

THE EU CITIZENSHIP AND THE EUROPEAN IDENTITY

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Abstract

The article presents an overview of the process of development of the citizenship of the European Union introduced with the Treaty of Maastricht, like one of the mechanisms adopted by the European institutions in the process of creating the European identity. After the enforcement of the Treaty of Lisbon, which does not include in its content the European symbols such as flag, anthem, European Day etc, the issue on European identity was opened again. In this paper the authors argue that the Citizenship of the European Union remains the only symbol of the created European Identity, as it takes central position in the EU law after the Treaty of Lisbon.

Key words: European citizenship, European identity, national identity, symbols.

I. Introduction

When we discuss about the European citizenship, the first issue that has been raised, is how the European citizenship has been granted formal status to become a legal concept, and is the creation of citizenship a dynamic process from a methodological perspective.

When the citizenship of the EU was introduced with the Treaty of Maastricht, a wide debate was opened about its legal nature among the politicians, scholars and the general public. In this regard, the following questions have been raised: Can the EU citizenship be separated from the national one? Is the citizenship of the European Union complementary with the national citizenship or it is its replacement? Before we search for an answer to these questions, we present a short historical background on the creation of the European identity and creation of the citizenship of the European Union.

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II. European identity: before and after the treaty of Lisbon

European identity is about the importance of certain values regarding Europe that differ among people. Europe needs to be understood as a set of ideas that have different meaning for different people. When it comes to the basics of the European identity, some authors argue that "it is an attachment to the evolving European transnational management system¹."

European identity has its foundation in the common system of political values, not in a common culture or history. Some authors argue that only the existence of collective identity may explain the development of the EU².

The study of European identity has been improved by the contribution of the concepts of historical, political and socio-political roots³. In the past years, numerous empirical studies have been conducted, which provide different perspectives on national and regional level, but in the end, the concept finds its way to the integrative theoretical discourse. Scholars that were concerned with the final product of European integration searched for desirable forms of collective political identity on supranational level. Theorists abandoned ethnic models of identity for a very short period of time⁴, and the debate turned towards normative ontological forms, such as constitutional patriotism⁵, post material citizenship, multiple identities, utilitarian and civic identity, post nationalism and supranationalism or cosmopolitan communitarianism⁶.

Many of these theories on European identity were not able to enclose the complexity of the process of creating collectivity and its conditions and restrictions. What this discussion is missing is taking more care of the practical feasibility and necessity of European politics of identity. In this context, the key issue is whether the European collective identity should be seen as a missing relationship in the successful, stable and democratic European Union.

¹ Traiandafyllidou, A. and Spohn, W. 2003: *Introduction in Europeanisation*, National Identities and Migration, eds. Willfried Spohn and Anna Traiandafyllidou, London, Routledge: 8.

² Giesen, B. 2003: *The Collective Identity of Europe: Constitutional Practice or Community of Memory?*, Europeanisation, National Identities and Migration, eds. Willfried Spohn and Anna Traiandafyllidou, London, Routledge, 21.

³ For more details: Ahrweiler, H. 1993: *Roots and Trends in European Culture*, S. Garcia (ed) European Identity and the Search for Legitimacy, Pinter, London.

⁴ Kostakopoulou, D.: *On European Identity*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2117157, approached on 28.3.2015

⁵ Habermas, J. 2001: *The Postnational Constellation- Political Essey*, The MIT Press, Cambridge, Massashusets.

⁶ Castiglione, D. 2009: *Political identity in a community of strangers*, European identity, Jeffrey T. Checkel and Peter J. Katzenstein, Cambridge University press, New York: 40.

The creation of the European identity is a process that has been developed through many stages in the history of the European Union. Its development will be analyzed through the creation of the European citizenship, due to the fact that specific identity symbols, are not present in the Treaty of Lisbon.

The adoption of the Declaration on European identity by the European Council in Copenhagen in 1973, is considered as first major step in building the European identity, but this document gives priority to issues such as external relations of the Community instead of defining and taking certain steps towards creation and promotion of European identity. An attempt for correction of this negligence was made at the European Council meeting held in 1984, where the Declaration on the need to strengthen the European identity was adopted. This meeting resulted with the establishment of an ad hoc committee, known as Adonnino Committee, with specific tasks to achieve the objectives of Declaration. Despite the numerous novelties introduced by the Adonnino Committee, the most significant are promotion of the flag and anthem as symbols of the Union and joint declaration on Europe Day, May 9th. In fact, Eurobarometer considers the European flag as a symbol of the European identity according to the survey in 2012, when 83% responded positively regarding this issue, and 53% said that they identify themselves with the European flag.

If we consider that the European identity is based on symbols of the Union, today we can conclude that the Lisbon Treaty does not express any of the identity symbols such as flag, anthem, Europe Day etc. The European identity was not created according to the national model of identity, based on traditional symbols. The European identity after the Treaty of Lisbon received different shape and was mainly articulated through the concept of citizenship of the European Union, a concept that took central position in the EU law.

III. Citizenship of the European Union – legal aspects

The origins of the creation of the European citizenship could be found in the first Founding Treaty of the European Union. Although the concept of the European citizenship has not been mentioned at that time, two important events contributed for the development of the term "European citizens".

Here, we refer to the EEC Treaty provisions concerning free movement of workers (Art. 48 and 51 EC Treaty) and the laws that were adopted in accordance with this Treaty. Thus, acts were brought, concerning the free movement of workers and their families,

including measures for coordination of national legislation, which will ensure the free movement of workers and their families. Based on these provisions, the European Court of Justice has developed a broad jurisprudence. For example, it has developed the “concept of the worker”, and it applies to those who work part-time, those whose income is less than the established national minimum, and those in training.

In this regard, we can notice that the Court of Justice has strengthened the protection of rights of the workers and their families, and at the same time it has increased the level of information on the protected rights for the citizens of the European Union. However, what is considered to be the cornerstone for creating awareness of the existence of European citizens, is the decision of the Court of Justice in the landmark case of *Van Gend en Loos*. This case was raised by the Dutch postal and a transportation company that imported certain products from West Germany to the Netherlands. The Dutch custom authorities charged the company a tariff on the import. Van Gend en Loos complained before the European Court of Justice, that the tariff was against the EC law. Besides the fact that this case shows how the European Court of Justice has created the doctrine of direct effect by jurisprudence which was not previously mentioned in the Treaty, it created another precedent for all European citizens and companies to appeal to the Court in case of economic discrimination by national authorities by stating "all European citizens and companies can appeal to the Court in the case of economic discrimination by national authorities."⁷

Furthermore, the European Court of Justice, based on the provisions concerning the right of non-discrimination (Article 7 of the EC Treaty), has expanded its competence in order to provide protection of nationals of one Member State of the Union when they are visiting or residing in another Member State. In this context, there are two landmark cases *Cowan*⁸ and *Grawier*⁹. In the first case, the Court has ruled that a British visitor who was robbed in the metro in Paris, possess the same rights as French nationals and may require compensation from the compensation fund for crime. In the latter case, the Court ruled that a citizen of France, who resides in Belgium, has the same rights of access to higher education as nationals of Belgium. In this case, the Court decided on the basis of non-discrimination law and ruled that the student should not pay scholarship fee, due to the fact that the fee is not requested from the Belgian citizens.

⁷ Case C-26/62, *Van Gend and Loss against the Duch Tax Administration*, (1963), ECR 1.

⁸ Case C-186/87 *Cowan v. Le tresor public* (1989) ECR 195.

⁹ Case 293/83 *Grawier v. City of Liege* (1985) ECR 593.

Based on the above, there are authors who claim that "citizenship" existed before its introduction in the Maastricht Treaty, and because it was based on the provisions on free movement, it may also be defined as "market citizenship". Before the "Europe of the citizens" concept was introduced, the Union was criticized for existing distance between the citizens and the political decision-making institutions. The European Union was even more challenged on democratization by the new member states and its "new citizens". The concept of "European citizenship" was officially introduced by the Maastricht Treaty, adopted in 1992.

The transformation of the political concept of citizenship of the European Union into a legal one was made with the Treaty of Maastricht. But the process of its creation includes many different stages.

In fact, the roots of the political concept of the special rights for the citizens were part of the debate on the Summit, held in Paris in 1974, and were part of the Report¹⁰ prepared in 1984 by the Adonnino Committee for the "people" of Europe. The Report states that the European Council considered that it is important for the Community to meet the expectations of the peoples of Europe by adopting measures to strengthen and promote the identity and its performance before the citizens and the rest of the world. For this purpose, an ad hoc committee was planned to be constituted, that would include heads of states and governments of the Member States of the European Union. In addition, this report includes and approval of the European Council to the Union to issue a European passport. The ad hoc committee was determined to examine the need for the creation of Community symbols such as the flag and anthem, the establishing of European sports team, streamlining the border-crossing procedures and the creation of the Euro.¹¹ The citizenship was settled on the agenda of the intergovernmental conference which took place in 1990 and 1991, as a result of the memorandum proposed by Spain, as an actor that promoted implementation of "special rights" for the citizens of the Member States.

The only condition for acquisition of the EU citizenship, is a national citizenship of a Member State of the Union and it remains in the exclusive competence of the Member

¹⁰ Bulletin of the European Communities Supplement 7/85
http://aei.pitt.edu/992/1/andonnino_report_peoples_europe.pdf, approached on 17.2.2015.

¹¹ Ibid.

States.¹² The rights that derive from the citizenship of the European Union provided by the Maastricht Treaty are the following:

1. The right of residence and free movement of all citizens of the Union.¹³
2. The right for citizens of Member States to elect and be elected on local or European elections, when staying in another Member State to have the same terms as national citizens of that Member State.¹⁴
3. Right to diplomatic and consular protection for European citizens when they are on the territory of a third country which is not a Member State of the Union, in the embassy or consulate of the Member State of the Union.¹⁵
4. Right for the European citizens on petition to the European Parliament and to the European ombudsman and right to write on their own language complaints to the institutions of the Union.¹⁶

It is important to be stressed out that Article 17 paragraph 2 of the Maastricht Treaty stipulates that "citizens of the Union shall enjoy the rights provided in this Treaty and shall be bound by obligations arising from it".¹⁷ This right is linked to the right to non-discrimination, which is also provided in this Treaty.¹⁸

Article 22 of the Treaty guarantees the further development of the right to citizenship of the Union. Namely, in this article is provided for the Commission to submit periodic reports to the European Parliament on European citizenship and introduce a shortened procedure for submitting amendments to the Treaty relating to European citizenship on the proposal of the European Commission and after consulting the European Parliament. These changes still need to be ratified in all member states in accordance with their constitutions.

The introduction of citizenship of the Union was followed by different and divided reactions in public. Some opinions were supportive and considered the European citizenship as a contribution towards closer political integration of the EU, while there

¹² C-369/90, Mario Vicente Micheletti and Others and Delegación del Gobierno en Cantabria, <http://curia.europa.eu/juris/showPdf.jsf?text=&docid=97581&pageIndex=0&doclang=EN&mode=lst&dir=&oc c=first&part=1&cid=239851>, approached on 19.2.2015.

¹³ Article 18 of Maastricht Treaty, <http://www.eurotreaties.com/maastrichtec.pdf>, approached on 19.2.2015.

¹⁴ Article 19 of Maastricht Treaty, <http://www.eurotreaties.com/maastrichtec.pdf>, approached on 19.2.2015.

¹⁵ Article 20 of Maastricht Treaty, <http://www.eurotreaties.com/maastrichtec.pdf>, approached on 19.2.2015.

¹⁶ Article 21 of Maastricht Treaty, <http://www.eurotreaties.com/maastrichtec.pdf>, approached on 19.2.2015.

¹⁷ Article 17 of Maastricht Treaty, <http://www.eurotreaties.com/maastrichtec.pdf>, approached on 19.2.2015.

¹⁸ Article 12 of Maastricht Treaty, <http://www.eurotreaties.com/maastrichtec.pdf>, approached on 19.2.2015.

were others who denied that any achievement has been accomplished with the Maastricht Treaty provisions, claiming that the citizenship of the European Union did not bring up anything new and that the rights introduced within the Treaty were already regulated with the *acquis*.

Today, the citizenship of the European Union is regulated with the Treaty of Lisbon. Article 9 of the Lisbon Treaty states that “In all its activities, the Union shall observe the principle of equality of its citizens, who shall receive equal attention from the institutions, bodies, offices and agencies. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional and not replace national citizenship.”¹⁹

The Treaty of Lisbon provides protection of the rights, freedoms and principles by introducing the Charter of Fundamental Rights. The Lisbon Treaty does not include the Charter of Fundamental Rights as integral part of the Treaties. Instead, it declares that the Charter “shall have the same legal value as the Treaties” and that “the Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights” (Article 6 TEU). The European Court of Justice is in charge of the Charter’s application, and by that it has exclusive competence over the rights and freedoms protection in the European Union. Besides that, the European Agency for Fundamental Rights (founded in Vienna in 2007) provides professional support to EU institutions and Member States with independent, evidence-based advice on fundamental rights, aiming towards ensuring full respect for fundamental rights across the EU. The European Union is a community of values, as it is stated in article 2 of the Treaty of Lisbon: “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities”. These values, according to some authors represent the content of European identity.²⁰

However, many European citizens today are not fully aware of their rights and freedoms that derive from the EU citizenship. Therefore, the European Commission once a year publishes a Report on citizenship of the European Union and its deriving rights. For that purpose Eurobarometer surveys are used as an indicator for the level of acknowledgement of the political rights among the European citizens. The table below

¹⁹Article 9 of Lisbon Treaty, (2010/C 83/01)EN 30.3.2010 Official Journal of the European Union C 83/1, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012M/TXT&from=EN>, approached on 5.3.2015.

²⁰ Laszlo, M. and Versteegh, C. 2010: *European Citizenship as a New Concept for European Identity*, Acta Universitatis Sapientiae European and Regional Studies, vol.1, no.2:161-169, <http://www.acta.sapientia.ro/acta-euro/C1-2/eur12-2.pdf>, approached on 17.3.2015.

presents a comparative overview of surveys, conducted in 2007 and 2010, where the European citizens were asked if they are familiar with the political rights they pose that derive from EU citizenship and what measures they deem necessary to take to increase voters to vote in the upcoming elections to the European Parliament.²¹

Table 1. Awareness of electoral rights that a citizen of the EU has, 2007-2010

	11/2007	3/2010
A citizen of the European Union from another Member State living in a country, has the right to vote or to stand as a candidate in municipal elections here	Yes – 37% No – 50% Don't know– 13%	Yes – 69% No – 26% Don't know– 5%
A citizen of the European Union from another Member state living in a country, has the right to vote or to stand as a candidate in European Parliament elections here	Yes – 54% No – 29% Don't know– 17%	Yes – 67% No – 24% Don't know– 9%
A citizen of the European Union from another Member state living in a country, has the right to vote or to stand as a candidate in national Parliaments here	Yes – 26% No– 60% Don't know– 14%	Yes – 48% No – 43% Don't know – 9%

We can see that in 2007, prior to the elections, Eurobarometer found little awareness that non-nationals provided that they are EU citizens- may vote in a member

²¹<http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/Survey/getSurveyDetail/yearFrom/1973/yearTo/2010/search/electoral/surveyKy/817> approached on 28.4.2015.

state of which they are not nationals. Only 37% could correctly identify that such persons are entitled to vote in municipal elections and 54% knew that electoral rights are also provided for EU elections. On the other hand, 60% were aware that such rights are not provided when it comes to national elections. The landscape has changed completely for 2010 when the overwhelming majority (69%) were aware that non-national EU citizens may vote in municipal elections and 67% also correctly identify that electoral rights are provided in European Elections. While awareness has increased, it is not necessarily precise. The proportion of those who believe that EU citizens resident in another member state are also entitled to vote in national elections has increased, too.

IV. The EU Citizenship v. National Citizenship

There are many scholars who claim that the citizenship of the European Union looks like decorative and symbolic institute that brought very little novelties among the previously existing rights of free movement and residence of the European citizens. It is a fact that EU citizenship includes different groups of rights such as political rights (active and passive suffrage for local elections and for the European Parliament in the Member State of residence; right on petition to the European Parliament and to the European ombudsman; language rights; right on accessing European government documents, non-discrimination rights); rights of free movement (right to free movement and residence, freedom of movement to work); rights to diplomatic and consular protection for the European citizens in a non-EU country (any EU citizen in a non-EU country where his/her own national state has no representation is entitled to protection by the diplomatic or consular authorities of any other EU state).

Considering the provisions on EU citizenship in the Treaty of Lisbon, it is easy to recognize that they do not include any specific duties for the European citizens, which is a fact that goes in favor of the claim that the concept of European citizenship does not implement any novelties. In addition, the modest content of the EU citizenship in comparison with the provisions of national citizenship (which are called triptych of civil, political and social rights and duties) quite legitimately allows us to say that citizenship of the European Union is nothing more than a pale shadow of its national counterpart.

Furthermore, the national citizenship is consisted of civil rights that derive from the historical background of the state, which is different from the EU citizenship that has emerged as a result of the economic integration and economic rights. Besides that, many

theorists have found it necessary to point out the priority of national citizenship, as it would highlight the derivative nature and narrow content of European citizenship. In fact, the EU citizenship is considered as a derivative form of citizenship, dependent on the decision making process of the member states that have the power to define the form and content of citizens' rights and duties.

Despite these facts and circumstances, it is visible that the EU citizenship has grown into an institute that provoked numerous cases and decisions by the European Court of Justice in the recent years and has contributed towards enforcement of the so called Citizens' Directive (Dir. 2004/38). The transformative potential of the EU citizenship or its shift from the margins to the center of focus in the EU, has raised the interest of scholars to examine its characteristics and the increased complexity of the relationship between national citizenship and forms of cosmopolitan citizenship. While the national citizenship is an expression of a strong national identity and horizontal relationships of belonging to the nation that is conceived as a homogeneous or ethnic cultural community (ethnic nation) or as a community with shared values (civic nation), the European citizenship would help create a European people (demos) and identification with the EU.

The significance of the EU citizenship towards creation of European identity has been confirmed in the third report of the European Commission on Citizenship of the Union, where it states that: "this institute is a source of legitimacy for the process of European integration, by reinforcing the participation of citizens, and a fundamental factor in creating a sense of belonging to the European Union between citizens and having a genuine European identity."²² Furthermore, in favor of this statement goes the survey made by Eurobarometer where we can see significant increase of the awareness among the European citizens for their political rights that derive from the European citizenship.

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²² Third Report from the Commission on Citizenship of the Union, Brussels, 07.09.2001 COM(2001) 506 final, http://www.southern-cross-group.org/archives/Overseas%20Voting/2001%20-%202009/European_Commission_Third_Report_EU_Citizenship_7_Sept_2001.pdf, approached on 4.5.2015.

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