

FROM EUROPEAN CITIZENSHIPS TO EU CITIZENSHIP

Charlotte Ene^{*}, Iuliana Pop and Andrei Micu

Academy of Economic Studies, Bucharest, 6 Piața Romană, Bucharest, Romania

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Abstract

The Treaty of Maastricht established the concept of ‘citizenship of the European Union’, (EU citizenship) and placed the citizen rights at the heart of the European Union. More over, the freedom of movement became the core of EU citizenship, being intrinsically linked to the internal market. It also meant that the economic/market-oriented rationale embracing the original status of European citizenship moved closer to a rights-based approach. However, for the nationals of the last acceding Member States, namely Bulgarians and Romanians, the right to have access to the internal market (especially labour market) has been at times restricted by the application of transitional measures/arrangements included in the Acts of Accession. In our opinion one of the major consequences of these processes has been the proliferation of different forms of European citizenship whose normative framing and implementation by the nation states foster differential treatment that sometimes conflicts with fundamental rights.

Keywords: EU citizenship, freedom of movement, fundamental rights, internal market, transnational citizenship

1. Introduction

Few decades ago, Hannah Arendt emphasized that there is one universal human right, namely, “the right of citizenship” meaning “the right to have rights” [1]. And, in addition, J. Shklar noted that “there is no notion more central in politics than citizenship, and non more variable in history, or contended in theory” [2].

Most of the theorists have admitted that citizenship is not a clear-cut and stable analytical concept, and it cannot be treated as a “monolith” [3]; it has been constantly modified in political practices in accordance with transformation of the global framework [4]. There are two focal points of citizenship, according the Kratochwill [5]: belonging (meaning the identity decided by the majority to define itself) and status (bundle of distinctive civil, social political rights).

In legal terms, citizenship represents the legal relationship between the individual and the polity, within it certain rights and obligation were granted to persons under the state authority. So, modern understanding of this concept is

^{*} E-mail: lotte_ene@yahoo.com

based on the nation-state which is entitled to decide who is part of the political community and who is not. Thus, citizenship relies on the principle of formal equality of all citizens and determines an exclusive demarcation of the nation-state members, as privileged group.

From a legal point of view, the decision regarding inclusion and exclusion is based on two concepts: nationality and citizenship. Both of them refer to the nation-state and identify the legal status of an individual as membership of polity (nation-state). In the context of interstate system, nationality is the international legal feature of citizenship; based on it each state establishes who has the access to its citizenship by distinguishing between those who are granted the right to benefits and protection, and those to whom these rights are denied. While the concept of citizenship is broadly valid, its meanings are not. The necessary conditions of access to legal status of citizenship vary significantly from state to state, based on its internal legal provisions.

In the last two decades, several international processes diminished the role of nation-state as source of citizenship such as: the emigration and immigration phenomena, the codification of international human rights norms, or the formation of supranational and transnational bodies such as the European Union.

All those major social issues have brought about recent approaches of citizenship based on new modalities of civic engagement of the individuals who are no more seen as members to a polity. Therefore, in order to describe all those citizenship concerns [4], scholars employ several terms such as: *global citizenship* referring to the recognition of the citizenship statute of all the persons in the state where they live and work; *cosmopolitan citizenship* emphasizing universal standards of human rights; *transnational citizenship* encompassing transnational social movements (labour movements, environmental movements, etc.). *Postnational citizenship* and/or *denationalized citizenship* marks the connection with a polity different from national state [6].

Therefore, as Soysal concluded, the grounds of membership of the polity have been changed. "In the new (post-national) model, the membership of individuals is not solely based on the criteria of nationality: their membership and rights are legitimated by the global ideologies of human rights. Thus, universal personhood replaces nationhood; and universal human rights replace national rights. The justification for the state's obligation to foreign population goes beyond the nation state itself. The rights and claims of individuals are legitimated by ideologies grounded in a transnational community, through international codes, conventions and laws on human rights, independent of their citizenship in a national state. Hence, the individual transcends the citizen." [7]

As we can observe, some of the major changes, occurring lately under the impact of globalization, determine several transformations of citizenship in order to respond to the new conditions within it is embedded. This trend is reflected by the evolution of the concept of citizenship related to European Union polity, as part of the European integration, to Europe-wide citizenship and beyond the formal status of European Union citizenship [6].

In this paper we intend to explore the main understandings of European citizenship and in this regard we tackle the European Union citizenship as both legal status and belonging.

2. A brief and selective account of legal framework of European Union citizenship

The modern hegemonic juridical political concept of citizenship has to be reconsidered in accordance with the discourse of European integration, one of the most comprehensive project in international integration [8]. The process of European integration generated a new legal order, European Union, to the profit of which the Member State have limited their sovereign rights and of which the subjects are not only the states but also their nationals, according to the decision issued by European Court of Justice in Case law *Van Gend & Loos*.

The process of European integration has multiple dimensions pertaining to normative changes, market integration a transnational structure, as European Union itself which cannot be a polity in the traditional weberian meaning of the word, but a symbol of the denial of modern approach of sovereignty and political territoriality [9]. The normative changes from Maastricht to Lisbon treaties refer to a new view of sovereignty, self-determination and rights of individuals and it purposes to strengthen the citizens' feeling of belonging to the European Union.

Therefore, the Treaty the European Union, also known as the Maastricht Treaty, introduced the term of European Union under Article 17(1) - former Art. 5 (C) as follows: *Citizenship of the Union is hereby established. Every person holding the nationality of a member state shall be a citizen of the Union.* And since the Treaty of Amsterdam, Art. 17(1) continues: *Citizenship of the Union shall complement and not replace national citizenship.*

The entry into force of the Lisbon Treaty (initially known as the Reform Treaty) gives the European Union (EU) a legal personality and an independent corporate existence for the first time – separate from and superior to its member states. (The Lisbon Treaty was signed by the EU member states on December 2007, and entered into force on December 2009. It amends the Maastricht Treaty and the Treaty establishing the European Community. The Lisbon Treaty is divided into two parts: the Treaty on European Union and the Treaty on the Functioning of the European Union.) In this regard, the Lisbon Treaty changes the meaning of citizenship, and emphasizes the fact that it is a status additional to national citizenship. An additional citizenship is a true dual citizenship so that EU citizens will be both national and EU citizens. This is because the EU has its own legal personality separate from those of its Member States and can have individuals as its real citizens for the first time. Moreover, the new additional citizenship is connected to the Charter of Fundamental Rights and the rights defined in Article 9 new TEU and Article 20 (1) TFEU, (both treaties form the Lisbon Treaty). In this normative context, the term 'additional' expresses an accurate delineation of the two statuses: national and EU citizenship, and the

new development of EU citizenship which grants to EU citizens additional rights, such as: the right to petition the European Parliament, to apply to the Ombudsman and to write to any of the institution and agencies of the Union in any of the official languages of the Union and to receive a reply in that language etc. Moreover, Article 35 TEU imposes more duties on the diplomatic and consular representations of the Union and the Member States in third countries give effect to protection for Union citizens on the basis of this status.

Also, EU secondary law contains provisions regarding EU citizenship, particularly the Council Directive 2004/38/EC of the European Parliament and the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the member states amending Regulation (EEC) no. 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, OJ L 158/77, 30 April 2004. According to Article 17 of the directive, the EU citizens and their family who have resided legally for a continuous period of 5 years in the other member state shall acquire a right of permanent residence there. Another important achievement of the directive is a great simplification of the legislation regarding to the right of entry and residence for EU citizens; and a reduction of the formalities the subjects have to fulfil in order to exercise their rights. As Carrera and Merlino have pointed out, by recognizing a new right of permanent residence in the receiving Member State, this directive has substantially revisited free movement rights and the status of EU citizenship [10].

3. European Union citizenship – *ratione personae*

Legal status of EU citizenship cannot be a genuine form of citizenship [11] since it does presuppose holding the nationality of one Member State, as a condition to have access to the set of supranational rights, which result from the freedom to move. As the Art. 20 TFEU provided, there is a connection between citizenship at European level and nationality of a Member States; while the nationality represents the formal link between a person and a state. As Antje Wiener has argued, EU citizenship has evoked multiple identities based on a group-by-group approach to granting new additional rights [12].

In this context, each Member State of EU determines those persons who qualify as EU citizens, according to their nationality law which provide different modes of acquisition and loss of nationality, or vary naturalization criteria from state to state. From this comparative approach we may established that diversity of legal rules related to the nationality, it might cause problems at the practical level. For instance, the residence period for naturalization varies greatly across Member States and is not cumulative access to EU citizenship by mobile individual may be impeded.

On the other hand, according to the same nationality laws not all the nationals of Member States are effectively recognized as EU citizens. Such is the case of United Kingdom which issued a special declaration defining who is

British for Union purposes and consequently who are excluded from EU citizenship (British dependent territories citizens, British overseas citizens, British subjects without citizenship and British protected persons). Also, there are several other categories of nationals of Member States who form so called borderline categories of European citizenship, like Danish inhabitants of the Faroe Islands, the Netherlands Antilleans, the Arubans, the French inhabitants of French overseas territories, nationals of South America who are European citizens based on Spanish nationality or Italian nationality pursuant to treaties on dual nationality [11].

All the above mentioned exclusions are based on the special *Declaration (No.2) on nationality of a Member State*, attached to the Maastricht Treaty. According to the first paragraph, each member state has the right to determine whether an individual possesses the nationality granted by it, solely by reference to the national law of the member state concerned. However, the European Court of Justice stressed that interpretation of the nationality law is in conformity with Community law [ECJ 7 July 1992, Case 369/90, ECR 1992 I-4258, *Mario Vincente Micheletti and others/Delegacion del Gobierno en Cantabria*].

Thus, Member States have a narrow competence in matters of nationality related to EU citizenship which could be observed if the domestic rules violated the right of free movement of persons within the European Union. Fundamental to the idea of European Union is the act of ‘crossing boundaries’, which represents key idea behind the conceptualization of EU citizenship, and refers to economic mobility, among other things [13].

Therefore, the need for the individuals to move beyond the traditional boundaries of their states of nationality constitutes the basis of acquiring by the European subjects of the rights and freedoms attached to the status of European Union citizen. EU law has granted several rights to a very specific category of third country nationals (TCN). The adoption of the Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents has recognized the status of those national of third country who have resided for a period of time of five years in the territory of a Member State. According to above directive, TCN have right to move to a second Member State and to be treated equally there, meaning have a status that is comparable yet not equal to the one enjoyed by EU citizens as nationals of the Member States. The family reunification directive – Directive 2003/86 – provides a right for third country nationals resident in the EU to be joined by their family members; the students and researchers directives (Directive 2004/114 and Directive 2005/71) provide for the admission and residence of TNC, etc.

We have to point out that EU enlargement processes have implied several restrictions in terms of the rights and freedoms of the new entry nationals. The Acts of Accession included a set of transitional provisions which delaying free movement of persons among Member States and allowing old Member States to apply restrictions to the practice of the free movement of workers principle in an enlarged EU. Transitional provisions concerning the access to labour market only apply to 8 Eastern and Central European States, including Romania, not to

Cyprus and Malta. These provisions determine a diversified class of EU citizenship with different statuses and rights and violate the right of equal treatment and non-discrimination of grounds of nationality, as enshrined by the EU legal framework and the Court of Justice jurisprudence [14].

4. Conclusions

This paper has stressed that the European Union citizenship is a valuable legal status which it is not applicable to all nationals of Member States, but could be claimed by the third country nationals within the territory of the European Union.

As Castles and Davidson have emphasized, current configurations of the institution of citizenship continues being primarily based on traditional conceptions of the nation-state [15].

It is no doubt that the European Union is one of the biggest and most exciting legal political economical and social construction of the twentieth century. The European Court of Justice held “Union citizenship is destined to be the fundamental status of nationals of the member states, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for” [Case C-184/99, Grzelczyk v. Centre public d’aide sociale d’Ottignies-Louvain-La-Neuve, 2001, ECR I6193].

According to Václav Havel: “The most important task facing the European Union today is to come up with a new and genuinely clear reflection on what might be called European identity, a new articulation of European responsibility, an intensified interest in the very meaning of European integration in all its wider implications for the contemporary world, and the recreation of its ethos, or, if you like, its charisma“. [F. Groothues, *Imagine: a European Identity Open Democracy*, 2002, available at: www.opendemocracy.net/people-debate_36/article_330.jsp]

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