

tional social security system. The little case-law we have so far under the new Regulation 883/2004 shows no sign of such a spectacular turn.

What is furthermore interesting with ‘mere coordination’ – apart from its frequent application and power which can be verified in the relevant chapter of this book – is the way the formula was uprooted and became abstract. Originally, the roots of the formula of ‘mere coordination’ in certain decisions was quite clear, but the Court in the mid-1980s detached it from these origins and turned it into an abstract concept for which soon an almost random assembly of decisions was referenced. This is probably just one case of many in which the Court’s referencing practice lacks clarity. Often the Court merely refers back to the latest case(s) in which an interpretive formula was applied. Apart from that it is worth noting that this abstraction of ‘mere coordination’ occurred largely in parallel with the *volte-face* described above. For both, *Pinna, 1986* can be identified as a turning point. However, to suspect a causal connection between the two developments – implying that the abstraction was made in order to conceal the *volte-face* – would probably stretch things too far. There are some natural limits to the consistency and interpretability of the Court’s case-law. Perhaps the *volte-face* and abstraction of ‘mere coordination’ are just signs of the fact that *Pinna, 1986* is a leading case, in more than one regard.

IV Fundamentalality

The interpretive formula designating Union citizenship as the ‘fundamental status’ is by nature relatively young. Yet the idea of treating some notions as fundamental whereas others remain something less than fundamental is as old as the ‘broad’ formulas and the formula of coordination. Hence, the ‘fundamental status’ can be seen to rely on two traditions in the Court’s case-law. On the one hand, there is a hierarchical, structural tradition in case-law which has notably come to fruition with the *fundamental* rights and, of course, the *fundamental* freedoms. On the other hand, the case-law also includes a status tradition, at least from an informal perspective. Thus, Union citizenship – the ‘fundamental status’ – was preceded informally in case-law by the notion of the Community national. The establishment of the tradition of the Community national in case-law goes back to the push and drive of the parties to cases and the referring courts. Detailed evidence of the two traditions – ‘fundamental’ and ‘status’ – is included in the chapter on ‘fundamental’.

While the ‘fundamental status’ is obviously kin to the ‘broad’ formulas – it having supplemented the application of broad interpretation to the freedom of Union citizens (see above) – the ‘fundamental status’ has a clear dimension of its own. Despite its short period of existence, it has acquired an almost eerie power. When the ‘fundamental status’ is mentioned in a decision, it usually spins it and, further, the result turns out almost consistently in favour of the Union citizen

concerned or Union citizens more generally. This is most evident in the early citizenship decisions. However, the results from a counterfactual check – which this book can make for the ‘fundamental status’ due to the limited number of Union citizenship decisions, while it proves impracticable for the other interpretive formulas – remain inconclusive. Thus, when the ‘fundamental status’ goes unmentioned in a Union citizenship decision, the decision is still capable of going either way, pro or contra Union citizen. The ‘negative power’ of the ‘fundamental status’, i. e. the power to impair through absence, is weak. Its absence has no consistent effect on decisions. Yet this does not at all curtail the ‘positive power’ of the formula.

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