situations: the movement of workers from the EU to Ukraine, and the movement of workers from Ukraine to the EU. The movement of EU citizens to Ukraine is often left unaddressed, and the Ukrainian legislation shows some cavities to ensure reciprocal protection and equal rights in the labour field. As for the opposite situation, workers from Ukraine moving to the EU, the speaker stressed the fragmented character of the DCFTA as part of the Association Agreement, and underlined that the rights of Ukrainians to move into the EU are in no way equivalent to free movement rights within the EU. While the agreement commits to reciprocal recognition of, for example, qualifications, the regulatory detail leaves more questions than it gives answers, also in relation to fundamental matters such as equal treatment of EU citizens in Ukraine, for example. She related the situation of Ukrainians in the EU to the general debate on the status of third-country nationals in the union. Dr Holovko-Havrysheva emphasised the specific approach adopted by the EU, that regulates specific areas rather than adopting a more general approach. She emphasised the discrepancy in the enjoyment of Ukrainian citizens’ movement rights in different EU Member States, as migration also relates to national legislation, which again makes it dependent from specific grounds.

As for the right to the establishment, she stressed that the AA contributed to the development of the cross-border movement of businesses between the EU and Ukraine as certain areas of the country were very attractive. She stressed the IT sector as a specific example, where Ukrainian regulations made it attractive for businesses from the EU to register and provide services into Ukraine and the EU. Thus, before the war, certain sectors were flourishing due to this collaboration in cross border provision of services and registration of businesses in Ukraine, such as services. However, due to the war, the use of those provisions has changed direction: presently, businesses from Ukraine are keen to relocate to neighbouring countries into the EU in order to maintain operations.

Dr Holovko-Havrysheva then referred to the EU's Temporary Protection Directive, which had been adopted for the EU to deal with mass displacements, and was for the first time activated at the occasion of the war in Ukraine. Again, its specific effectiveness depends much on detail, and it is in this regard that implementation in individual Member States, as well as administrative practice differ. Again, national legislation and practices play a crucial role in furthering or delimiting the scope of migrants' opportunities and rights to move.

Dr Holovko-Havrysheva concluded with some deliberations on how the provisions on movement of people in the Association Agreement should develop in the future. She emphasised that much detail will depend on the way how the war in Ukraine will end, which again will determine the future relationship between the EU and Ukraine. Presently, she emphasised the necessity of analysing the current practices which the EU and its Member States have developed relating to the migration of Ukrainians into EU Member States under the conditions of war. That analysis is in her opinion particularly important because it constitutes one of the rare events in which requirements to enter the EU and its Member States were lowered, both in EU and national legislation. A careful analysis of different practices, and their suitability for dealing with practical problems, could constitute a useful background for revising the use of the Temporary Protection Directive in the future as well as managing movement between neighbouring and accession states and the EU after the end of conflict.

Contribution of Dr Tatiana Shaban

Dr Tatiana Shaban's contribution relates to the status of Ukraine refugees and asylum seekers in the neighbouring countries and thus relates, to the relationship between law and place. She first recalled that the temporary protection is a political response based on the solidarity principle.

Dr Shaban stressed that since 2003, the EU has required asylum seekers to apply for protection in the member states in which they first entered. This policy, commonly known as the "Dublin regulations" has been complimented by the temporary protection directive since March 2022. She argued that said directive offers greater protection to potential asylum seekers and a better distribution of responsibility of asylum administration across the EU. Roughly five million people have benefited from this EU temporary protection scheme.

When assessing the situation of Ukrainian refugees in the first year of protection, the humanitarian aid organisation applauded the quick and prompt response from EU countries, especially countries in Ukraine's neighbourhood. However, Dr. Shaban stressed that some issue remains, such as the status of stateless people who lived in Ukraine (e.g. Roma people). Furthermore, there is a clear differentiation of treatment between holders of biometrics passports, holders of international passports or individuals with no documents at all.

Dr Shaban recalled that the temporary protection is the first harmonising measure adopted in the area of asylum in the EU. It principally emerged as an emergency procedure to manage the massive flux of population. It was adopted long time before the Ukrainians refugees fled to Europe, but activated for the first time when the war started and Ukrainians fled the country. She stressed that while in the political sphere, hosting a large number of refugees for an indeterminate period of time has usually been highly problematic and resulted in great resistance at the national level and EU level, the narrative has been quite different for the humanitarian crisis related to the war in Ukraine. She recalled that through a unanimous vote, the council not only activated the temporary protection but also specified the groups that could benefit from such protection and directed the EU Member States and agencies to comply and coordinate the management of displaced people. The temporary protection grants social and welfare rights to the beneficiaries such as the right to work, access to education and family reunification.

Dr. Shaban stressed that when discussing displacement of people, the narrative is important as it will influence the legal responses. It is thus, necessary to consider the different narratives and legal responses of the current humanitarian crisis and the one from 2015/2016. She stressed how this constitutes a complete turnaround and made clear that the problem did not lie in insufficient contingencies but rather an absence of solidarity.

When focusing on the implementation of the temporary protection, she highlighted the lack of unification in different Member States. In a case study, she analysed the Czech Republic, Poland, Hungary, and Slovakia. In Poland, the legislation recognises the legal status of Ukrainian citizens who fled the war until August 2023. Furthermore, Dr Shaban stressed that Ukrainian citizens have to fill an application at least two months prior to the end of their current legal stay and if they leave the territory for more than thirty days, their protection is revoked. She stressed how the reality can differ from one Member State to the other.

To conclude, she stressed how the initial reception of Ukrainian refugees in the EU was smooth and efficient at first, but in practice, there are severe limitations facing the provision of basic services. She emphasised the difficulty for many Member States to safeguard basic rights such as housing, healthcare and education despite being at the heart of the temporary protection benefits. Consequently, she stressed the temporary character of the directive, as the long-term solution would entail a safe return home for Ukrainians or clear obligations for Member States of the EU.

Discussion

Professor Dagmar Schiek reflected on the contributions. She referred to Dr Soares's presentation which highlighted the divergence between rights in theory and rights in practice. As for Dr Holovko-Havrysheva's presentation, it painted another picture, the hope of a state to become a member of the EU and how it is embedded in the Free Trade Agreement. As for Dr Shaban, she outlined the EU's first use of temporary protection.

Professor Schiek stressed how those three contributions highlight a difficult framework of contradicting and overlapping legal frames as well as their use in practice. Thus, she questioned, "What can we do to make it better?"

Dr. Mary C. Murphy reflected on Dr. Soare's contribution and noted that the discussion related to the Windsor framework has been focused on trade. Thus, she welcomed the approach of Dr. Soares. She questioned, "What is the bigger problem? Is it the British government or is it the EU regime? Or is it the absence of cooperation and discussion between the two?"

A person from the public referred to a recent paper (O'Donoghue and McNeilly, 2023) that highlighted the manifestation of equivalences in human rights. Thus, in relation to border dynamics, especially in Ukraine, she questioned "How can we examine equivalences across the border between the EU and neighbouring states? What do the equivalences look like and how do they manifest in terms of convergence and divergence?".

Relating to migration status and its practical effect on the island of Ireland, she asked the speakers to compare two scenarios "Would the situation of a Syrian refugee relocated to the city of Derry Londonderry (Northern Ireland) that wishes to play with his team in a sport competition in Donegal (Republic of Ireland) would be any different that from the one of a Ukrainian refugee in the same situation?"

Professor Schiek submitted, that there are doubts whether the concept of regulatory equivalence, originating in the discourse on international trade, is suitable for guiding rights guarantees for individuals, criticising the approach of O'Donoghue and McNeilly. However, she welcomed the critical approach of the paper which highlighted that international human rights guarantees are frequently insufficiently implemented.

Dr. Holovko-Havrysheva added that in terms of political and movement rights, the context is key as it will shape the execution or the exercise of the right in any specific situation. She argued, that while human rights and movement rights might be nicely formulated, their protection will depend on the context. Thus, as migration depends on a lot of factors, she stressed that different causes and different legal responses can be found.

Dr Soares emphasised that discussions and negotiations around Brexit have mainly revolved around goods. Thus, people have been forgotten, although the production of goods depends on them. As for the scenario question, he emphasised that it is a problem often faced by local sports teams. He expressed his indignation at such a situation, which forced sports teams to leave players at home as they did not have the correct status to cross the border. He stressed that when the Republic of Ireland and the UK were both members of the EU, people were also facing obstacles when they crossed the border, at least a common framework could be found.

Dr Shaban emphasised that regional arrangement is hugely important for the future. She stressed that if clearly defined, regional arrangements would facilitate better protection for refugees and asylum seekers.

A person of the audience wondered "How can we guarantee freedom of movement throughout Europe in the face of far rights parties that are often anti-migration."

Professor Shiek stressed that normalising right-wing discourse is dangerous and that we can now find in academia some arguing that migration is dangerous for the welfare state. Furthermore, she strongly believes that the EU should stop allowing a differentiation in treatment between EU citizens and third-country nationals.

Dr Holovko-Havrysheva argued that a balance should be found between economic considerations and social expectations. Furthermore, she stressed that in times of turbulence, there is always a strong need to find someone to blame.

Dr Soares argued that politicians lying in the media should be challenged for it and should be faced with facts. He stressed that migration is a sign of economic success for a country and that individuals bring more than just production or economic value.

Closing of the seminar

Professor Schiek reflected on the seminar which has highlighted the problem of conflicting practices and conflicting regimes. Dr. Shaban has proposed to look at regional collaboration, Dr. Soares focused on the human nature to cross borders and Dr. Holovko-Havrysheva emphasised the importance of the context.

Further readings

- Hayward K and Murphy M.C “The EU’s influence on the peace process and agreement in Northern Ireland in light of Brexit” in *Beyond the Good Friday Agreement* (2020) Routledge 54-69
- Holovko-Havrysheva O and Petrov R “Resilience in the Context of the Implementation of the EU-Ukraine Association Agreement”, (7) *Kyiv-Mohyla Law and Politics Journal* (2021) 1-26
- MacMahon P “Deep and Comprehensive Free Trade Agreements Available at: [Ukraine DCFTA – Brexit – An Irish Guide \(brexitlegal.ie\)](https://www.brexitlegal.ie/ukraine-dcfta-brexite-an-irish-guide). Accessed on the 26/09/2023.
- Öberg, M-L. “The Boundaries of the EU Internal Market: Participation without Membership” (2020) Cambridge University Press
- O’Donoghue A and McNeilly K “Mapping the tapestry: national and international human rights frameworks in Northern Ireland and Ireland” (2023) *Irish Studies in International Affairs* 34:2
- Potter M “International relations outside the European Union: Ukraine” (2017) *Research and Information Service Briefing Paper*, Northern Ireland Assembly. Available at: [International Relations Outside the European Union: Ukraine \(niassembly.gov.uk\)](https://www.niassembly.gov.uk/international-relations-outside-the-european-union-ukraine)
- Schiek D “Brexit on the island of Ireland: beyond unique circumstances” (2018) *Northern Ireland Legal Quarterly* 69 (3), 367-395