

European Citizenship at the Time of Crisis

Zlat Milovanovic

Abstract

*The Charter of Fundamental Rights of the European Union states that the European Union (E.U). "places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice... To this end, it is necessary to strengthen the protection of fundamental rights..." The Charter, together with the Treaty of Lisbon is today a part of the *acquis communautaire*. On the other hand, the economic, financial and political crisis threatens not only the Euro but also the very existence of the E.U. The crisis of the common currency has brought itself to the center of the E.U. attention, while the individual, the citizen of the E.U. remains more or less on the periphery.*

*This paper is about citizenship, its importance and its future. The Euro has to be saved, definitely, but E.U. citizenship as well. There are several building blocks of citizenship, on national, regional and international level. They are: legal in their character, either as a part of international or constitutional law or – European, they are also psychological, i.e. linked to personal or national identity, social, cultural, philosophical... To be able to protect the citizens, E.U. citizenship has to be protected and, expanded in the future. It should become a real citizenship within a new, federal context. The question is: how can the E.U. or another form of integration become a model for the world, a model attractive globally? What answer is to be given to the American challenge or the challenge of other major powers? An interdisciplinary methodology is used here, first of all in the domain of *de lege lata et de lege ferenda*. The new needs will require new solutions and projection to the future remains a part of futurology.*

Keywords: Human rights, fundamental freedoms, European citizenship, nationality, dual nationality, ethnic groups, change of identity, European integration, American challenge

The Charter of Fundamental Rights of the European Union states that the European Union (E.U.) “places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice... To this end, it is necessary to strengthen the protection of fundamental right...” (Charter of Fundamental Rights of the E.U., 2007). On the other hand, the present economic, financial and political crisis threatens not only the Euro but also the very existence of the E.U. as we know it. This crisis has brought itself to the center of the world’s attention; while the individual, the citizen of the E.U. remains more or less on its periphery - which was not the original idea of the E.U. member states. If the E.U. is ever dissolved, as some eurosceptics stand for, would E.U. citizenship also disappear? If a member state, with or without consulting its own citizens, decides to leave the E.U., would that mean that its citizens would also cease to be European citizens? The Euro can be replaced by a national “denarius” but no matter the name, citizens of the country leaving the E.U. would all lose their acquired rights.

The Question of Citizenship

The Treaty on the European Union, signed on February 7, 1992 – did establish among other things European citizenship (TEU).

According to Art. 20:

Para.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 be additional and not replace national citizenship.

Para. 2- Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have, inter alia:

a) the right to move and reside freely within the territory of the member-states;

b) the right to vote and stand as candidate in elections to the European Parliament and in municipal elections in their member-state of residence, under the same conditions as nationals of the state;

c) the right to enjoy, in the territory of a third country in which the member-state of which they are nationals is not represented, the protection of

the diplomatic and consular authorities of any member-state on the same conditions as the nationals of that state;

d) the right to petition the European Parliament, to apply to the European Ombudsman and to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language.

These rights shall be exercised in accordance with the conditions and limits defined by the Treaties and by the means adopted thereunder. (TEU, 1992).

* * *

The term nationals / nationality is used in this article: It amounts to the same concept as that of citizenship. The first is a concept of international law, the second of constitutional (i.e. municipal law). Citizenship is a link between a citizen and his/her state, while nationality also implies a link between a person and his/her nation (Skaric, 2004). Vojin Dimitrijevic, in his piece on ethno-nationalism, divides national constitutions into two groups: those that are based on "demos" (i.e. the totality of citizens irrespective of their origin), and those based on "ethnos" (i.e. the ethnic origin of a majority of citizens). (Dimitrijevic, 2012; Hudson & Bowman. 2012) Looking back at the Treaty of Maastricht, there is primary and secondary citizenship, the second one is based on "demos" while the first could be defined either way, depending on the nation's constitution.

One should remember here that Aristotle envisioned the best state as the one in which all citizens have the same rights, the same education, the same capacity (ethical, political, cultural and rational) and the same goal: a good life! In Aristotle's "politeía ariste", every citizen would know how to govern and how to be governed. Ultimately, all the highest positions would be accessible to every citizen (Djuric, 1997).

The ideal state, however, has never been achievable. Present day states have lower expectations. The E.U. may be too big for an ideal state but this does not preclude the existence of real European citizenship in the interest of European citizens and their "good life" or at least a "better life". Being an additional citizenship, European citizenship may be too dependent on the national "ethnos". It may also be considered "pseudo-citizenship" – for instance by Jean Marc Favret – as E.U. citizens do not have the constitutive power i.e. "le pouvoir constituant" (2008). Not being a nation, Europe cannot have full European citizenship under the present conditions. But, if the

concept of “demos” is used, citizenship could become all- inclusive, almost like world citizenship.

The United States, within its federal system is based on “dual citizenship” as a fundamental part of its system (Stephens & Scheb, 1993). In the U.S., two levels of government, federal and state, exercise direct authority simultaneously over persons within their jurisdictions (Ibid.). Many rights, privileges and immunities derive from both federal and state citizenship. This happens in many federations. Why not in a European federation if it is created one day?

As the E.U. grows in different areas, its citizens can acquire new rights. The united citizens and their interests should indeed have precedence over purely economic or monetary considerations. If, for instance, country A decides to leave the E.U., its citizens cannot just be stripped of their European citizenship. Why? There are several reasons.

- a) There is no provision in the Treaties that would allow such a change.
- b) Those citizens of country A who are legally residents in E.U. member states M and N do have the same rights as the citizens of those countries and would be discriminated against if denied the acquired rights;
- c) If the citizens of country A vote in a referendum and reject the government’s policy, they should not be sanctioned by other states;
- d) It is impossible to think of long term economic integration without political integration (Schuman, 2009);
- e) The system of human rights and fundamental freedoms having been already established, the E.U. values of respect for human dignity, democracy, solidarity etc. are there to protect the European citizens;
- f) The European Court of Justice ruled in the case of Van Gend en Loos that the Community constituted a new legal order, the subjects of which consisted not only of states but of their nationals. (ECJ, 1963).

European law protects citizens too, in a great number of cases.

European Identity

European citizenship is a legal category and at the same time, an expression of European identity. The identity may be defined as the quality of being the same as others within a group, small or large and remaining the same. It is a sense of self, providing sameness and continuing one’s

personality over time. Nations also have their identity as communities of generations, past, present and future. For some authors, national identities may have developed recently and are not permanent (Thiesse, 1999).

The European identity is obviously older than European citizenship. Already Philip II of Macedonia was considered the greatest European of his time. Dante Alighieri in his work "De Monarchia" spoke of European culture and the need to create a European unified state. J.J. Rousseau wrote that "We have no more Frenchmen, Englishmen, Germans or Spaniards, we are all Europeans!" The Roman Empire was the first to unify all of known Europe of that time. The *Constitutio Antoniana de Civitate* enacted by Emperor Caracala in 212 AD, made all free men of the Empire Roman Citizens, from Iraq to England and from North Africa to Northern Europe. A common currency was already used in the whole Empire and beyond.

The empires, states, identities and the concepts of nationality, have changed many times and are likely to keep changing. Identities can develop before a corresponding citizenship, or after that citizenship or instead of citizenship. As an example, a German nation existed before the unification of the twenty-four sovereign states. Today, there is no citizenship of the Duchy of Oldenburg, for instance, but the Oldenburgers' identity remains in part of the population. The idea of a united Yugoslavia goes back to Napoleon's time and its strong identity resulted in a common state. That state has disappeared but the identity has not as there are yet Yugoslavs and in addition, that is a common name of the Southern Slavs (Dodovski, 2011).

There are only about twenty-six surviving Livonians in Europe, yet they have their own identity. What about Mandeans, an Iraqi minority of about 50,000, with their language and gnostic religion (recognized since at least the 4th century AD); thrown out of Iraq by militants' violence and accepted in Sweden as refugees? The Livonians are disappearing old Europeans and the Mandeans are present and prospective new Europeans, potentially new European citizens.

In a recent interview, Umberto Eco said that European identity, in 2012, was widespread but shallow (in Italian "superficiale"). It is culture, he said, not war that cements our (European) identity. The United States needed a civil war while culture and a common market will do it for us (Eco, 2012). Europeans should spend more time with other Europeans, all over Europe. Exchanges of professors and students are wonderful, of lawyers, architects, etc. but there is still lacking an exchange of taxi drivers, workers, artisans, etc.

On one hand, there is European literature, education and film, the Eurovision song contest, European sports' championships, European Railway Systems, and European organizations including IGO's and NGO's. There is the Theatre de l'Europe in Paris.

Not only do the French, Germans, Swedes, and Hungarians feel European, but also many Turks, Icelanders, Americans, and Russians. And of course, the Macedonians! The question of feelings is personal and cannot be imposed by laws. Many citizens of the Commonwealth feel European too, and others such as Francophones, Iberophones, Lusophones from all around the world. According to Eurobarometer (in 1999), European citizens (over the age of fifteen) feeling attached to Europe (very or fairly) was 78% for Luxemburgers, 71% for Swedes and Danes, on the top of the list, with 49% for Dutch, 41% for Greeks, 37% for English, among the last on the list. As for European versus national identities, the highest scores were reached by Luxemburgers, 49%; Italians 45% and Spaniards 32%. Here, the British go with -37%, the Portuguese with -22% and Finns with -19% (European Commission, 2001).

In 2006, in Macedonia, answering the question of how important is the integration of Macedonia into the E.U., 86% answered: important or very important, with 11% opposing it. At the same time, 87.8% said that in a referendum for the entry of Macedonia into the E.U. they would vote YES! While 5.2% were opposed (Government of Macedonia Secretariat for European Affairs, 2008).

For a large part of Europeans and world citizens, the European identity is quite real. For many, it is not, and the question arises on how to strengthen individual national identities. In many parts of Europe, nationalism is on the rise too. "The recent upsurge of nationalism in Europe reflects above all a failure of politics and difficulty of forging new collective identity based on a genuine political project" (Thiesse, 1999).

Looking Ahead

European citizenship is now confronted by crisis - as is the E.U. itself and in a wider European architecture. The future, we assume, is in an innovative and inclusive Europe, as the title of this Conference suggests. Whatever the solutions to the crisis are worked out to be, emphasis should be on individuals, citizens, people. As we have seen earlier, European law and

the existing European identity are clearly opposed to the abolition of European citizenship, for one country, for a few or for all. There are, however, no clues on how to stay on the right path, i.e. on the path of European integration as defined by the founding fathers of Europe.

*The first change needed is to make European citizenship primary or full citizenship. Present "additional" citizenship should become a citizenship *proprio sensu*.

*The link with nationality will remain but as citizenship of federal units within a European federation. To be European will eventually mean to belong to a state.

*European identity, irrespective of nationality, will entitle individuals to acquire European citizenship directly. Those who chose to be citizens – even when and if their countries withdraw from the E.U. will be able to remain European citizens. It is a matter of choice and an innovative approach.

*This should apply to the citizens of candidate countries, and also of non candidate countries. In these cases, European institutions with an expanded federal authority, will make individuals or groups of people European citizens by their decisions (the European Parliament, for instance). Federal authorities in the U.S., Brazil, Argentina, Switzerland, Austria etc. already make such decisions. The conditions are to be worked out.

*Citizens of any country will be able to apply and obtain European citizenship based on their links with Europe, material and spiritual. *Ius soli* and *Ius sanguinis* will be relevant, as well as knowledge of Europe, of European languages and of European values. Those working for their countries and Europe will also qualify, those contributing to mutual understanding, peace and progress.

*Europe will act as a protector of minorities, ethnic, religious, racial, cultural and others. The descendants of Francois I, Maria Theresa and Catherine the Great will protect the Christian minorities and at the same time the Muslim, Jewish, Hindi, Buddhist and all other minorities world over. Europe will be an area of accepting refugees and asylum seekers.

*Europe can grow by more states joining in the areas of Euro-Atlantic, Euro-Asia and Euro-Africa, and also with citizens of those areas coming to Europe and opting for Europe. Those belonging to other European configurations can also become European citizens.

*A democratic model of any state or organization is based on the concept of government of the people, by the people and for the people. To

paraphrase Aristotle, if Europeans can learn to live in peace with each other (without wars and conflicts), they will become the center of the world.

*The protection of human rights and fundamental freedoms is already a proclaimed goal of the E.U., of the Council of Europe and of the U.N. The goals to be found in their basic documents, and are the long term commitment of the European and the International community. For instance, the goals proclaimed by the E.U. Charter in 2007 could not possibly be declared void in a ten year period.

*Europe, as suggested here, is to become a universal Europe, the most successful model of international integration at the level of states and citizens. The E.U area of freedom, security and justice will also become an area of: tolerance, solidarity, non-discrimination, human dignity, social rights, minority rights etc. As such, Europe is also to become a world unifying factor, unique and distinctive in all its aspects.

The American Challenge

Back in 1967, Jean-Jacques Servan Schreiber (JJSS), a French journalist, politician, university teacher, and fighter-pilot, published a book called "The American Challenge" (JJSS, 1967), which received tremendous publicity on both sides of the Atlantic. The author pointed out American leadership in management techniques, technology and research capacity, challenging Europeans to become more modern and more competitive. About fifty percent of U.S. high school graduates went on to universities whereas about ten percent of Europeans (of that period) did so. In forty-five years, the gap has diminished greatly, in part due to the efforts of the E.U. and, of course, of national governments of many nations.

Yet, U.S. population has increased by more than 100 million, i.e. from 198 to 313 million, while Europe grew from 450 to about 505 million. The U.S. called "the first new nation" has attracted a large number of Europeans from Europe or people of European extraction in countries in Latin America and other parts of the world. Most Europeans, no matter how divided they may be in Europe, become tolerant Americans in the U.S., demonstrating their capacity to live in peace with each other. That is probably the largest challenge today which is likely to continue as a challenge unless Europeans develop a new approach, e.g. by building the European federation and the European identity.

The other important challenge is the fact that U.S. Government and society recognize and readily accept foreign students, professors, researchers, scientists and professionals of all kinds. In general, European actors, artists and sportsmen integrate relatively easily into American society; but also workers, artisans, taxi drivers, shepherds, barbers, etc. Workers of all possible: nationalities, creeds, races, genders, ages, origins, languages, sexual orientations, etc should be welcome in Europe too. American values are the same, or very close, to those proclaimed in the E.U. Charter.

The U.S. can go a little further. The U.S. Constitution in its Amendment XIV, proposed in 1868, contains the norm of "equal protection of the laws". It reads: "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are the citizens of the U.S. and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."(U.S. Constitution, Amend. XIV, Section 1).

I would like to draw the reader's attention here to a case decided by the Supreme Court, *In Re Griffiths* (1973). In this case, *Fre Le Poole Griffiths*, a citizen of the Netherlands, challenged the decision of the Connecticut bar to deny her membership due to her citizenship. Ms. Griffiths came to the U.S. as a visitor in 1965, married a U.S. citizen in 1967 and became a resident of Connecticut. After graduating from Law School in 1970, she applied for permission to take the Connecticut bar examination. The County Bar Association found her qualified in all respects except that she was not a U.S. citizen. She sought judicial relief, asserting that the regulation was unconstitutional, but her claim was rejected. Ultimately, her case made it to the Supreme Court (Fletcher & Sheppard, 2005). The Supreme Court held that the rule unconstitutionally discriminated against resident aliens, under the equal protection clause. Here, the Connecticut State Bar Examination Commission attempted to justify the total exclusion of aliens from the practice of the law. In fact, the Supreme Court ruled in 1873 the admission to the practice of law did not depend on citizenship at all (in *Bradwell v. State*, 16 Wall. 130, 139). Later, the State of Connecticut established the rule which was in question. In the *Yik Wo* case, equal protection was found applicable to a Chinese resident against an ordinance regulating laundries. A resident was found to be a person under the XIVth amendment. The legal history is long.

At some point, even a fishing license was made beyond reach of a person ineligible for citizenship (in California). In *Graham v. Richardson* (1971) the Court concluded that “classifications based on alienage, like those based on nationality or race, are inherently suspect and subject to close judicial scrutiny” (Fletcher & Sheppard, 2005).

“Resident aliens, like citizens, pay taxes, support the economy, serve in the Armed Forces and contribute in myriad other ways to our society” (*McLaughlin v. Florida*, 1964). Without going into more details, it is important to understand that Mrs. Griffiths was allowed to take the exam and become a lawyer. This is where the E.U., the ECJ and other institutions and national governments should see the challenge for the future. Fletcher and Sheppard, comparing the U.S. situation to the European one, point to rather liberal anti-discrimination provisions of both the Council of Europe Convention and the E.U. Charter. They have asked a number of questions: How serious are Europeans about their criteria? Discrimination based on wealth appears to be permissible, they say. Or the rule of obligatory retirement of teachers of certain age, which does not exist in the U.S. (The age is mentioned in the E.U. Charter as a cause for discrimination). Language discrimination is also mentioned as an existing practice in Europe, “la nationalité” as well. The E.U. has introduced the use of Catalan, Galician and Andalusian as languages of communication, which leaves at least some 30 minority languages out, including Russian, for instance. The U.S. does not have a similar linguistic policy. Nationality (as “the ethnos”) remains a criterion in various constitutions of the E.U. countries and may be used for discrimination purposes (Fletcher & Shppard, 2005). Getting back to *In Re Griffith*, one has to admit that it was a bold liberal decision of the Burger court which could be considered almost a revolutionary one in Europe.

Conclusion

The present crisis is developing within the context of growing nationalism within the E.U. and other parts of Europe. The crisis feeds nationalism and nationalism augments the crisis. The world needs a stable and globally oriented Europe in the situation where global problems require common action of all in solving them, as well as stronger international homogeneity and solidarity. To be innovative and inclusive, Europe will have to follow the road so far determined and create a model for the world, not just

for itself. The founding fathers have already called for a United Europe. "To serve mankind is a duty equal to our dedication to our nation" wrote Schuman (2009). Political integration is a condition sine qua non of the economic integration, as witnessed in the summer of 2011 by all of us. Our proposal calls for a new category of European citizens and the engagement of all citizens of Europe in solving European problems and contributing to the solution of global problems of mankind. By bringing the citizens to the center stage, all will progress faster.

References

- Charter of Fundamental Rights of the European Union (2000/C 361/ 01). Proclaimed in Strasbourg on December 12, 2000.
- Dimitrijevic, Vojin. (2012) Constitutional Ethno-nationalism: Revival of the Nation-State, in Hudson, R. and Bowman, G. *After Yugoslavia: Identities and Politics within the Successor States*. Houndsmills, Hampshire: Palgrave Macmillan.
- Djuric, Milos. (1997). *History of the Hellenes' Ethics* (Beograd: Zavod za udzbenike, in Serbo-Croatian, pp. 412-414.
- Dodovski, Ivan. (2011). Pride and Perplexities: Identity Politics in Macedonia in Hudson and Bowman, op.cit. (on cultural identity and cultural refractions)
- Eco, Umberto. (2012). An interview published in *Utrinski Vesnik*. Skopje, February 11&12; in Macedonian.
- European Commission. (2001). *How Europeans See Themselves*. Luxembourg: Office for Official Publications, pp. 10 – 11.
- European Court of Justice, Case 26/62 Van Gend en Loos (1963) ECR 1
- Favret, J.M.. (2008). *L'Essentiel de l'Union Européenne et du Droit Communautaire*. Paris: Gualino, p.20.
- Fletcher, G. P. , & Sheppard, S. (2005). *American Law in a Global Context: The Basics*. New York, NY: Oxford University Press, pp. 203-220.
- Hermann, R. Risse-Kappen, T., Brewer, M. (editors) (2004). *Transnational Identities: Becoming European in the E.U.* Lanham, Boulder etc: Rowman and Littlefield Publishers.
- In Re Griffiths (413 U.S. 717, 1973)
- Lipset, S.M. (1973). *The First new Nation, the United States in Historical and Comparative Perspective*. New York: WW Norton.
- Schuman, R. (2009). *Pour l'Europe*. Skopje: Plus produkcija, in Macedonian. p. 103
- Secretariat for the European Affairs, Government of Macedonia. (2008). *Macedonia in the E.U. The Sun too is a Star*. Skopje: The Secretariat for European Affairs.
- Servan, S. & Jean, J. (1967). *Le Défi Americain*. Paris: Denoël
- Skaric, S. (2004). *Comparative and Macedonian Constitutional law*, Skopje: Matica Makedonska (in Macedonian).
- Stephens, O.H. & Scheb, J.M. (1993). *American Constitutional Law*. St. Paul, MN: West Publishing p. 393 et supra.
- Thiesse, A.M. (1999). Inventing National Identity. *Le Monde Diplomatique- English Edition, Paris, May, 6*.
- Treaty on the European Union (TEU), Maastricht, 1992, Articles 17-22.