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Vasiljević, Snježana

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## Chapter 5

### THE CONCEPT OF EUROPEAN CITIZENSHIP

Snježana Vasiljević\*  
*Faculty of Law, University of Zagreb*  
*Zagreb*

#### ABSTRACT

The recognition of European citizenship by the Treaty on European Union (Treaty of Maastricht) introduced a novel legal institution into the European construction, hitherto unknown in international law. Its historical importance and nature will be analysed through different perspectives. The analysis of the structure of European citizenship reveals main advantages and disadvantages of the current concept. However, in its current form, it offers a very limited list of rights. Until recently, citizens' rights were neglected and invisible at the level of the European Union. This is especially visible in the policies towards the candidate and accession countries, which are obliged to follow certain human rights standards in order to meet the conditions for membership. The importance and meaning of European citizenship for third country nationals has been emphasised over the last few years.

#### **Key words:**

European Union, European citizenship, citizens' rights, human rights, nationality, third country nationals, future of Europe

## INTRODUCTION

The recognition of European citizenship by the Treaty on EU<sup>i</sup> introduced a novel legal institution into the European construction, hitherto unknown in international law.

This paper will in its first part give a definition, a survey of the historical importance and analysis of the citizenship concept. The nature of citizenship will be observed through the debates over its meaning and content.

Legal literature usually calls the concept of European citizenship plastic and empty in its context. That is especially visible if we observe the legal structure of the concept, which is mainly oriented to the free movement of persons and political rights. In analysis of the structure of European citizenship from a legal point of view, this paper will reveal the main disadvantages and gaps in the current concept.

Through an historical background and analysis of establishment of European citizenship, the paper will explore the position of European citizenship yesterday, today and tomorrow. Despite several legal changes of the primary European law (Treaty on EU, Treaty on establishing the European Community, Treaty of Nice and Treaty establishing a Constitution of Europe), the EU institutions have themselves emphasised that European citizenship needs to be understood as a developing concept.<sup>ii</sup>

The paper will also reveal that until recently, citizens' rights were neglected and invisible at the level of the EU. Market freedoms and market integration have been crucial in the discussions and legal documents of the Union. Free movement of persons opened up a place for new debates on the concept of European citizenship. At present, European citizenship rights are not only of great importance, but are on the way to becoming the sole basis for enjoyment of a number of rights in Community law, without further reference to a person's status as a citizen (Kochenov, 2006:216). In addition to free movement of persons and legal changes of European law, in the last part of the paper, the position of third country nationals will be analysed.

Even though there are a lot of positive implications of the concept, this paper makes a contribution to further discussion on the credibility of the concept first introduced by the Treaty on EU. More research is needed to detect gaps and offer possible solution to this problematic issue (Meehan, 1993; Everson, 1996; Shaw, 1997; Kostakopoulou, 1998; De Burca, 2002).

## THE CONCEPT OF CITIZENSHIP

### Historical background

The idea of citizenship came into being many centuries ago. In the ancient city-state of Athens, citizenship was granted to males of certain classes. Citizenship was also granted to a few foreigners and freed slaves. Citizenship meant that a man could vote, hold office, serve on committees and juries, and do military service. He was also expected to share the work of government. Women, slaves, and practically all foreigners were protected under the law but had few of the rights and privileges of Athenian citizens.

Citizenship was also important to the people of ancient Rome. Roman citizens often took part in their government. Roman citizenship was extended to foreign soldiers serving in the army and to men of conquered lands. By A.D. 212 almost all of the men in Roman provinces, except slaves, were citizens. After the fall of the Roman Empire, in 476, the idea of citizenship became less important for many centuries. The feudal system spread through Western Europe in the Middle Ages. This system was based on services and loyalty to a superior in exchange for his protection.

By the 1600s some kings had made many small states into nations. The common people no longer owed allegiance, or loyalty, to the nobles in their immediate region. Their first allegiance now was to the king. They began to take pride in their whole country. They also began to feel that they should have a voice in their country's government. As these changes took place, people started thinking of themselves as citizens of a nation as well as the loyal subjects of their king.

The French Revolution of 1789 represented one of the biggest changes in the history of human rights. After a series of four mini-revolutions from May to July, the Declaration of the Rights of Man and of the Citizen was released on the 26<sup>th</sup> of August, 1789. Furthermore, the French Revolution brought about a head-on clash between church and state. Napoleon Bonaparte reached a peace of sorts with the church, which was brought under state tutelage, but left alone as long as it confined itself to spiritual matters. The arrangement did not last and amid renewed anti-clerical militancy the Third Republic decreed the separation of church and state. The law of separation meant strict official neutrality in religious affairs. The French state could not allow any proselytizing in public buildings – least of all in schools, where the citizens

of tomorrow were being taught. The insistence on schools as religion-free zones goes to the heart of the French idea of citizenship. The Republic has always recognised individuals rather than groups: a French citizen owes allegiance to the nation, and has no officially sanctioned ethnic or religious identity (Hancock, 2002:2). The concept of citizenship is a relatively young one. Prior to the French Revolution neither the concept of nation nor that of citizen as we know them, was in existence.

## **Definition of the concept**

Since the 1990s, citizenship has become one of the key issues of the political debate. The notion of citizenship is changing at a great pace because of the major economic, social and political changes that occurred while the 20<sup>th</sup> century moved into the 21<sup>st</sup>. Ever since the classical ages (Greece, Rome) the concept of citizenship has been in a process of constant evolution.

Citizenship can be defined as a legal and political status that allows the citizen to acquire some rights (e.g. civil, political, social) as an individual and acknowledge some duties (e.g. taxes, military service, loyalty) in relation to a political community, as well as the ability to participate in the collective life of a state. The latter right arises from the democratic principle of the sovereignty of the people. Citizens of Spain, the United Kingdom, France, Portugal or the United States have a series of rights, granted by their constitutions, but also have obligations, with regard to their national community. In a democratic state, the citizen must fulfil those obligations since they were passed by the representatives they have voted in, using one of the main political rights of the citizen, the suffrage. Citizenship is restricted to people who legally satisfy the conditions for becoming a citizen of a state. People that live in a territory but lack the status of citizen are deprived of the rights and duties that citizenship involves. Every state has laws to regulate the way an individual can acquire its nationality, that is to say, citizenship of that state. This concept of citizenship dates back to a historical period initiated with the great liberal revolutions in the late 18<sup>th</sup> century. It is a notion characterised by the pre-eminence of the nation-state as a political community that comprises individuals. Citizenship is tantamount to nationality.

In the broadest sense, citizenship can be defined as setting the terms for the institutionalised relation between citizens and polity/community. This set of institutions includes shared principles of justice, social and cultural norms and rules that establish the procedures of political participation, and day-to-day practices of citizen participation in the polity/community. Citizenship then entails the entitlement to belong to a community that has the right and the obligation to represent community interests as a sovereign vis-à-vis other communities and vis-à-vis the citizens. This model of a relationship between two entities, namely the individual subject or citizen on one side, and the representative of a sovereign entity (Queen/estate/nation-state) on the other, has provided modern history with a basic pattern of citizenship. It follows that at least three elements need to be considered in the conceptualisation of an ideal-type citizenship. These are the individual, the polity/community, and the relation between the two. Any study of citizenship needs to refer to these three elements in one way or other. They therefore represent the three constitutive elements of citizenship (Wiener, 1998:22).

## **Conceptual debates over citizenship**

Citizenship means different things in different contexts. The concept has remained a much-contested one, particularly today, and no complete or elaborate theory of citizenship exists (Turner, 1990; Tilly, 1995). For some, the most basic aspect of citizenship includes the notion of membership in a community or in a nation-state (Barbalet, 1988; Brubaker, 1989; Vogel, 1991; Kymlica and Norman, 1994). For others, citizenship comprises an understanding of intersubjectively shared practices that contribute to democratic changes of and within a community (Habermas, 1994; Kratochwill, 1994). Taking conceptual and historical approaches to citizenship into account, two general statements about citizenship can be made despite conceptual differences. First, it is possible to state that citizenship is about rights, access, and belonging, wherein rights include Marshall's triad of civil, political, and social rights; access indicates the conditions of access to political participation; and belonging means rootedness in a community. Second, most scholars agree both from a conceptual and a historical perspective that analyses of citizenship are in one way or another linked to the state or the nation-state respectively. That is, talking about citizenship invariably involves the notion of stateness (Barbalet, 1998; Turner, 1990).

## THE PARADOX OF EUROPEAN CITIZENSHIP

### The road toward the launching of European Citizenship

The right of free movement of persons inside the Community was introduced in the constituent Treaty of Rome, establishing the European Economic Community (EEC), signed in Rome in 1957.<sup>iii</sup> This freedom did not appear bound to any citizenship concept but rather it was closely linked to the conduct of an economic activity. In consequence, the right of residence was accorded to workers and their families, linked to the right to exercise a labour activity in another member state of the EEC.

Although in a meeting of the European Council, held in Paris in 1974, the necessity to grant special rights in the EEC to the citizens of the member states was put forward, it was only in 1976 when the Tindemans Report was issued that it was put into practice. Then for the first time, the object of proceeding beyond a common market and creating a community of citizens was clearly proposed.<sup>iv</sup> This report, edited by the Belgian prime minister at the request of the Summit of Paris 1974, had no success with governments, though it had an important influence in later steps towards integration. In a chapter entitled Europe of the Citizens Tindemans proposed the enactment of different measures that made perceptible, by means of outward signs, the rise of a European awareness: unification of passports, the disappearance of border controls, the common use of the benefits of the social security systems, the accreditation of academic courses and degrees.

In 1976 a second step took place when elections to the European Parliament by universal suffrage were conducted. Although Parliament's competences were meagre, for the first time, one of the key elements of citizenship, democratic participation, appeared. Later on, after the Fontainebleau Council in 1984, a Committee of Europe of the Citizens, presided over by the Italian Euro MP Adonnino, was established.<sup>v</sup> This committee approved a series of proposals that were seemingly unambitious but nevertheless led to the constitution of a European citizenship.

More audacious was the Project of Treaty of European Union, passed by the European Parliament, in February of 1984, and presented by the Euro MP Alterio Spinelli (Spinelli Project). In spite of its restraint, the Single European Act (1986) hardly included any of the Spi-

nelli project proposals, although it adopted, and that is fundamental, the objective of a political EU.<sup>vi</sup> In this manner, a few years later, two intergovernmental conferences were convened to reform the treaties. One of them focused on the Economic and Monetary Union, the other one on political union.

A meeting of the Rome Council in October 1990, in the course of establishing the Intergovernmental Conferences (IGCs) guidelines, introduced the notion of European citizenship, as an essential element of the Treaties reform, and with some characteristics and similar rights to those that were later included in the Treaty on EU or Treaty of Maastricht.<sup>vii</sup> It was the Spanish delegation that first presented to the IGCs, in October 1990, a document on European citizenship. After diverse negotiations, and with the enthusiastic support of the European Parliament that passed two favourable resolutions in 1991, the Treaty of the EU came finally to institutionalise European citizenship.

## **European citizenship and European supranational statehood**

These common understandings of citizenship were dramatically challenged when citizenship was established within a supranational context in the Treaty on EU in 1993. The Union is not a nation-state. Nonetheless, citizenship policy making has been part of European Community, now Union, politics for over 20 years and “citizenship of the Union” has been defined in the Treaty on EU according to Article 8. Since the ratification of the Treaty on EU in 1993, citizens of the Union have enjoyed a series of rights that will be discussed later in this text.

This newly institutionalised link between the citizens of the Union and the EU as a polity differs in many ways from the familiar citizen-polity relation as established in nation-states over the past two centuries. The euro-polity is a political arena without fixed boundaries or a centralized political structure; instead it has been characterized as a multi-level polity with a weak core that cannot claim the legitimate monopoly of force over a population within a bounded territory (Caporaso, 1996; Marks and McAdam, 1996; Hooghe and Marks, 1997).

Placing citizenship in a supranational context instantly provoked debates over its political and conceptual implications (Closa, 1995; Preuss, 1995; Habermas, 1994; O’Keeffe and Twomey, 1993; Hobe, 1993; Shaw, 1997; La Torre, 1997). If such a political entity, which is



best defined as a polity in the making, offers citizenship rights despite the fact that a national state is not the final goal, then the questions at hand are: What does Union citizenship entail? How have Union citizenship rights been established? Is the EU proposing rights, access and belonging as national states do? The questions lying at the centre of these discussions are first, whether or not citizenship remains a valid concept at a time when multiple issues of governance are practiced beyond state level and when an awareness of difference contributes to push for new ways of representing a multiplicity of identities (Young, 1989; Turner, 1990; Held, 1991; Meehan, 1993; Kymlica, 1994; Tull, 1995). Furthermore, can citizenship be meaningfully applied as an organizing principle that institutionalizes the relation between citizens and the polity/community in a democratic way, providing both just and equal access to participation for the citizen and setting the terms for legitimate governance? Secondly, does the unprecedented establishment of citizenship within a supranational framework indicate a qualitative leap forward towards a notion of statehood in the EU (Hobe, 1993; König and Pechstein, 1995)?

Together these questions pose a tremendous challenge to familiar understandings of both citizenship and statehood. If citizenship has a meaning as a component in the process of modern state-building, then its application in a non-state context suggests the notion of European supranational statehood. However if the euro-polity is not going to develop the institutional characteristics of a modern state despite the introduction of Union citizenship, then we need to shed light on the paradox of citizenship in a non-state and ask: what is the meaning of Union citizenship?

The crumbling structure of the nation-state involves a complex process of shifting boundaries and polity restructuring. This process includes new models of policy making in emerging polities such as the EU. If it is true that citizenship has a crucial role in process of polity formation, then such changes involve a possible reconfiguration of citizenship to bind complex levels of identities (subnational, national and supranational) in new forms of political community (Linklater, 1996:97). It is this role of citizenship as more than an organizing principle, in fact as an identity-generating practice with community-building capacity that has emerged from the history of modern state-making as a powerful, if much contested idea. To this day, no fully worked-out theory of citizenship exists. The visible emergence of a supranational "European" citizenship has led to a renewed debate over the question

of whether citizenship as nationality is a precondition for polity formation, or whether citizenship as a practice contributes to identity-building as the glue of a new polity on citizenship have mostly referred to citizen identity by using the terms of “national identity” or “nationality”, that is, by simply adding either an adjective or replacing it with a noun to clarify its meaning. Both are derived from the term “nation” which is a construct itself (Tully, 1995:29). However, it does not go without saying whether or not this attachment to a nation is reflected in citizenship identity. As identities are multiple and dependent on context, we cannot assume one identity as a hegemonic constant but need to show how it came to the fore in the first place. If the terms national identity and/or nationality were used in a meaningful way, they would have to reflect citizens’ identity at a particular time and place, that is, express actual allegiances of citizens.<sup>viii</sup> However, as nationality is often used synonymously with citizenship, the interchangeable use leads scholars to fall into the trap of taking the construct for real. It is then important to note that the term national identity often wrongly appears as a *sine qua non* for the establishment of citizenship (Anderson, 1993:6). Nationality becomes easily reified once the distinction between constitutive and historical elements is not respected. Accordingly, to take the decline (or increase) of national identity as an indicator for citizenship has led to assumptions which may lead to wrong conclusions because they are part of the powerful construct of “nationality” itself. Although the nation-state continues to be the key element of the world political map, changes are taking place that portend an evident challenge to this kind of political organisation.

Two major transformations are calling in question the role of the contemporary state-nation and the concept of citizenship that it embraces. Firstly, globalisation, that is to say, the fact that the central and strategic economic activities are integrated on a world scale through electronic webs of capitals, goods, and information exchange. A key element of this globalisation is the development of the Internet and the information society. This globalisation of markets is the decisive factor that has impelled the last step in European integration, the Economic and Monetary Union. The nation-state is less and less able to cope with the challenges of globalisation. Secondly, the existence of more multicultural societies, which breaks up the theoretical homogeneity of nation-states. Regional or national diversity (Spain, Belgium, United Kingdom) and multiculturalism and multiethnicity brought about by

growing immigration are key aspects of the new European society. European citizenship will rise from this new European society.

The institutions of the EU itself and some socio-historical studies have pointed out that union citizenship needs to be understood as a “developing concept”.<sup>ix</sup> It is not only that the concept is “developing” but is also a “dynamic” one. As O’Keeffe (1994:106) observes, “the importance of the Treaty on EU citizenship provisions lies not in their content but rather in the promise they hold out for the future. The concept is a dynamic one, capable of being added or strengthened but not diminished. This understanding involves an approach to citizenship not primarily from a topical and analytical viewpoint but from a contextual perspective instead. Meehan (1993:80) has characterized the difference in approach in the two perspectives as stemming from a “minimalist” and “dynamic” understanding of citizenship respectively. The minimalists base their evaluation of Union citizenship predominantly on a positivist rights approach, the impact of new policy options and opportunities on citizenship as an organizing principle of communities (Meehan, 1996:81). Strictly legal interpretations thus stand in contrast with socio-historical analyses, which claim that Union citizenship entails more than rights, that citizenship is more than the sum of its parts. They suggest that the substance of citizenship is not only derived from the stipulation of rights according to the principles of law, but it also contains context specific meaning which has been developed through social, political and cultural practice (Garcia, 1993; Turner, 1990; Soysal, 1994; Conover and Hicks, 1996; Calhoun, 1996).

It is, of course, possible that the term “European citizenship” can be used as a collective term to describe the laws on citizenship of the member states. However, such a term has no clear content in itself. Citizenship in national terms varies considerably amongst the countries, above all concerning acquisition of citizenship and the legal consequences. In certain member states it is quite easy to become a citizen; in others it is harder. Many individuals are affected by the obvious inequities and differences arising due to the fragmented laws on citizenship. No uniform rules on citizenship exist in the EU countries, nor do common rules on how a citizen of the Union may obtain citizenship of a member state other than his country of origin. Differences between the laws on citizenship in the various member states are reflected directly in the citizenship of the Union.

Thus, some of the problems concerning citizenship of the Union are connected to national citizenship in the EU countries and the great

differences which exist between the national concepts of citizenship. Differences between the concepts of citizenship in the EU, which have arisen due to various political and legal transitions, can clearly be distinguished. One of the main weaknesses of the citizenship of the Union is its lack of independence, due to the fact that citizenship of the Union is totally founded on the fragmented national concepts of nationality. The possibility of becoming a citizen of the Union varies according to where in the Union that person lives. A means of overcoming these differences, and thereby strengthening citizenship of the Union, would be to harmonise the laws on citizenship in the member states. Harmonisation would, at present, be politically impossible.

To sum up, despite the continuous efforts of building a “European” model of citizenship based on the modern blueprint, the Union is neither a centrally organized polity nor does it follow state-centric types of policy making. Instead it is developing a polity without a centre. Citizenship practice related to this polity/community has generated a fragmented type of citizenship. Union citizens direct demands towards the member states and to the Union as well; they may belong to a local community of one member state (in terms of their social, cultural, economic and political activities) and at the same time to a national community of another member state (legal/national ties and political activity). Thus, “European” citizenship does not supersede national identities. Instead, it has evoked multiple identities as citizenship practice has involved a growing number of target groups, such as workers, wage earners, students, etc. and created access to certain social rights, new voting rights, a “European” Passport, changed rules of border crossing and practices to contribute to create a feeling of belonging.

## **IMPLICATION OF EUROPEAN CITIZENSHIP FOR FUNDAMENTAL RIGHTS**

### **Fundamental rights of European citizens**

According to the Article 17 of the Treaty establishing the European Community, every person holding the nationality of a member state of the EU is a citizen of the Union. Citizenship of the Union supplements national citizenship without replacing it. From the very wording of Article 17 and the history of its drafting, one is tempted to con-

clude that Union citizenship is nothing but a corollary of nationality of one of the member states.<sup>x</sup> Citizenship always attaches to member state nationality. In one judgement the European Court of Justice (ECJ) made clear that member states, and member states only, may determine the creation and abolition of nationality.<sup>xi</sup> They may, however, not put restrictions on it if another member state has already granted nationality.

Citizenship of the Union is made up of a set of rights enshrined in the EU Treaties, additional to those of national citizenship. In concrete terms, it gives all nationals of member states the following rights:

- the right to move and reside freely within the EU;
- the right to vote for and stand as a candidate at municipal and European Parliament elections in whichever member state an EU citizen resides;
- access to the diplomatic and consular protection of another member state outside the EU;
- the right to petition the European Parliament and to complain to the European Ombudsman;
- the right to contact and receive a response from any EU institution in any one of twenty languages;
- the right to access Parliament, Commission and Council documents under certain conditions;
- the right to non-discrimination on grounds of nationality within the scope of Community law;
- the guarantee of fundamental rights as upheld by the European Convention on Human Rights and the Charter of Fundamental Rights of the EU;
- protection against discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation;
- equal access to the Community civil service.

The question is how one can become an EU citizen. Any person who holds the nationality of an EU member state is automatically a citizen of the EU. The question of whether an individual possesses the nationality of a member state is settled solely by reference to the national law of the member state concerned. Thus it is for each member state to lay down the conditions for the acquisition and loss of nationality. Creating an ever-closer union among the peoples of Europe is the first aim to be mentioned in the EU Treaties. The concept of EU citizenship has been developed gradually. Though free movement of people has existed since the foundation of the Community in 1951, it was confined to workers. In 1986, the Single European Act set out to create

a Europe without internal frontiers. The concept of European citizenship is enshrined in the Treaty establishing the European Community (Articles 17-22 and 255). The Maastricht Treaty, signed in 1992, aimed to strengthen the protection of the rights and interests of the nationals of its member states through the introduction of citizenship of the Union. Union citizenship confers on every Union citizen the fundamental and personal right to move and reside freely without reference to an economic activity. With this Treaty also came additional voting rights and extra consular protection.

The Treaty of Amsterdam, signed in 1997, extended citizens' rights by introducing a new anti-discrimination clause on the grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Amsterdam also reinforced the free movement of people by integrating the Schengen Convention into the Treaty.

The Treaty of Nice, signed in 2001, confirmed citizens' rights. It facilitated, for example, legislating relating to free movement and residence by introducing the qualified majority for the decision-making in Council. The majority of Europeans are not well or not at all informed about their rights as EU citizens.<sup>xii</sup>

In addition to the rights attached to the citizenship of the EU that are explicitly mentioned in the Treaties, there is a whole series of fundamental rights which stem from the EU Treaties, the case-law of the Court of Justice of the European Communities, the Council of Europe's Convention on Human Rights and the constitutional traditions of the member states. These rights have been assembled into a single, simple text called the Charter of Fundamental Rights of the European Union<sup>xiii</sup>, which was proclaimed by the Commission, the Parliament and EU leaders just before they signed the Treaty of Nice in December 2000.

The Treaty of Nice contains a declaration calling for a deeper and wider debate about the future of the EU. This debate was launched at the beginning of 2001, in view of the next treaty due to be signed in 2004. The issues at stake include the demarcation of responsibilities between the EU and the member state, the status of the Charter of Fundamental Rights, simplification of the Treaties and the role of the national parliaments in the institutional architecture of the EU. As a contribution to this debate, in July 2001 the Commission adopted a White Paper on European governance<sup>xiv</sup>, setting out a vision of a Union made more relevant to its citizens. Examples of the proposals made are a clearer division of powers among EU institutions, a simplification of EU legislation and a clearer definition of policy objectives.

EU citizens still encounter real obstacles, particularly in exercising their right of free movement. In December 2003 the Council of ministers reached the common position on the Commission's amended proposal on the right of citizens of the Union and their family members to move and reside freely within the territory of the member states, aimed at clarifying and simplifying the rules on the right of entry and residence in any of the EU member states.<sup>xv</sup>

## Limitations of citizens' rights

The EU has long faced a problem: as the Community has shifted from common market to Union, with certain attributes of a state, it needs a people who are its members, who identify with its objectives, and with whom it has a relationship. The principle of citizenship introduced by the Treaty on EU was intended to create this link between nationals of the member states and the European Union (Barnard, 1999:383). Even though the first intention of the Treaty of the European Union was to create a link between nationals of the member states and the Union, since then a little has been done in bringing citizens closer to the EU. Citizenship of the Union does not replace the citizenship of a member state and the rights and duties listed in the Treaty of Amsterdam are simply not enough in obtaining a full membership in the Union. This argument could be supported by quoting Marshall (1950:40) who argued that "citizenship involves full membership of the community which has gradually been achieved through the historical development of rights, starting with civil rights (basic freedoms from state interference), political rights (such as electoral rights) and, most recently, social rights, including rights to health care, unemployment insurance and old age pensions – the rudiments of a welfare state". According to the fact that a European citizen is defined as one holding the nationality of a member state, the concept as such is exclusionary. The concept excludes *a priori* any third-country national.<sup>xvi</sup>

Since the list of rights contained both in the Treaty on EU and Treaty establishing European Community is rather poor and very limited, there is no doubt that the list of citizenship rights serves its purpose. The first express use of citizenship to extend the rights of Union citizens was the judgment in the case of *Martinez Sala v. Freistaat Bayern*.<sup>xvii</sup>

Article 13 of the Treaty establishing European Community was designed to foster citizenship of the Union. It has an important role to play in this evolutionary process, where the emerging concept of citizenship is complex and multi-faceted, involving relationships between individuals, their own and other states and the Union. However, legislation alone is not enough. Furthermore, individuals will primarily enforce any right provided by legislation adopted under Article 13 their own state or any other state to which they have moved. Here lies a further paradox: rights intended to foster a commitment to the Union are actually being exercised against the member states. This highlights the complex nature of citizenship (Barnard, 1999:385).

Weiler (1996:30) claims that simply adding new rights to the list, or adding lists of new rights, has little effect. Rights are taken for granted; if you managed to penetrate the general indifference towards the European construct by waving some new catalogue or by broadcasting imminent accession to the European Convention on Human Rights and Fundamental Freedoms, the likely reaction would be to wonder why those new rights or accession were not there in the first place.

Human rights have a place in the discourse of citizenship. The concept of European citizenship established by the Treaty of Maastricht is an example of how citizenship rights can be scattered across the Treaty. However, this catalogue of citizenship rights is exceedingly limited and hardly comparable with domestic conceptions of citizenship and it does not have an independent status since the member states decide who are their nationals, and not the EU. Yet, there is still a question whether citizenship rights will bring citizens closer to the Union or not. But given how things stand, developing political means of control is more central to European citizenship than piling on new human rights. The major problem of European citizenship is giving it meaning, actually developing some measure of shared understanding about what it can and should (and should not) mean.

It has to be pointed out that only rights developed by the citizenship context are political rights. However, there are some difficulties in exercising these rights, so we come to the conclusion that they are weak in their content. The political dimension of EU citizenship is underdeveloped. The instruments for participation in the public life of the Union are lacking as this public life itself, as distinguished from the public life in the member states, is virtually non-existent: a weak Parliament, next to no direct access to the European courts, and so forth. Furthermore, Jessurun d'Oliveira (1994:126-148) emphasizes that



rights of political participation are weak, whilst social rights evidently are non-existent. Furthermore, the EU does not represent a shared public realm in any meaningful sense of the term. Following the arguments mentioned above, there is certainly a concern that the concept of European citizenship introduced by the Treaty of Maastricht does not offer very much in terms of protection of fundamental rights. It must be stressed that the whole problem of European citizenship is not only the problem of which rights are incorporated or left out of the concept. Probably, the real problem of the Community is the absence of a human rights policy with everything this entails: a Commissioner, a Directorate-General, a budget and a horizontal action plan for making effective those rights already granted by the treaties and judicially protected by the various levels of European courts. Most of those whose rights are violated have neither the knowledge nor the means to seek judicial vindication. The EU does not need more rights on its list or more lists of rights. What are mostly needed are programmes and agencies to make rights real, not simply negative interdictions which courts can enforce (Weiler, 2002).

Consequently, there is a legitimate question whether the citizenship chapter should be broadened or whether it would be better to broaden the definition of citizenship? From my perspective, simply adding a broader definition will not make any improvement. On the other hand, adding more rights to the list could cause a negative effect in terms of diminishing rights that already exist. This problem deserves special attention in the literature and more research is still needed in order to provide possible solutions.

## **CITIZENSHIP TOMORROW**

### **Towards a European citizenship for third country nationals**

A culture of rights accessible to third country nationals is slowly emerging at EU level. As early as 1984, the Economic and Social Committee had called for Community intervention in relation to the resident status of third country nationals. At the time however, member states were very reluctant to consider interference with what they regarded as their exclusive competence. With Maastricht cooperation on migra-

tion-related issues a new institutional structure was provided: the third pillar. While the first pillar, i.e. the provisions contained in the Treaty on establishing the European Community, was characterised by supranational decision-making procedures, the third pillar only provided the basis for intergovernmental cooperation. The new third pillar provided that policy activity concerned with third-country nationals was of “common interest” and therefore should be the subject of cooperation (Picard, 2004:70). Despite the gross inadequacies of the third pillar system, lessons had been learned about what could be done at supranational level and the policy instruments provided by the Treaty of Maastricht proved that there were sufficient grounds amongst member states to go further in the process of developing new initiatives. In 1997, the Treaty of Amsterdam made migration issues important for the Community by incorporating a new title on visas, immigration, asylum and free movement of persons. The EU institutions were given competence to define conditions.

Indeed, during the post-Maastricht phase there had been increasing recognition that insufficient attention had been paid to the role of third country nationals in EU labour markets. The new EU powers constituted a major change as EU institutions had only been loosely associated under the old Maastricht third pillar. The Commission, which emerged as the big winner of the institutional reshuffle, used its newly acquired right of initiative to play a very pro-active role on migration related issues. It issued a number of proposals, the most significant of which was the 2001 proposal, for a directive on the status of long term resident third-country nationals.

Recent years have seen progress in terms of political will. In 1999, the Tampere Council concluded that the status of long-term-resident third-country nationals should be approximated to the status of member states nationals, i.e. with a set of similar rights.<sup>xviii</sup> It is in the right of free movement that citizenship is most developed.<sup>xix</sup>

Arguably, economic considerations have achieved precedence over the “patriotic” elements of citizenship in the EU. Critics have expressed concerns that the Treaty of Amsterdam merely provided for flanking measures to ensure free movement. There is a clear attempt in the Treaty establishing a Constitution of Europe to enhance the political and social rights of non-nationals and the inclusion of the Charter of Fundamental Rights of the Union is to play an important role in the representation of migrant interests in EU law. The Charter was initially

promulgated as a declaratory act and was annexed to the Nice Treaty in December 2000.

By enshrining a common set of rights and values, the Charter, it is thought, will make the Union more palpable to its citizens. The Charter ignores the interface between national and EU citizenship: fundamental rights apply to all individuals, including non-nationals having regard to their nature as humans rather than as citizens of a given state.

In June 2002, the Seville Council further acknowledged the importance of the contribution by third-country nationals to economic, social and cultural life. To put this rhetoric in practice was one of the major challenges for the Convention on the Future of Europe. The Constitutional Treaty represents a notable attempt at enhancing a culture of rights accessible to all.<sup>xx</sup>

Individual membership of the EU is unlike traditional models of citizenship. Its nature is complementary nationality of one of the member states as an essential prerequisite. Although modern economies rely more and more on an immigrant labour force a significant number of this force is left out of the benefits of EU citizenship due to divergent nationality laws in the member states. It is still early in the process of integration for a postnational citizenship, namely one based on criteria other than the nationality of one member state, such as legal residence. The Treaty establishing a Constitution of Europe does not change the complementary nature of EU citizenship; citizenship of the Union shall be additional to national citizenship. However, in a bid to make EU citizenship more credible, the EU has for the past ten years adopted a culture of rights, mostly applicable to EU nationals but also to a limited extent to third country nationals residing in the EU on a long term basis.

The Treaty establishing European Community has been amended to insert new Title IV, Visas, Asylum, Immigration and Other Policies Related to Free Movement of Persons which follows on from Title III, Free Movement of Persons, Services and Capital. Title III contains provisions on the free movement of workers, the right of establishment and service provisions which apply to nationals of the member states and their family members of any nationality.

Here too is the base for movement of third-country national employees of service providers sent by their employer to fulfil contracts for services in other member states. The new Title in part applies to Community nationals whose position is already regulated to a great-

er or lesser extent by arrangements between the Community and third countries (Guild, 2001:296).

The reference to the nationalities of the member states is important. It states clearly the limited nature of EU citizenship. It links back directly to one of the framework “constitutional” provisions of the Treaty of Maastricht itself, Article F (1) Treaty on EU: “The Union shall respect the national identities of its member states, whose systems of government are founded on the principles of democracy.”<sup>xxi</sup>

How, then, could and should European citizenship be constructed? What should be the political attributes forging the linkages that must flow, at the European level, from citizen to public authority? How should a European demos be understood? Does it exist? Can it exist? What are its implications for European identity?

Since citizenship depends on nationality, the nationals of accession countries will only be EU citizens after accession. This means that the fundamental right of free movement granted to EU citizens cannot yet be invoked by nationals of these countries, including citizens from Croatia.<sup>xxii</sup>

Rights of citizens from accession countries as third country nationals in the EU are regulated by international treaties. The most important instruments in this respect have been association agreements between the EU and third countries. Examples of these agreements are the Europe Agreements and Stabilisation and Association Agreements (Reich, 2001:20).

Citizenship under Union law contains a bundle of different rights like freedom to look for work, right to take residence where desired, possibility of family reunion and so on. Obviously, these rights have not yet been extended to the nationals of countries of the Europe Agreements. This depends on the status of the accession countries themselves, and has to be negotiated in the respective Treaties. The Commission has put forward certain proposals on whether the *acquis* should be taken over immediately in favour of the citizens of the new member states or not.

However, by preparing a “constituent project”, the Convention on the Future of Europe by drafting the Treaty establishing a Constitution of Europe is going to have to examine the question of EU citizenship. Under Title II, Article 5 of the Treaty establishing a Constitution of Europe:

“Every citizen of a member state is a citizen of the Union; enjoys dual citizenship, national citizenship and European citizenship; and is free to use either as he or she chooses; with the rights and duties attaching to each.

This article sets out the rights attaching to European citizenship (movement, residence, the right to vote and to stand as a candidate in municipal elections and elections to the European Parliament, diplomatic protection in third countries, right of petition, right to write to, and obtain a reply from the European institutions in one’s own language).

The article establishes the principle that there shall be no discrimination between citizens of the Union on grounds of nationality.”<sup>xxiii</sup>

In order to encourage social cohesion, it is essential to place human rights and anti-discrimination at the centre, as an integral part, of all Community policies and to include among the fundamental values of the EU respect for minorities and cultural diversity. Recognising European citizenship to nationals of non-EU countries legally living in the EU satisfies all these requests. Granting full European citizenship to the nationals of third countries would enable them to vote and run for office in municipal and European elections just like European citizens who reside in a different member state than their own. It would also enable them to live, study, work or retire in the EU country of their choice, in the same way European citizens are able to. Extending EU citizenship to the nationals of third countries legitimises a de facto form of citizenship that is already expressed through the exercise of social, trade union or cultural rights. This de facto citizenship must be matched with legal citizenship (Shaw, 1997:22).

To grant the same rights to all the people who reside on EU territory, regardless of their nationality, is to recognise the legitimacy of their presence and participation in the cultural, social, working and political life of the EU. It is a way of asserting the will to live in a democracy and to defend the indivisible and universal values of human dignity, freedom, equality and solidarity on which the EU is founded.

## CONCLUSION

“The traditional, classical vocabulary of citizenship is the vocabulary of the State, the Nation. European citizenship, on this view is to people, what European Monetary Union is to currencies. To some – both europhiles and eurosceptics – this is exactly what European citizenship is about. It should not surprise us that both europhiles and eurosceptics can hold a similar view of what European citizenship is about. We have long understood that often the debate between these two extremes is not a debate of opposites but of equals – equals in their inability to understand political and social organisation in non-statal, national terms. The introduction of European Citizenship to the discourse of European integration could, however, mean not that the telos of European integration has changed, but that our understanding of citizenship has changed, is changing, or ought to change” (Weiler, 2002:35).

To date there is very little knowledge about the efficiency of the EU citizenship model. Moreover, we still do not know what actually this model implies and how it will be implemented at the level of the individual state. There are a lot of questions that should be answered in order to understand the advantages and disadvantages of this model and what “Union citizenship” is and could be. An extensive search of the literature has failed to identify studies that have examined these particular questions. There are very few studies which have tried to identify possible solutions but they do not offer us an unambiguous answer. Much research is still needed to go beyond present knowledge, which is insufficient to give us a proper explanation. Moreover, European citizenship is no longer a symbolic institution and the mirror image of “market citizenship”. It is thus unfortunate that much of the relevant literature in the 1990s did not recognise that the value of European citizenship existed not so much in what it was, but in what it ought to be. As an institutional designer and agent of change, the European Court of Justice has succeeded in institutionalising European citizenship that is, in giving meaning and value to it, thereby establishing new institutionalised norms which will impact on and modify national legal culture. Ultimately, better understanding of the European citizenship model and the fundamental rights protection within its scope is of great importance for the future implications of this model on third countries and their nationals. Croatia is one of those European states in which the application of this model could cause a significant change from the legal and political point of view. Therefore, all the questions raised do need answer-

ing. In this respect, let us hope that this study will be able to contribute to the further analysis of EU citizenship policy and to the understanding of the concept of supranational citizenship and democracy.

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- \* *The author would like to thank the referees who anonymously reviewed this paper.*
- i *Treaty on the European Union. Available at: [http://europa.eu.int/eur-lex/lex/en/treaties/dat/12002M/pdf/12002M\\_EN.pdf](http://europa.eu.int/eur-lex/lex/en/treaties/dat/12002M/pdf/12002M_EN.pdf).*
- ii *Treaties are available at: [http://europa.eu/abc/treaties/index\\_en.htm](http://europa.eu/abc/treaties/index_en.htm).*
- iii *Available at: [http://europa.eu/abc/treaties/index\\_en.htm](http://europa.eu/abc/treaties/index_en.htm).*
- iv *Available at: <http://www.eu-history.leidenuniv.nl/index.php3?c=11>.*
- v *Available at: <http://www.ena.lu/europe/19801986-enlargement-south-single-europe-an/fontainebleau-european-council-1984.htm>.*
- vi *Available at: [http://europa.eu/abc/treaties/index\\_en.htm](http://europa.eu/abc/treaties/index_en.htm).*
- vii *Available at: <http://www.historiasiglo20.org/europe/ciudad europea.htm>.*
- viii *For a definition of the concept of nation, see Anderson (1993:3) “it is imagined political community – and imagined as both inherently limited and sovereign. It is imagined because the members of even the smallest nation will never know most of their fellow-members, meet them, or even hear of them, yet in the minds of each lives the image of their communion.”*
- ix *The term “developing concept” is used by the European Commission. See: European Commission (1995) and European Parliament (1996).*
- x *Article 17: “1. Citizenship of the Union is hereby established. Every person holding the nationality of a member state shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship. 2. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.”*
- xi *This is in accordance with the Micheletti – judgement of the ECJ handed down in 1992 parallel to the adoption of the Treaty of EU (Case C-369/90), Micheletti v. Del-egación del Gobierno en Cantabria, [1992] ECR I-4239.*
- xii *Ten years after the creation of citizenship of the EU, a “Flash Eurobarometer” public opinion survey carried out by the European Commission in October 2002 reveals that only one fifth of the Europeans feel that they are well informed about their rights as Union citizens. One third knows what Union citizenship means. Eight per cent know what the Charter of Fundamental Rights of the EU is. A high 60% know that Union citizenship is acquired automatically by having the nationality of a member state. Ninety per cent know that Union citizens can work in any member state. The Irish and the Finns are best aware of the rights of Union citizens while UK citizens are the worst informed. The survey concerned three main subjects: awareness of the concept of Union citizenship, understanding of the meaning of Union citizenship and information received about Union citizenship. Available at: [http://ec.europa.eu/justice\\_home/fsj/citizenship/fsj\\_citizenship\\_intro\\_en.htm](http://ec.europa.eu/justice_home/fsj/citizenship/fsj_citizenship_intro_en.htm).*
- xiii *Available at: [http://ec.europa.eu/justice\\_home/fsj/rights/charter/fsj\\_rights\\_charter\\_en.htm](http://ec.europa.eu/justice_home/fsj/rights/charter/fsj_rights_charter_en.htm).*
- xiv *Governance in the EU: A White Paper. Available at: [http://ec.europa.eu/governance/governance\\_eu/white\\_paper\\_en.htm](http://ec.europa.eu/governance/governance_eu/white_paper_en.htm).*
- xv *Available at: [http://ec.europa.eu/justice\\_home/fsj/citizenship/movement/fsj\\_citizenship\\_movement\\_en.htm](http://ec.europa.eu/justice_home/fsj/citizenship/movement/fsj_citizenship_movement_en.htm).*

- xvi *“This link between citizenship and nationality has prompted the criticism that the concept of citizenship is exclusionary: citizenship rights are for those who belong and not for outsiders. Thus, citizenship is defined in terms of the statist concept of nationality which starkly draws the line between those who are included and benefit from the (albeit limited) rights of citizenship and those, in particular legally resident third-country nationals, who are excluded” (Barnard, 1999:385).*
- xvii *Martinez Sala v. Freistaat Bayern [1998] ECR I-2691. The case concerned a Spanish resident in Germany who was out of work claiming a German child-raising allowance. Under German social security law her application was refused because she still was not in possession of a valid residence permit. The Court did not accept this limiting condition to access to child allowance. A reading of Article 8 on Union citizenship in conjunction with Article 6 on non-discrimination puts her under protection of the Treaty which cannot be denied by reference to the absence of a permanent residence permit. In its free judgement discussing citizenship, Skanavi v. Chryssanthakopoulos, the ECJ refused to discuss the application of the Article 8 which was considered to be residual (Skanavi case C-193/94, Skanavi v. Chryssanthakopoulos, [1996] ECR I-2253).*
- xviii Available at: [http://ec.europa.eu/justice\\_home/glossary/glossary\\_t\\_en.htm](http://ec.europa.eu/justice_home/glossary/glossary_t_en.htm).
- xix *In landmark judgements such as Grzelczyk, Baumbast and D’Hoop, the ECJ established that Article 18 (1) of the Treaty establishing the European Community confers directly upon every Union citizen the right to move and reside freely across the member states. Exercise of that right is subject to the limitations and conditions laid down under community law – which, as regards economically inactive citizens, refer especially to the requirements of “sufficient resources” and “sickness insurance in respect of all risks”. Moreover; provided they are lawfully resident within the national territory, economically inactive migrant Union citizens are entitled to equal treatment with own nationals in accordance with Article 12 – though the member state may be entitled to restrict access to social benefits to those with a “real link” with the host society (Dougan: 89-107). See the ECJ cases C-184/99, Grzelczyk [2001] ECR I-6193; Case C-413/99 Baumbast [2002] ECR I-7091; Case C-224/98 D’Hoop [2002] ECR I-6191.*
- xx Available at: <http://www.ecre.org/seville/sevconc.pdf>.
- xxi See more at: <http://eiop.or.at/eiop/texte/1997-003.htm>.
- xxii *This means that the fundamental right of free movement granted to EU citizens by virtue of Article 18 Treaty establishing the European Community and by the specific provisions on free movement of persons namely Article 39 on workers and Article 43 on establishment cannot yet be invoked by nationals of these countries.*
- xxiii See more at: <http://european-convention.eu.int/docs/sessPlen/00369.en2.PDF>.



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