
EUROPEAN UNION CITIZENSHIP FROM 1993 TO 2013 AND AFTER

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Abstract

20 years have passed since the Treaty of Maastricht established the concept of 'citizenship of the European Union' (EU citizenship), as the *key pillars of European Union* polity. That anniversary offers us the opportunity to analyze the evolution of this *fundamental status* [ECJ, Case I-184/99, Grzelczyk] in the light of the recent developments bring by both the European Union law (especially Treaty of Lisbon) and European Court of Justice (ECJ). This paper stress that the EU citizenship is comprised a set of rights from free movement to diplomatic protection, including political rights that confer to the nationals of the Members States the legal framework to engage in democratic life of European Union. In this regard, under Treaty of Lisbon, the European Citizens' Initiative (ECI) procedure has been settled as a tool for involving the Europeans into European law-making process. Moreover, the paper explores, also, another direction of development of EU citizenship based on the connection with fundamental rights. The main outcome of the paper is the conclusion that the EU citizenship is an intricate tripartite legal relationship; linking European Union to both Europeans and Members States, as well as it is an important factor of European integration process.

Keywords: nationality, rights, European integration process

1. Introduction

Celebration of 20 years since the European citizenship (European citizenship is used as a synonym for 'the citizenship of the European Union', or 'Union citizenship' the terms provided by the Article 9 TEU and Article 20 TFEU and subsequent) has been provided by the Maastricht Treaty offers us the opportunity to bring this major European legal concept in the heart of the analysis. During this period of time the European citizenship has evolved based on the efforts of the main European institutions, mainly the European Court of Justice, concretized in specific legal provisions.

We must to emphasize that from the beginning the European citizenship has been a very controversial concept; taking into account that it has been grant by a supranational (international) entity to specific categories of physical persons and in this way it has been *established a citizenship common to*

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nationals of Member States [Consolidated Version of the Treaty on European Union (TEU) and of the Treaty on the Functioning of the European Union (TFEU), together with the annexes and protocols thereto, as they result from the amendments introduced by the Treaty of Lisbon, which was signed on 13 December 2007 in Lisbon and which entered into force on 1 December 2009, O.J. (2008) C 115, preamble, rec. 10]. Therefore, European citizenship is bound to the nationality of the Member States as it has been stated in both Article 9 TEU (the second and third phrases): “Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.” and Article 20(1) TFEU: “Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.”

Linked to nationality of a Member State, European citizenship was assessed by the scholars as a ‘derivative’ [1] or ‘parasitic status’ [2], being impossible for a person to become a citizen of the European Union without having the nationality of a Member State. As we can noted, in the context of EU citizenship rhetoric there is a terminological difference between the terms ‘citizenship/citizen’ and ‘nationality/national’. With few exceptions (Slovenia, Italia and Denmark use the same term for ‘citizen’ and ‘national’), ‘citizenship’ represents the supranational status and ‘nationality’ refers to the formal link between a person and a national state [3]. Moreover, nationality could be understand as a legal institution demarcating nationals from aliens and not implying the rights, citizenship represents a set of rights conferred or denied to the specific categories of persons [1].

Even European citizenship is linked to the nationality of the Member States, it confers to all those who are entitle to this status a bundle of rights recognized by the European legal order, added to those originating in the national legal systems. As the scholars underline, “citizenship of the Union adds new rights to those enjoyed by nationals from Member States without this implying currently any meaningful derogation of nationality” [4]. According to the Article 20 (2) TFEU (first phrase): “Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties”.

This provision sets a direct legal relationship between the European Union and the nationals of the Member States which overlaps the bonds traditionally established between each Member State and its nationals. Taking into account also the legal relations stated between European Union and each Member State, we will concluded that European citizenship determines a real network involving European Union, Member States and people of Europe *civis europoeus* [Case C-168/91, *Christos Konstantinidis v. Stadt Altensteig*, 1993 E.C.R. I-1191, para.46 (paraphrasing the opinion of Advocate General Jacobs)].

In this regard, European citizenship could be viewed as a means of empowering Europeans not only *vis-à-vis* the EU institutions, but also *vis-à-vis* national authorities in relation to EU matters [P.N. Diamandouros, *Union Citizenship After the Lisbon Treaty*, Centre for European Union Studies (CEUS), Research Working Paper 1/2010, 10]. Therefore, the citizenship of the Union is

added to national citizenship and does not replace it, and on this fundament we are in the presence of a duality of citizenship which reflects the dual nature of the Union and the Member States. For this reason, it is not useful to discuss citizens' relationship with the EU institutions in isolation from their relationship with national authorities as regards EU matters [P.N. Diamandouros, *Union Citizenship After the Lisbon Treaty*].

Therefore, as scholars notice European citizenship is a unity of two elements: a legal status, meaning the relationship between a polity and its members (citizens) and a set of rights enjoyed by the members of the community [5]; in this case, the community is a supranational (international) legal person, hence the members of this peculiar polity are beyond the boundaries of a nation-state.

The aim of this paper will be to emphasize the development of European citizenship from a symbolic gesture, or “pie in the sky” [6] to “the fundamental status of nationals of the Member States” [Case C-184/99, *Grzelczyk v. Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve*, 2001, E.C.R. I-6193, para.31; Case C-413/99 *Baumbast and R*, 2002, E.C.R. I-7091, para.82; Case C-135/08 *Janko Rottmann*, 2010, E.C.R. I-1449, para. 43] having an important role in European integration process. The paper will start with an assessment of the European citizenship rights conferred by this legal status. In the following section it will be analyzed the main developments of European citizenship brought by the provisions of the Treaty of Lisbon in order “to play an essential role, occupying the central place in the body of EU law” [7]. In the end, this paper will comprise some proposals in order to enhance the impact of European citizenship on the European integration process.

2. The rights of European citizenship

The Treaties grant to the citizens of the Union, inter alia, the following rights:

- (a) *the right to move and reside freely within the territory of the Member States;*
- (b) *the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;*
- (c) *the right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State;*
- (d) *the right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language.*

This enumeration is not a restrictive but only declarative one, taking into account the words of Article 20 (2) mentioned above, referring to any right

provided by Treaties which could be a citizenship right. Moreover, Article 25 (2) allows *expressis verbis* for the introduction of new rights in order to strengthen or to enrich the list provided by Article 20 (2), with respect to a specific procedural requirements.

These citizenship rights can be assorted into two categories: the rights regarding the freedom of movement and the rights providing protection of the entitled persons [M.-J. Garot, *European Citizenship: 15 years after the Maastricht Treaty*, IE Working Paper Derecho (WPD06-07), 2006, 2].

2.1. The rights on freedom of movement of entitled persons

The most important European citizenship rights are those regarding the freedom of movement of the entitled persons within the territory of European Union. There are two categories of rights regarding to the freedom of movement: the right to move and reside freely within the territory of the European Union and the right to participate to the political life of the Member State of residence.

2.1.1. The rights to free movement

According to the Article 21 TFEU:

- 1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.*
- 2. If action by the Union should prove necessary to attain this objective and the Treaties have not provided the necessary powers, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1.*

As was stressed in legal literature, the Article 21 TFEU has marked a break between free movement and economic activity [M.-J. Garot, *European Citizenship: 15 years after the Maastricht Treaty*, p. 2]. Based on this new vision, this provision allows to different categories of persons to move and reside freely within the territory of the European Union, including not only the workers but the students, retirees, persons of independent means, or looking for a job, etc. The paragraph (1) of Article 21 TFEU have to be corroborated with Article 18 TFEU (first phrase) regarding the principle of non-discrimination on grounds of nationality, meaning that the any persons, who enjoy to this right of free movement, benefits from ‘full home treatment’ in any Member States of residence, (for example, meaning to receive social assistance under the same conditions as the nationals of that State) [1]

We have to underline that this right is subject to some limitation, conditions provided by the Treaties and measures adopted by the authorities in order to give it practical effect. Related to this provision, scholars wondered how the possibility of exercising this fundamental right, established by the primary

EU law, became dependent on the secondary legislation [8], which maintains the economic character of this right [A. Tryfonidou, *Reconceptualising the EU's Market Freedoms as Union Citizenship Rights. Towards a Citizenship Right to Pursue an Economic Activity in a Cross-Border Context?*, Paper presented at the EUSA 2011 Twelfth Biennial International Conference, Boston, 3-5 March 2011, online at: https://docs.google.com/viewer?a=v&q=cache:zHZcZ0tzPHMJ:euce.org/eusa/2011/papers/8d_tryfonidou.pdf+%22Reconceptualising+the+EU+%27s+Market+Freedoms+as+Union+Citizenship+Rights%22&hl=ro&gl=ro&pid=bl&srcid=ADGEESjIMiQ1IKxPPMrpy1C95GKEXMCikIy78SxKg-6CtQgNFiG8cJkCeoiS5At3fCuc3q7v16skA5WlIKYBhPUHCx71b7U5EgWFIR_c8kcbm0uUrDfPALmXGBNOIG1b9alq9htq7kme&sig=AHIEtbQdCSovwkw1hfa7Hzkyy2Nk9t3Xmw]. At the present, secondary provisions regarding free movement have been included in a single directive, called Citizens' Directive adopted in 2004 [Council Directive 2004/38/EC on free movement and residence of EU citizens and their families, (2004) O.J. (L.158) 77 EC] which established self-sufficiency conditions to be fulfilled by those who exercise the right to move and reside in the territory of another Member State.

On the other hand, the Treaties stated exceptions to free movement based on public policy, security, health, and employment in the public areas. Also, as has been underline by the scholars, the right of free movement is undermined by the national bureaucracies of the Member States [9].

However, the European Court of Justice protected this fundamental right giving a "number of major judgments strength the protection of Union citizens in the context of" Article 18, 20 and 21 TFEU [Fourth report of the European Commission on Citizenship of the Union, 26/10/2004, COM (2004) 695 final].

2.1.2. *The political rights*

Article 22 TFEU grants to *every citizen of the Union residing in a Member State of which he is not a national* two main political rights: *the right to vote and to stand as a candidate at municipal elections or in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State.*

These political rights represent "one of the most important innovations of the European citizenship" [M.-J. Garot, *European Citizenship: 15 years after the Maastricht Treaty*, p. 3] allowing foreigners permanently residing in Member States to take part in the election at both local and European levels. As has been emphasized in legal literature "what is progressive about Article 22 TFEU is that it does not contain any qualifications related to the minimal length of residence," [1, p. 201] with some exceptions provided by secondary legislation [Council Directive 93/109/EC laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in election to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, (1993) O.J. (L 329) 34 EC; and Council Directive 94/80 /EC, laying down detailed arrangements for the exercise of the right to vote and stand as a

candidate in municipal election by citizens of the Union residing in a Member State of which they are not nationals (1994) O.J. (L 368) 38 EC]. Therefore, it is not necessary for citizens of the EU to prove a certain level of integration in the host Member State in order to exercise these rights at European level; this situation confirms that “the European Parliament shall be composed of representatives of the Union’s citizens” (Article 14 (2) TEU).

The elimination of residence requirements contemplates the application of the non-discrimination right provided by the Article 22 TFEU, according to it foreigners exercise their rights to vote and to run in municipal or European election *in the Member State in which he resides, under the same conditions as nationals of that State*.

“These rights aim at fostering the political participation of non-national citizens in local and European spheres, and then to prevent that people who move from its country to another Member State be deprived of its full political rights.” [M.-J. Garot, *European Citizenship: 15 years after the Maastricht Treaty*, p. 3]

Moreover, the rights provided by Article 22 (2) TFEU have been seen as a mean “to reinforce the legitimacy of the European Parliament as well as to reduce the democratic deficit that has been very often denounced regarding” the EU [European Commission, Memorandum of the Council Directive 93/109/EC laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in election to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals].

As was underlined by the scholars, the rights grant to EU citizens under Article 22 TFEU (ex.19 EC) and the implementing directives, “which extend to rights to vote and stand under the same conditions as nationals not only in municipal elections but also in EP elections, provide examples of how the various regimes of rights enjoyed by EU citizens are dispersed across the supranational as well as the local levels. (...) The rationale for this legal framework focuses to a considerable extent on the fostering of integration of migrant EU citizens into the society and polity of the host Member State.” [10]

2.2. The rights providing protection of the entitled persons

Another category of European citizenship rights confer a particular protection to the entitled persons within the territory of the European Union in the context of the relationship with European institution or Member States, or abroad.

2.2.1. Protection granted within the European Union

According Article 24 TFEU (the second, third and forth phrases):

Every citizen of the Union shall have the right to petition the European Parliament in accordance with Article 227.

Every citizen of the Union may apply to the Ombudsman established in accordance with Article 228.

Every citizen of the Union may write to any of the institutions or bodies referred to in this Article or in Article 13 of the Treaty on European Union in one of the languages mentioned in Article 55 (1) of the Treaty on European Union and have an answer in the same language.

This group of citizenship rights, provided by Article 24 TFEU offers specific tools to European citizens mainly, in order to establish a direct bond with European institutions, and forms a new mechanism of protection against European acts.

These new mechanisms “are not judicial but, at the time they contribute to improve the protection of European citizens against abuses or weaknesses of European institutions and Member States” [M.-J. Garot, *European Citizenship: 15 years after the Maastricht Treaty*, p. 5-6].

The right to petition shall be exercise in relation to a subject falling within the EU Law and concern the petitioner directly; and the right to apply to the European Ombudsman is recognize to all persons that have to complain about an act of ‘mal-administration’ issued by an European institution, with few exceptions (i.e. European Court of Justice).

We underline that the above mentioned rights are applicable to “any natural or legal person residing or having its registered office in a Member State” (Articles 227-228 TFEU). Even though “these rights can be considered a way to bring nearer the European citizens and not only to European institution, (...in order) to reduce the so called democratic deficit” [M.-J. Garot, *European Citizenship: 15 years after the Maastricht Treaty*, p. 6]

2.2.2. Protection granted beyond the borders of European Union

Article 23 first phrase TFEU stated:

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State.

In connection with Article 23 TFEU, the Article 3 of Council Decision 95/553/EC provided that

Diplomatic and consular representations which give protection shall treat a person seeking help as if he were a national of the Member State which they represent.

The EU provisions recognize to every European citizen a consular protection from a diplomatic and consular representation of a Member State; and it should contribute to reinforce the protection of European citizens abroad, “as well as the European consciousness of people, thanks to the idea of an European solidarity” [M.-J. Garot, *European Citizenship: 15 years after the Maastricht Treaty*, p. 7]. “In addition, in fleshing out the former Article 20 TEU (currently Article 35 TEU), the drafters of the Treaty have sought to impose additional

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, rather than nationality.” [J. Shaw, *The Treaty of Lisbon and Citizenship*, European Policy Brief for Education & Research, Federal Trust for Education and Research, 2008, 4, online at: www.fedtrust.co.uk]

From other point of view, this right creates an unusual international legal reality, contrary to the traditional link nationality/citizenship-diplomatic protection granted by a state, since “no other polity depends upon other polities in order to be able to confer citizenship rights” [11].

We may conclude that all the provisions regarding European citizenship rights concretize a significant “determination to move from a purely economic community focusing on the establishment of an internal market, towards a Union with broader aims and aspirations” [A. Tryfonidou, *Reconceptualising the EU’s Market Freedoms as Union Citizenship Rights. Towards a Citizenship Right to Pursue an Economic Activity in a Cross-Border Context?*].

3. Main developments of the European citizenship under Treaty of Lisbon

The Treaty of Lisbon introduces rather few substantive and almost no substantial changes to the existing EU and EC Treaty provisions, so far as these concern the legal status of the citizen of the Union, as was underlined in the legal literature [J. Shaw, *The Treaty of Lisbon and Citizenship*].

One of the most significant difference between the EC Treaty citizenship provisions and those of the TFEU (Articles 20-24 TFEU) referring to the wording of the relationship between national citizenship and citizenship of the EU. In the TFEU this is stressed as *additionality*; previously, citizenship of the Union was expressed as being complementary to national citizenship in Article 17 EC. This means that EU citizenship does not replace national citizenship. “Expressing Union citizenship as additional to national citizenship was insisted upon by the Member States, in order to reinforce the point that EU citizenship can only add rights, and cannot detract from national citizenship.” [J. Shaw, *The Treaty of Lisbon and Citizenship*]

In legal terminological approach, the concept of ‘additionality’ underlines the duality between national and EU citizenship and delineates more accurately the two statuses, “and avoids any unfortunate implications that there is somehow a duty on the part of one status to bend to the will of the other, in order to achieve the sought after ‘complementarity.’ Overall, the rewording seems unlikely to make a substantial difference to the trajectory of EU citizenship.” [J. Shaw, *The Treaty of Lisbon and Citizenship*]

Other changes involve the provisions relating to the legal basis for adopting the measures necessary to give effect to citizens’ initiatives as provided for under Article 11 (4) TEU and Article 24 TFEU. European Citizens’ Initiative offers to European citizens the opportunity to get involved directly in European Union (EU) politics.

In summary, from the text quoted above it might be detached three essential traits of ECI. First, such citizens' initiative has to be developed at European scale, which implies one million signatures to be valid. Second, these signatures should come from a significant number of Member States; and third, after both former requirements are met, the Commission is 'invited' to put forward a European legal act required for the purpose of implementing the Treaties.

As we can see, the European treaties have provided only at level of principle the right of European legislative initiative accorded to European citizens; and it has been established that the procedure of ECI is detailed by regulation [EU Regulation no.211/2011 on the Citizens' Initiative was published in the Official Journal of the European Union, L 65, on 11 March 2011, <http://eur-lex.europa.eu>; The Commission Implementing Regulation (EU) no 1179/2011 laying down technical specifications for online collection systems pursuant to Regulation (EU) no 211/2011 of the European Parliament and of the Council on the citizens' initiative, published in the Official Journal of the European Union, L 301, on 18 November 2011].

In the end, we have to emphasize that the Lisbon Treaty gives legal force to the EU Charter of Fundamental Rights [The Charter of Fundamental Rights of the European Union which was proclaimed at Strasbourg on 12 December 2007 by the European Parliament, the Council and the Commission, O.J. (2007) C 303, 14.12.2007] thus citizenship of the European Union has finally acquired its Bill of Rights. Based on these provisions citizens of the Union have access to EU fundamental rights, structured in seven chapters respectively entitled (i) Dignity; (ii) Freedoms, (ii) Equality; (iv) Solidarity; (v) Citizen's Rights; (vi) Justice and (vii) General Provisions.

The most important issue is the nature of the EU Charter of Fundamental Rights which is neither part of a constitution in the traditional nation-state sense, nor is it an international human rights treaty even in the regional sense of the European Convention on Human Rights. Instead it belongs to the EU legal order and depends for its interpretation and enforcement on the mechanisms of EU law. In this regard, it imposes obligations on authorities of Member States that are not amenable to modification by those authorities, and its final interpretation is the preserve of the European Court of Justice.

This Charter offer a new mechanism for granting the rights, and it transforms the relationship between the individual and the state through a different type of rights entitlement arising from and embedded in the EU. Therefore, citizens of the EU now have a Charter of Rights that is legally binding and which their state authorities must deliver in accordance with their duty of good faith to the EU [E. Guild, *The European Union after the Treaty of Lisbon Fundamental Rights and EU Citizenship*, CEPS 'Liberty and Security in Europe', Global Jean Monnet/European Community Studies Association, 2010, 1, online at: ec.europa.eu/education/jean-monnet/doc/ecsa10/guild_en.pdf].

4. Conclusions

At the present day, two decades on, a further transformation of the concept of European citizenship lies ahead. Ultimately, the paper argues that the novel place attributed to the concept extends its reach further than ever before, and supplies it with a massive potential that the European Court of Justice is poised to exploit [H. de Waele, *EU Citizenship: Revisiting its Meaning, Place and Potential*, PDF hosted at the Radboud Repository of the Radboud University Nijmegen, 2013].

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