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## European citizenship as a unifying factor

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### Abstract

*The attribution of European citizenship has resulted from a process of expanding the field of beneficiaries from the right of free movement and residence in the territory of the Member States. This preceded the process of determining and enriching the status of European citizens, and making it the fundamental status of citizens of the Member States and the basis for a more direct relationship with the European Union. European citizenship presumes, of course, that a citizen of a Member State has a citizenship, but with the acquisition of European citizenship it is subject to subordination to the community domains. In this way, it is more important to claim that the status of a European citizen is destined to become the fundamental status of the citizens of the Member States because of the fact that it provides the position of European citizens to their state even in cases that appear to fall within the competence exclusive of this state. The notion of European citizenship as a legal concept has long been linked to how the European Court of Justice has interpreted the provisions of the Treaties governing freedom of movement and non-discrimination of persons. Also, this evolution is linked to the pretext of this Court to expand the categories of persons protected by community norms, including in these even individuals beyond the traditional groups protected by the Treaties. With the Maastricht Treaty, such a status becomes a legal concept.*

Keywords: *Citizenship, European Union, member states, competences*

### **1. The right to citizenship in the European Union.**

The attribution of European citizenship has come as a result of a process for the expansion for the realm of the beneficiaries of the free movement right and residence in the territory of the Member States. This preceded the process of defining and enriching the status of European

citizens, and making it "the fundamental status" of the citizens of the Member States and the basis for a more direct relationship with the European Union<sup>1</sup>.

European citizenship is added to the national one with autonomous legal and political characteristics. It is based not on the affiliation of the population forming the state, but on the will expressed by the member states to create an ever closer union among their people and to strengthen and protect the rights and interests of its citizens in the political arena. At this point it seems that the purpose of a common citizenship seems instrumental.

Member States have full discretion to mandatory determine for other countries the conditions of granting citizenship, even if these criteria result to be very liberal<sup>2</sup>. In function of these conclusions on the automatic attribution of European citizenship as a result of obtaining the citizenship of one of the Member States, the jurisprudence has recently expressed that it is more problematic in the existence of the limits established by Community or European Union law in relation to with the grant, and especially the revocation of national citizenship.

The European Court of Justice has sanctioned that the criterions that do not respect gender equality and which lead in "imposing" the will of the spouse's citizenship towards the weaker subject<sup>3</sup> are unacceptable in the matter of the attribution of national citizenship. According to the ECJ, Member States in exercising their competences must respect Community law in cases where situations are within the sphere of EU law.

Because of the importance of nationality, it becomes even more, a sector that is included in the competencies of community law. This attitude is interpreted as an important development, because European citizenship is configured not as subsidiary to national citizenship but as a second nationality, with a "autonomous status", and connected with the essential developments of national citizenship.

Thus, European citizenship presupposes, of course, the award of the citizenship of a member state, but which, with the acquisition of European citizenship becomes subject to community norms. In this way, the claim that the status of a European citizen is destined to become a fundamental status of the the Member States citizens becomes even more important, because of the fact that it assres the position of European citizens towards their state even in cases that appear to be within the exclusive competence of the latter.

### *1.1. The right to citizenship in the European Union.*

The legal concept of European citizenship is regulated by the Treaty on the Functioning of the European Union (TFEU). The second part of this Treaty, the non-discrimination and the

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<sup>1</sup> European Court of Justice, Decision C-184/99, Grzelczyk case, dated 20 September 2009, paragraph 39.

<sup>2</sup> European Court of Justice, Decision C-200/02, case Zhu and Chen, dated 19 October 2004.

<sup>3</sup> European Court of Justice, Decision C21 / 74, case Airolo, dated 20 February 1975.

citizenship of the Union, in Articles 20-25 makes the legal regulation of this institution in the structure of the European Union<sup>4</sup>.

The evolution of European citizenship as a legal concept has in fact long been linked to how the European Court of Justice has interpreted the provisions of the Treaties governing freedom of movement and non-discrimination of persons. Also, this evolution is tied to the predisposition of this Court to expand the categories of persons protected by community norms, including in this individuals beyond the traditional groups protected by the Treaties<sup>5</sup>. With the Maastricht Treaty, such a status becomes a legal concept.

The legal basis of this concept is formed by the articles of the Treaty, creating a deviation from the idea that the European Union was a purely economically ethnical entity, which was a characteristic of the initial phase of the EU, where the citizens of the Member States were seen as political actor. However, up to date, Europeans citizens' rights derive from European citizenship as a legal concept and that extend to all citizens of the Member States of the European Union.

Described by the European Court of Justice as destined to become a "fundamental status of the citizens of the member states"<sup>6</sup>, European citizenship is automatically granted to all citizens of the member states, whether they are economically active or not in the community space. This statement should also be seen in the "Declaration on the Citizenship of a Member State"<sup>7</sup>, which is attached to the Treaty of the European Union. The Declaration states that, if the establishing Treaty of the European Community refers to nationals of Member States, the question whether a person is a citizen of a Member State or not will be solved only by reference to the national law of the Member State concerned.

The Declaration also sanctions that Member States may declare, for information, who are persons to be considered as citizens for the achievement of the Community's objectives through a declaration deposited with the EU Presidency and, if necessary, can modify this statement<sup>8</sup>. This means that the circle of EU citizenship which benefits has not been decided by the European Union, but is a result of the various regulations of each Member State and this status can be configured as a non-original, but tractum or deviated legal situation, as it "derive" from national laws<sup>9</sup>.

Article 20 (1) of the Lisbon Treaty sanctioned that European citizenship does not replace national citizenship, but European citizenship is added to the national one. The Lisbon Treaty

<sup>4</sup> Before the entry into force of the Lisbon Treaty, citizenship in the European Union was regulated by Articles 17 to 22 of the Treaty on European Union.

<sup>5</sup> Ibidem, p. 9.

<sup>6</sup> Tizzano A., *Codice dell'Unione Europea*, Cedam, Padova, Fifth Edition, year 2012, p. 133.

<sup>7</sup> Ibidem, p. 133.

<sup>8</sup> Ibidem, p. 133.

<sup>9</sup> Schrauwen A., *European Union citizenship in the Treaty of Lisbon: any change at all*, in "Maastricht Journal of European & Comparative Law", Vol. 15, Nr. 1, Year 2008, p. 59.

replaces the previous expression which defined that the European citizenship was complementary to the national one<sup>10</sup>.

Naturally, everyone might ask whether this change is related only to the denomination or the change is even deeper, touching the core of the law. The specification of the point that European citizenship was complementary to the national citizenship was on the basis of the national will of the member states in order to make it clear that EU citizenship can only add and not remove rights that individuals enjoy due to having national citizenship.

### *1.2. The rights of the European citizens.*

The main rights, formally associated with European citizenship are those rights that are qualified as "transnational". Such rights are acquired or get into action when an individual moves within the territory of the European Union and is resident in a Member State other than the State from where his nationality comes from. These rights, provided by the acts of the European Union, consist of:

- The right to move and stay freely in the territory of any EU Member State, as sanctioned in Article 20 (2a) of the Treaty on European Union and in Article 21 of the Treaty on the Functioning of the European Union.
- The right to vote and to be elected in the elections for the European Parliament as well as in the local elections in each of the member states of the European Union. The right to get involved in the local elections is a right belonging to any European citizen who is resident in one of the Member States and is under the same conditions as every member of that State. This right is sanctioned by Article 20 (2b) of the Treaty on European Union and by Article 22 of the Treaty on the Functioning of the European Union.
- The right of European citizens for protection by diplomatic or consular authorities from any Member State under the same conditions as nationals of that State in the territory of a third country in which an EU Member State is not represented. This right is sanctioned by Article 20 (2c) of the Treaty on European Union and by Article 23 of the Treaty on the Functioning of the European Union.
- The right to petition to the European Parliament, to apply to the European Lawyer to address the European Union institutions and advisory bodies in one of the languages used by the EU Treaties. In addition, European citizens for any claim filed or appealed, have the right to receive a reply in the same language, as used in the application or complaint. This right is sanctioned by Article 20 (2d) of the Treaty on European Union and by Article 24 of the Treaty on the Functioning of the European Union.

<sup>10</sup> Article 20 of the Lisbon Treaty, ex Article 17 TEC.

This list of rights is preceded by the expression "inter alia", thus giving a clear indication that the list remains open. The entry in force of the Lisbon Treaty on 1 December 2009 has strengthened the Union's citizenship status and has enhanced its rights related to it, including the introduction of a new right which is the "European Citizens Initiative", which enables one million citizens from a considerable number of member states to invite the Commission to submit a proposal for any matter of EU competence regarding the implementation of an EU legal act following to the norms of the Treaties. This, a right provided in Article 11 (4) of the Treaty on European Union.

Through the Treaty of Lisbon, citizenship of the European Union is created where every person holding the citizenship of a Member State is a citizen of the Union<sup>11</sup>. Union citizenship is added to national citizenship and does not replace it. The citizens of the Union enjoy the rights and are subject to the obligations provided for in the Treaties. Among others they<sup>12</sup>:

- have the right to move and reside freely within the territory of the Member States;
- have the right to be elected and be elected in elections for the European Parliament and local elections in the Member State where they have their principal place of residence, under the same conditions as applied to nationals of that State;
- have the right to get the protection of the diplomatic and consular authorities of each Member State in the territory of a third country in which the Member State from where they are is not represented, under the same conditions as those applicable to nationals of that State;
- have the right to file requests to the European Parliament, the European Lawyer and the Union institutions and advisory bodies in each of the Treaty languages and receive answers in the same language.

These rights shall be exercised under the conditions and limits lay down by the Treaties and the measures adopted in their implementation.

### 1.3. Gaining and Revocation of the European Citizenship. Loss of European citizen status.

There are two ways to gain European citizenship. Through each of these two ways the European citizenship is obtained automatically. They are:

- being born in a European Union country,
- living in one of these European Union member states.

<sup>11</sup> Article 20 of the Lisbon Treaty, ex Article 17 TEC.

<sup>12</sup> Article 20 of the Lisbon Treaty, ex Article 17 TEC.

In the second case, to acquire European citizenship, it is required that the stay of the persons in the member states be lawful. This residence should be accompanied by a valid residence permit and then the persons go through the naturalization procedures.

Practically, in the community structure in order to acquire European citizenship, it is considered sufficient having the citizenship of a member state of the European Union. By possessing a citizenship of one of the member states European citizenship is automatically acquired including all the rights and obligations that accompany it. For example, to obtain Italian citizenship, perhaps the easiest way is to marry a Italian citizen. This citizen acquires citizenship after the marriage is concluded, over a period of at least two years. The two-year timeframe is mandatory even if a child has been born before the marriage, who automatically acquires Italian citizenship and, consequently, European citizenship as well.

European citizenship belongs to all citizens of the EU Member States, being added to the national one<sup>13</sup> as a second nationality. This, according to the jurisdictional interpretation made by the European Courts of Justice<sup>14</sup>, for the fundamental status of the nationals of the Member States whose significance has been fortified by the Lisbon Treaty.

The European Court of Justice in its judgments has set the parameters on the basis of which it would be assessed whether or not the proportionality principle is observed. Thus, the criteria set are:

- the national judge must take into account the possible consequences of citizenship revocation of the person in question and, if necessary, to his family members in terms of the loss of the rights that any EU citizen possesses;
- The judge must determine whether this loss is justified in relation to the extent of the offense committed by the person, to estimate the time passed since the decision of naturalization and the decision of revocation, and to assess the person's possibility to recover his original nationality.

Indeed, the ECJ has often used the principle of proportionality to assess compliance with the Community law, exemptions and restrictions of citizens' rights set by national laws, particularly with regard to freedom of movement. In the above-discussed judgment, the ECJ sets out the limits of the discretion of States in the individualization and application of criteria for the granting and removal of national citizenship. The decision of the ECJ on this subject is very important for its content, but also for the fact that this sector is clearly included in the state sovereignty recognized by the EU Treaty. In this way, the Court emphasizes the central position of EU law as well as the fundamental importance for any citizen of a Member State of European Citizenship status and the rights it gives to a growing democratization and integration into the European Union based on values and common objectives.

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<sup>13</sup> Article 9 of the Treaty on European Union.

<sup>14</sup> Article 9 of the Treaty on European Union.

However, the standardization of the common minimal norms from the European Union still seems distant, in order to clearly identify the limits of state power regarding to the removal of citizenship, at least in relation to the need of respecting the fundamental rights of the citizen.

#### *1.4. Contribution of European citizenship to national citizenship.*

The relationship between European citizenship and national citizenship shows the consequences of the changes that have taken place in recent decades, which have redefined the modern notion of citizenship. The intensification of migration processes and the gradual emergence of multicultural societies, increased levels of the typical mobility in a globalized world<sup>15</sup>, the inequalities that result in a certain way of understanding globalization in terms of rights, the rebirth of a global scale cosmopolitanism<sup>16</sup>, the crisis of welfare systems in industrialized countries, new forms of participation and active citizenship<sup>17</sup>, are just some of the factors that have revived the debate over citizenship<sup>18</sup>.

The contribution that the creation of European citizenship has made to debate is the subject of multiple debates. There is debate over the fact that European citizenship is increasingly seen shifting from a connection related to national citizenship and the aspiration to present European citizenship as the most advanced form of the globalization era, in a cosmopolitan order on a local scale.

In fact, beyond the utopian projects of those who saw Europe as the future of cosmopolitanism<sup>19</sup>, European citizenship is in fact an integral part of the process that is called a division of citizenship<sup>20</sup>. The EU has been among the contradictory tendencies that push community institutions to bring about globalist legal norms for those within the community, while encouraging them to act with unlimited sovereignty over those outside the community<sup>21</sup>.

The controversies found in the statute of European citizenship emerge if we see the difficulties that European institutions have towards the respect of the so-called third-country nationals, ie permanently employed workers in an EU country, which are likely to become long-term residents. These people enjoy civil and social rights, but are usually excluded from political rights. These are people who live in a "border" condition that puts them in some aspects equal to the citizens of the member states, but for the rest they continue to be considered foreigners<sup>22</sup>.

<sup>15</sup>Sassen S., *Territory, authority, rights: from medieval to global assemblages*, Princeton University Press, Princeton, First Edition, Year 2006, p. 230.

<sup>16</sup> *Ibidem*, p. 230.

<sup>17</sup> *Ibidem*, p. 230.

<sup>18</sup> *Ibidem*, p. 230.

<sup>19</sup> Sassen S., *Territory, authority, rights: from medieval to global assemblages*, Princeton University Press, Princeton, First Edition, 2006, p. 230.

<sup>20</sup> Marshall H. T., *Cittadinanza e classe sociale*, Torino. Year 2002, p. 24.

<sup>21</sup> *Ibidem*, p. 24.

<sup>22</sup> Sassen S., *Territory, authority, rights: from medieval to global assemblages*, Princeton University Press, Princeton, First Edition, 2006, p. 231.

For this category, literature is used the notion of denizenship<sup>23</sup>, as a condition of who is at the border. This notion has its roots in a process based in common law in England, and indicates the persons who are between citizens and non citizens of a temporary or permanent form.

The concept of denizenship is in fact a hybrid, an intermediate step towards full citizenship and as a permanent condition in order to preserve privileged status for nationals of member states. The notion of denizenship in practice has been overcome with the idea of one: 'transnational membership'<sup>24</sup> or a 'postnational membership'. The characteristics of global migration processes and the high levels of integration between individuals belonging to different societies, whether physical or virtual from media and internet, produces porous boundaries<sup>25</sup> to the society within which a growing number of people develop a sense of affiliation and identification with different countries.

Thus, the power of the jurisdiction of national states contradicts this system of multiple transnational affiliations, which is translated into a number of different models ranging from national citizenship in the traditional meaning to the dual citizenship variant.

At this point the European citizenship retrieves the dimension of sociology of citizenship by representing "the full right to be a member of a community"<sup>26</sup>, where right is not seen simply as a legal category but as an opportunity and capacity to act.

From a sociological point of view, citizenship is defined as a condition for full participation in the life of a community, which takes a sense of identity with extensions such as the European one or the name of any state.

The Statute of European Citizenship confirms the fact that the European Union presents itself as an attractive institutional and political experimentation laboratory, never setting its limits<sup>27</sup>. In its non-linear movement, between opening and closure, the contradictions of the integration process are also noted, drawing attention to a social and political Europe with uncertain boundaries. On the other hand, it is certainly shortsighted to eradicate the economic, political and institutional connections from the context of values even with the cost of losing parts on the long road to a united Europe.

It can not be seen as a necessity, but it needs to take further strength to become an original process to become a lab of a new nationality<sup>28</sup>. Perhaps the notion of European citizenship needs to be re-imagined, as some of the reasons that led to the EU's founding have lost over the

<sup>23</sup> Ibidem, p.230

<sup>24</sup> Baubock R., Who are the citizens of Europe? [www.eurozine.com](http://www.eurozine.com).

<sup>25</sup> Sassen S., Territory, authority, rights: from medieval to global assemblages, Princeton University Press, Princeton, First Edition, 2006, p. 232.

<sup>26</sup> Marshall H. T., Cittadinanza e classe sociale, Torino 2002, p. 24.

<sup>27</sup> Moccia F., Il 'sistema' della cittadinanza europea: un mosaico in continua evoluzione, publikuar në Reistën shkencore Diritti Fondamentali e Cittadinanza dell'Unione Europea, Milano 2011, p. 25.

<sup>28</sup> Triggiani D., Le nuove frontiere della cittadinanza europea, Polity Press, London, Year 2013. p. 28.



years the importance they have had in its formation, being replaced by others that make it more open in the context of international changes<sup>29</sup>.

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<sup>29</sup> Kostakopoulou, Invisible citizens? Long-term resident third country nationals in the EU and their struggle for recognition, Citizenship and governance in the European Union, Continuum Studies, London, Year 2006.