



## THE 6TH EDITION OF THE INTERNATIONAL CONFERENCE EUROPEAN INTEGRATION REALITIES AND PERSPECTIVES

### More European with European Citizenship?

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**Abstract:** Being nationals of a Member State, such as Romania, we all are citizens of the European Union. But, is being European citizens important for us? Does it change in any way our regular life? At European level, the usual remark is that “the importance of citizenship of the Union lies in the fact that the citizens of the Union have genuine rights under Community law<sup>1</sup>.” In other words, this is as much as saying that the importance of citizenship lies in its consequences. But the content given to European Citizenship will be absolutely relevant to understand its meaning and though its importance: if rights conferred by citizenship were, for example, insignificant, what would be the added value of being European citizen? So, starting from the article 20.2 of the Consolidated Version of the T.F.U.E. (ex Article 17 TEC) “*Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties*”, we shall focus the presentation on the EU core rights. Our scientific argumentation will follow the next steps: The notion of citizenship; An introduction; Citizenship vs. nationality; Meaning and importance of EU citizenship; From national citizenship to European citizenship; more European with EU citizenship.

**Keywords:** Citizenship; European Citizenship; EU rights; participatory democracy

#### 1. The Notion of Citizenship: An Introduction

“From Aristotle to the Treaty of Lisbon via Roman law, the twelfth-century revival of neo-Roman jurisprudence, the Italian city-states, the self-governing towns of Zeeland and Holland, the Polish *Sejm*, to the slogans of the English and French revolutionaries – in all of these contexts to be a citizen meant being an individual who belongs to a political community of common laws and to share its entitlements and duties equally with others” (Keane, 2008). All people who hold nationality in any of the 27 European Union member states are also European Union citizens. This means that while they are citizens of their home country, with the rights and responsibilities that citizenship involves, they are also citizens of the European Union, with extra rights and duties. This can be a difficult idea to grasp. While it is fairly easy to understand how one is a citizen of a state, how do you define citizenship of an international organization such as the EU? While certain key elements of European Union citizenship are laid out in the European Union treaties, wider questions exist about what it really means for the people of Europe. Can there be such a thing as a European 'identity' - do symbols such as the European flag or anthem actually help people to feel more European? The question of citizenship is particularly sensitive. Most states are jealous of their right to provide for their own nationals. But the idea of a supra-national code of individual rights, binding on all signatory states, is not new. In modern Europe the first step came in 1950 with the Council of Europe's Convention on

<sup>1</sup> Fourth Report on Citizenship of the Union (2001-2004) COM (2004).

Human Rights backed up by the European Court of Human Rights in Strasbourg which gave citizens the right to appeal against rulings made by their own government. At roughly the same period the treaty establishing the European Coal and Steel Community<sup>1</sup> was being negotiated, setting up the supranational institutions with which we are still familiar today in the European Union. Its immediate task was the coordination of an important but limited range of economic activities but its long-term purpose, as stated in the treaty's Preamble was to create "the basis for a broader and deeper community among peoples long divided by bloody conflicts". It outlawed discrimination between nationals of the member states employed in the coal and steel industries and thereby, perhaps unwittingly, took the first step towards a European citizenship.

In the Treaty of Rome these provisions were extended to cover employment in all occupations, including the self-employed, thereby making freedom to work without discrimination on nationality grounds available for all member states' citizens. In addition, the Rome treaty banned discrimination between men and women in the matter of equal pay for equal work. A series of rulings by the Court of Justice subsequently extended this principal to cover retirement age, pensions and equality of treatment in other, work-related respects. In effect, the roots of this embryo European citizenship, though that term was not yet used, lay in the concept of non-discrimination. It was not until the Maastricht Treaty that EU citizenship was formally introduced as a legal concept. All nationals of a member state are also automatically EU citizens who "shall enjoy the rights imposed by this Treaty and shall be subject to the duties imposed thereby"<sup>2</sup>. This is not, we note, a citizenship based on ethnicity but purely on a person's legal status. It gives EU citizens the legal right, subject to enabling legislation, to "move freely and reside in any member state within the territory of the Union". In other words, freedom of movement was no longer confined to economic activities but became a general right to be enjoyed by students, pensioners, and indeed anyone with adequate financial means. They may take employment or run a business, and vote or even stand as a candidate in municipal and European parliamentary elections in the member state where they now live, though not in national elections. When European Union citizenship was first introduced many people feared it was an attempt to replace national citizenship and would undermine their national identity. A later treaty amendment therefore made it clear that ". *Citizenship of the Union shall be additional to and not replace national citizenship*"<sup>3</sup>. Legally, therefore, we enjoy a multi-layered citizenship.

## 2. Citizenship vs. Nationality

The citizenship of the Union does not replace the national citizenship, but a nationality of Member States is entirely a matter for the Member States concerned, as the Declaration on nationality of a Member State appended to the Treaty of Maastricht confirms. It is therefore for each Member State, having due regard to the Community law, to lay down the conditions for acquisition and loss of nationality. The European Union does not have any competencies in that regard. Above, no specific distinction has been made between citizenship and nationality. For theory and history, it is never clear whether "citizenship" and "nationality" are one and the same notion or different notions. Any distinction between the two appears to be a recent phenomenon (Colas, 2004, p. 41). For many theoreticians, the two are "analytically distinct". It identifies nationality with cultural elements and citizenship with political ones (McCrone & Kiely, 2000, pp. 19-34). Yet, "it is difficult to imagine

<sup>1</sup> Treaty of Paris, 1951.

<sup>2</sup> See consolidated Treaty Establishing the European Community [TEC], Articles 17-22.

<sup>3</sup> Article 20.2 TFEU.

modern citizenship divorced from statehood or the “national principle” (Shore, 2004, p. 31). In some constitutional systems, like the French, citizenship is the core element, while in other constitutional systems, like the Dutch constitutional system, only the notion of nationality is present. In the Romanian constitutional system, we talk about “citizenship”. According to the Romanian Constitution “Romania is the common and indivisible homeland of all its citizens, without any discrimination on account of race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property or social origin<sup>1</sup>” and Romanian citizenship can be acquired, retained or lost as provided by the organic law; Romanian citizenship cannot be withdrawn if acquired by birth<sup>2</sup>.

As the text of Article 20 TFEU shows, there is a link between citizenship and nationality from the EU point of view:

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 to and not replace national citizenship”.
2. “Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties”.

There are many explanations for this relationship. “Nationality” is for instance often seen as the international law aspect, while “citizenship” refers to its implications in national law (Legomski, 1994, p. 279 ). It has been noted that [...] it is obvious that “nationality” refers to the formal link between a person and a state, irrespective of how this link is called under national law, whereas “citizenship of the Union” refers to the newly created status in Community law (De Groot, 2003, p.6).

### 3. Meaning and Importance of EU Citizenship

EU citizenship has now been mentioned several times as being different from state citizenship and as a prime example of the changing nature of citizenship. The rights and duties of EU citizens are laid down in the Lisbon Treaty. Art. 9 TEU: “In all its activities, the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its 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 to national citizenship and shall not replace it”. The importance of Union citizenship lies in the fact that the Union citizens have genuine rights under Community law. Article 17 TFEU (Treaty of Lisbon), after renumbering Article 20 TFEU reads as follows:

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 to and not replace national citizenship.
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 to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;

<sup>1</sup> Romanian Constitution, revised in 2003, article 4, *Unity of the people and equality among citizens.*

<sup>2</sup> Romanian Constitution, revised in 2003, article 5, *Citizenship.*

(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 measures adopted thereunder. This is summarized by the Commission as: “By establishing citizenship of the Union, the Union placed the individual at the heart of its activities”<sup>1</sup>. And by the Court of Justice: “Citizenship of the Union is destined to be the fundamental status of nationals of the Member States”<sup>2</sup>. In the Garcia Avello case, the Court of Justice also commented on citizenship: “Citizenship of the Union, established by Article 17 EC, is not, however, intended to extend the scope *ratione materiae* of the Treaty also to internal situations which have no link with Community law (Joined Cases C-64/96 and C-65/96 Uecker and Jacquet [1997] ECR I-3171, paragraph 23)<sup>3</sup>. Still, such a link is easily created. In this case, the system of family names in Spain had to be respected by Belgium in order not to block the possibilities of free movement of workers. In itself the notion of EU citizenship does not confer new rights on the nationals of the Member States. The European Court of Justice is showing the way forward. In the history of the European Union when the European Court of Justice takes the lead, the other Institutions often follow. So it is with European citizenship which the European Court of Justice appears to be consciously creating in a series of landmark judgments combining the articles on free movement with those on equal treatment. The Court, “*has repeatedly emphasized that European Union citizenship is destined to be the fundamental status of nationals in Member States enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality subject to such exemptions as are expressly provided for*”<sup>4</sup>.

The Court has established free movement as a fundamental right that does not need to be justified. Rather it is for the Member State to justify any restriction as reasonable and proportionate. This reversal of the burden of proof puts the citizen on the move in a much stronger position vis-à-vis national administrations. The cases relate to the need to reconcile free movement of people with national policies which Member States are reluctant to see harmonized. These policy areas are often highly sensitive and close to national sovereignty: access to higher education, social benefits, taxation and even the acquisition of nationality itself. The Treaty and the way it is being implemented by the European Court of Justice is also bringing about more recognition of citizens as citizens rather than different categories of the population or professions. In this way, following the lead taken by the Court, EU legislation on free movement and residence – the so-called European citizenship directive (38/2004) – brings together 9 separate legal texts for different categories. Similarly, new legislation on the recognition of professional qualifications brings together 15 previous laws for separate professions. There is often however, a gap between the principles of European citizenship in the case law of the European Court of Justice and the legislative texts, and what happens on the ground where Member States often invoke the exceptions to European Union law rather than its spirit to create obstacles to the practice of European rights. People assume that as a European citizen they can take

<sup>1</sup> Report from the Commission, Fourth Report on Citizenship of the Union (1 May 2001-30 April 2004). Brussels, 26 October 2004, COM (2004) 695 final.

<sup>2</sup> Case C-148/02, Carlos Garcia Avello v État belge, Court of Justice of the European Communities, 2003.

<sup>3</sup> Case C-148/02, Carlos Garcia Avello v État belge, Court of Justice of the European Communities, 2003.

<sup>4</sup> See report of the ECAS conference held on 24 May 2006 and background documents on the ECAS website – [www.ecas-citizens.eu](http://www.ecas-citizens.eu).

their case to the European Court of Justice. The Lisbon Treaty amends article 230 of the present EC Treaty and provides a small opening to the European Court of Justice. A citizen will be able to initiate a proceeding, “*against an act addressed to that person or which is of direct and individual concern to him or her, and against a regulatory act which is of direct concern to him or her and does not entail implementing measures.*”<sup>1</sup> In reality this provision does not go far to improve remedies for citizens since in the field of citizens’ rights legal acts are usually directives and not regulations. It is however a step in the right direction. With the Lisbon Treaty the status of the Charter finally becomes a legally binding document which means that citizens may invoke it before national courts. The rights to good administration, effective remedy and fair trial can help encourage speedier and more efficient extrajudicial and judicial remedies for breaches of European Union laws. Citizens find it hard to understand why it is necessary, to defend their European rights, to have to go first to a national court, rather than directly to the European Court of Justice. There is also confusion between the Luxembourg and Strasbourg courts. It is difficult to explain why a Court which is so much in advance of the legislative process in developing the rights of European citizens interprets the Treaty so restrictively on access. If wider access to the European Court could be established, how to make sure that this does not become counterproductive by opening the floodgates?<sup>2</sup> Where remedies have been exhausted at an administrative level and through a formal complaint to the European Commission, a citizen or group of citizens should have a right to appeal to the European court. In similar circumstances, the European ombudsman could be asked to take up the case on behalf of the individual or group without the costs and risks involved of going to court.

#### **4. From National Citizenship to European Citizenship**

One important question still remains and that is whether European citizenship indicates a development for the notion “citizenship” from national citizenship to something more, something supranational. In the first place, there are very different conceptions and approaches to citizenship often classified as liberal or rights based, communitarian or republican and participatory (Bellamy & Castiglione & Shaw, 2006). In reality, for the individual, citizenship often means all these things. Citizenship has very different national historical roots. In some countries it has been born out of traditions of revolution and protest, in others it has been much more closely related to the formation of the State and the constitutional order. The potential of European citizenship lies in the fact that it can lead us to think about and enrich the meaning of citizenship because it can only be a melting pot of very different national and political approaches. European citizenship has a role in establishing new forms of consensus in a multi-cultural, multi lingual society. Secondly, it is very difficult to have a clear picture of what European citizenship might become because it is in no way comparable to citizenship of a Member State. Since the creation of the modern welfare State, citizenship has become associated with a complete set of rights, duties, and entitlements which remain largely in the national sphere. European citizenship is bound to remain far less extensive and evolve against the background of variable decision making at different geographical levels. The European Union in the monetary area is to some extent a federation because of its single currency and central bank but in other areas closely associated with the exercising of citizenship, responsibilities remain decentralized and largely in the hands of Member States. In such a complex construction, the priorities for transnational citizenship beyond free movement rights can only emerge over time as a compromise between what citizens want and the division of tasks between the European Union and Member States. One cannot perceive European

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<sup>1</sup> Article 263, TFEU.

<sup>2</sup> <http://www.ecas-citizens.eu>, The Alternative Report on European Citizenship.

citizenship through the prism of our national citizenship; it will be something new, affecting some more than others and running deep but on a much narrower front.

## 5. More European with European Citizenship?

The rights laid down by the Lisbon Treaty can be very “attractive” for our citizens, but, in reality, they prove to be a “delusion” for them due to the fact that they don’t know very well those rights. As we already said before, the European citizenship does not substitute but rather supplements the citizenship of each State. Those holding European citizenship are entitled to some fundamental rights within the EU, regardless of which State they are the citizens of. This Flash Eurobarometer survey on European Union citizenship (No 213), commissioned by the European Commission, asked citizens of the EU to clarify how familiar they are with their status as an EU citizen, and the various rights they possess due to that fact. On the aspect concerning familiarity with the term “citizen of the European Union”, the majority of the EU citizens interviewed<sup>1</sup> (78%) claims familiarity with the term “citizen of the European Union”. However, there are differences regarding how well respondents know what the term means: 41% say they are familiar with the term and know what it means, while 37% have heard the term but are not sure what exactly it means. 22% of respondents claim to have never heard about the term. Romania (94%), Estonia (94%), and Hungary (93%) have the highest percentages of respondents declaring familiarity with the term “citizen of the European Union” – making them the countries most aware of this expression. On the aspects regarding the level of information on European Union rights only 3% of respondents from the 27 EU countries consider themselves “very well informed” about their rights as citizens of the European Union, and another 28% feel “well informed” in this respect. On the whole, less than one third (31%) of respondents from the 27 EU countries consider themselves well informed about their rights as citizens of the European Union. Half of the persons interviewed (49%) indicate that they are “not well informed” regarding their rights as citizens of the European Union, and one respondent out of five (19%) considers him/herself “not informed at all”, adding up to more than two thirds in the EU being uninformed about their rights as EU citizens (68%).

On the whole, half of the respondents from Malta (50%) and from Slovenia (49%) feel “very well informed” or at least “well informed” about their rights as citizens of the European Union, scoring the best among all nations in the EU. Romania with 42% situated between the countries with higher proportions of sufficiently informed people. About the rights of a European Union citizen, respondents are most aware of the right to free movement of persons, and especially perplexed about their rights regarding municipal elections in another Member State they might reside in. Testing respondents’ familiarity with some of the most fundamental rights that they hold as citizens of the European Union, the survey found that only 1% of citizens were able to correctly identify as true or false the eight propositions regarding their rights. (Six were true; two were false.) This suggests that the levels of consistent, firm knowledge of EU citizens’ rights are much less widespread compared to the levels indicated by the extent to which respondents could identify their rights, on an individual basis. Focusing only on the rights that they actually have (and discounting the false statements that might have perplexed respondents), only 18% recognized *each* of the six as rights they possess. Voting rights are especially troublesome for citizens. The right most familiar to respondents of the survey is that of freedom of residence - 88% believe that a citizen of the European Union has the right “*to reside in any Member State of the EU, subject to certain conditions*”. 7% of respondents do not recognize the above

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<sup>1</sup> Flash Eurobarometer 213 on European Union Citizenship, conducted by The Gallup Organization, Hungary upon the request of the Directorate-General Justice, Freedom and Security, publication: February 2008.

as a right of EU citizens, and 5% could not or did not want to answer the question. Roughly eight out of ten respondents agree that citizens of the European Union have the following rights: “to make a complaint to the European Commission, European Parliament or the European Ombudsman” (85%), “when residing in another Member State, to be treated exactly in the same way as a national of that State” (83%), “when finding himself outside the EU, to ask for help at embassies of other EU Member countries, if his country does not have an embassy there” (80%). The right “to acquire the nationality of any Member State in which he has lived for at least 5 years” is thought to be true by more than half (61%) of the EU public. One-fifth (20%) of respondents know that EU citizens are *not* entitled to acquire a second nationality in the manner described in the statement. Respondents are more aware of the rights that a citizen of the EU has in relation to European Parliamentary elections than in relation to municipal ones. 54% of interviewed persons recognize the right “to vote and to stand as a candidate in European Parliament elections”, while only 37% recognize the right “to vote and to stand as a candidate in municipal elections”. Half (50%) of the EU public believes that “to vote and to stand as a candidate in municipal elections” is not a right of an EU citizen. With regard to elections to national Parliaments (where, unlike the other two elections discussed before, citizens of other EU countries are normally *not allowed* to participate), six out of ten (60%) respondents know correctly that a citizen of the EU living in an EU state other than their own does not have the right “to vote and to stand as a candidate in elections to national Parliaments”, and a quarter (26%) state the opposite<sup>1</sup>.

First of all, let us consider freedom of movement and the right of residence within the territory. This is not really a citizens’ right in the sense in which the others are: freedom of movement represents one of the original freedoms that brought the European Community to life by the creation of a common market. Even though Union citizenship extended the scope of this fundamental freedom towards any person moving for any purpose inside European borders it plays a different role in comparison with the others. However, the most curious thing regarding freedom of movement is that it has contributed to creating the feeling of a closer Union much more than any other authentic citizen’s right. Broadly speaking, the provisions of the Treaties in relation to freedom of movement apply in the same way to the 10 member states which joined the EU in 2004 and the two new member states (Romania and Bulgaria) which joined in January 2007. The EU Treaties have a number of provisions dealing with free movement of people and specifically with free movement of workers. The Treaties provide that “every citizen of the Union shall have the right to move and reside freely within the territory of the Member States subject to the limitations and conditions laid down in the EC Treaty and by the measures adopted to give it effect”<sup>2</sup>.

The Treaties contain a general prohibition (ban) on discrimination on the grounds of nationality and they specifically state that freedom of movement for workers entails “the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment”. The Treaty provisions on free movement of workers provide that, subject to limitations justified on grounds of public policy, public security or public health, workers have the right to accept offers of employment and to move freely within the territory of the member states in order to take up such offers. When new member states join the EU, the terms and conditions which apply to them are set out in accession treaties. These treaties are then part of the overall treaties governing the EU. Special transitional provisions on free movement of workers were included in the Accession Treaties which apply to the ten member states which joined in May 2004 and in the Accession Treaties with Bulgaria and Romania. Bulgaria and Romania joined

<sup>1</sup> Flash Eurobarometer 213 on European Union Citizenship, February 2008.

<sup>2</sup> Article 21 TFEU.

the EU on 1 January 2007. The transitional arrangements in relation to free movement of workers which apply to them are as follows: from 1 January 2007 to 1 January 2009, the existing member states (including the 10 which joined in 2004) may decide to apply restrictions on free movement. They do not have to notify the Commission of their intention to do so. Ireland has decided to impose such restrictions. This means that citizens of Bulgaria and Romania are subject to the work permit requirements which applied before they joined the EU. However, those who have been working in Ireland on a work permit for a continuous period of 12 months or more prior to 31 December 2006 do not need a work permit. No new legislation is required as the Employment Permits Act 2006 gives the Government the option of allowing full free movement or requiring work permits. Workers from the two countries will have preference over people from non-EEA member states. From 1 January 2009 to 1 January 2012, Member States must notify the Commission of their intentions in respect of free movement for the three years until the end of 2011 – they may continue restrictions or may remove them. Full free movement should apply from 2012. There is a provision however whereby an original member state may ask the Commission to continue restrictions for a further two years if it is experiencing serious disturbances in its labor market. There will be complete freedom of movement from 2014. The main feature of European citizens' rights under Part Two of the EC treaty (with the exception of freedom of movement) is their instrumental design, this is, the aim of being useful for the European integration process (Ortiz, 2005, pp.126-129).

Rights to vote and stand as a candidate at elections to the European Parliament and at municipal elections in the Member States of residence and right to diplomatic and consular protection have in common their limited ambition of removing nationality's condition when citizens move to another country within the European Union (exercising their freedom of movement) and aim to participate in public affairs, or when they move to a third country where the Member State of which they are nationals is not represented and need diplomatic or consular protection inside that territory. Then, citizens should be treated as if they were nationals of the Member State of residence within European Union territory, or nationals of the Member State from whom they seek diplomatic or consular protection. Firstly, let's consider the limited scope of electoral rights, beginning by elections to the European Parliament. Article 22.2 TFEU stipulates that *“Without prejudice to Article 223(1) and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State”*. The right to vote and stand as a candidate at elections to the European Parliament in the member States of residence, which theoretically should be developed in a procedure *“in accordance with principles common to all Member States”*, is actually as different as different are Member States' internal rules (of course, with a couple of common basis). Also, at European level, there are no political parties, but some European groups of national political parties, which is pretty different. Of course, national political parties defend issues that most times have nothing to do with a wider *“European interest”* which is the symptom of the big and crucial absence of an European political awareness. Moreover, European Parliament does not play the role National Parliaments usually play in the Member States but a less important one. In that context, is it really important to have the possibility of voting and standing as a candidate for the European Parliament in the Member States of residence, in the same conditions than nationals of this Member State? Does it really change European people's lives? In 2008, in a Eurobarometer survey concerning the 2009 European elections,



the results regarding the interest of respondents in the European elections varied considerably from one Member State to another: in 11 European Union Member States, an absolute majority of respondents was interested in them. This proportion exceeded six out of ten respondents in Romania (65%). We have to notice that the study was carried out more than a year ahead of the elections (the electoral campaign had not yet started and the event had received little or no media coverage).

In 2009, Romania and also, Slovakia, Slovenia, Czech Republic and Poland had the highest rates of absenteeism in the European elections, over 70 percent. The Romanians did not know how many members of the European Parliament would send in Strasbourg and they considered the European Parliament as an institutional “Superman”<sup>1</sup>; although most of them know about the European Parliament from television and radio, they stand at Community level as having the best opinions on the European legislative forum. From “modesty” or maybe other reasons, even though Romanians knew what was the European Parliament’ role, two months before the European elections, 75% knew that they will send to Strasbourg 17 members, not 35. “ Few they know us, but the majority of them love us and credit us very much”, “ after hearing the results, I felt like an alien, the European Parliament look like a space ship populated by a specie with beneficial powers”, said one of the Romanian candidates for these elections. Other candidate felt pleasingly surprised with the Romanian’s perception: “surprise is linked to the respect we have Romanians to EU institutions. EU membership is seen in the light of the benefits that Romanians perceive from being a Member State: freedom of movement, right to work in EU, European funds”. According to article 22.1 TFEU, “*Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State*”. Considering the right to vote and stand as a candidate at municipal elections in the Member States of residence, it is worthless to remove unequal conditions between national if Member States are allowed to preserve some rights for their own nationals (for instance, French mayors). Giving nationals from other Member States the opportunity to participate level was a very good idea, however too close to the core constitutional basis of states: sovereignty. Several Member States’ Constitutions required to be amended. Romanian Constitution regulates in art. 16.4, Equality of rights, that: “*After Romania's accession to the European Union, the Union's citizens who comply with the requirements of the organic law have the right to elect and be elected to the local public administration bodies.*” and article 38, Right to be elected to the European Parliament: “*After Romania's accession to the European Union, Romanian citizens shall have the right to elect and be elected to the European Parliament*”.

According to article 23 TFEU, “*Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State. Member States shall adopt the necessary provisions and start the international negotiations required to secure this protection*”. We have to focus on diplomatic and consular protection provided for those citizens who have left European territory and need protection in a third country where their home State is not represented. It is useful to remind that there are only five countries in the world where all Union states are represented, thus, in most of the cases one particular Union Member State might easily have no diplomatic or consular authorities and shall require this provision to be

<sup>1</sup> www.monitorulexpres.ro, De ce nu cred europenii în votul pentru Parlamentul European?, Oltița Stiuț, 11.05.2009.

applicable. In this sense, the idea was a good one. But, we are not in front of a new idea. We can say we are in front of a new version of an old possibility according to Vienna Conventions on Diplomatic and Consular Protection of 1961 and 1963, that is a system of States' substitution. Besides this, the applicability and extension of that right is everything but evident: protection is mere consular assistance (assistance in cases of death, of serious accident or serious illness, in cases of arrest or detention, assistance to victims of violent crime and relief and repatriation of distressed citizens of the Union)<sup>1</sup>.

This assistance can only be provided by another Member State's diplomatic or consular authorities given the absence of the own Member States' and in the case that the first accept discretionally to bring that protection (exactly like it happens with their own nationals, "on the same conditions as the nationals of that State"). Moreover, Member States must agree the necessary rules between them and sign international agreements with third countries to give it effective force. ("*Member States shall adopt the necessary provisions and start the international negotiations required to secure this protection*"<sup>2</sup>). It is interesting to note that protection is never provided by European Union authorities (as happens in some areas like fishing where European Commission protect European fishermen if it is needed), but by Member States': that would have strengthened the idea of European identity as perceived by European citizens much more than the provisions of Article 20.2 (c) TFEU, too much conditioned by national concepts. Next, let's see the other set of European Citizens' rights, that is, right to petition the European Parliament, right to apply to the European Ombudsman, right to address the institutions and advisory bodies of the Union in any of the Treaty languages and right to obtain a reply in the same language. All of them have in common that they express a direct link between the European Union and its citizens, and all of them contribute to some extent, to control European institutions' work. The right to petition and the right to apply to the European Ombudsman have been designed from an identical point of view, that is, their capacity of signaling existing political and administrative deficiencies in the operation of the community institutions. Certainly it is the citizen who presents petitions on matters that effect him and who complains to the Ombudsman about possible maladministration, but such requests help the Committee on Petitions and the European Ombudsman (and in last instance the European Parliament) to be aware of the deficiencies which affect the functioning of the European legal system. At our national level, the Romanian Ombudsman is the People's Advocate. The People's Advocate operates either ex-officio, or at the request of individuals whose rights and freedoms have been violated, within boundaries established by the law. The Constitution compels the public authorities to grant the People's Advocate the support necessary for exercising his attributions. The People's Advocate only answers to the Parliament, being compelled to present reports to the Parliament. In these reports, the People's Advocate can also make recommendations regarding the legislation or adopting measures for protecting the citizens' rights and freedoms. Personally, it is a reality that fact that the Romanian citizens are not aware of their right to apply to the European Ombudsman, giving the fact that they have practically no idea about the existence nor the attributions of such similar institution at national level. In 2008, a number of 8030 petitions<sup>3</sup> were registered (bear in mind that Romania has over 22 millions inhabitants).

Nevertheless, we can not undermine the efforts made by this institution for imprinting an attitude of respect and tolerance in the public opinion and the behavior of public authorities, favorable to the free

<sup>1</sup> See Decision 95/553/EC of the Representatives of the Governments of the Member States meeting within the Council of 19 December 1995 regarding protection for citizens of the European Union by diplomatic and consular representations (OJ L 314 of 28 December 1995).

<sup>2</sup> Article 23 TFEU.

<sup>3</sup> People's Advocate, Report for activity for 2008.

movement of persons and for the elimination of any forms of discrimination between the citizens of a member state of the European Union and the citizens of the other member states. In order to fulfill that, the People's Advocate drafted an Open Letter, addressed to the European Ombudsman, the President of the International Institute of the Ombudsman – the European Region, the Ombudsmen of the European Union, insisting on the idea of cooperation between the Ombudsman institutions of the European Union member states, with a view to favoring the right to free movement of Romanian citizens abroad. Also, the People's Advocate Institution sent the open letter concerning the situation of Romanians in Italy to the 19 local Ombudsmen in Italy. Through written responses, the European Ombudsman, the National Ombudsman of Ireland, the Parliamentary Ombudsman of Finland, the Civic Defender- the Basilicata Region, the Commissary for the Protection of Civil Rights in Poland, the Civic Defender - the Friuli Venezia Region, the Civic Defender - the Romana Region, have shown that they were impressed by the People's Advocate's message, promising support for the institution in the matters regarding the discrimination that some Romanian citizens, who exercise their right to free movement, are confronted with. On the other hand, the right to address the European Union institutions and advisory bodies in one's own language and to obtain a reply in the same language, respond to an institutional strategy directed to promote the principles of transparency and openness of the European institutions. Its incorporation in the text of the EU Charter on Fundamental Rights together with the right to good administration proves what has just been said.<sup>1</sup> Attention must now be drawn to significant differences between these and the previously mentioned rights (that is electoral rights and right to diplomatic and consular protection by the authorities of any Member State). Firstly, because enjoyment of these rights corresponds to all individuals subject to Community law, not only to European citizens, that is to Community nationals. Secondly, because they can be enjoyed disregarding of the place of residence, that is independently from the freedom of circulation or movement to a third State. Why is important to underline these differences? Because, paradoxically, the only exclusive rights of European citizens are in fact the electoral rights and diplomatic and consular protection. The remaining rights (petition, claim and access to information), namely those that create direct links between individuals and the Union are not exclusive rights pertaining to the European citizen but rights to which both nationals and residents are entitled. The fact that such rights that can be exercised by all community nationals (also by those that have not moved from the Member State of origin) are shared with residents regardless of their nationality, implies, on the one hand that the status of "European Citizen" diffuminates, as it entitles to rights which are not exclusive and therefore do not identify a person as such. On the other hand, it means that residing in the territory of the community is sufficient to generate rights which create direct links between individuals and the European Union (Ortiz, 2005, pp. 130-131). So, European Citizenship has, above all, an instrumental character as it appears that its first aim is being useful for the European integration process, strengthening its devaluated image to citizen's eyes, citizens to whom the process in itself is addressed. European Citizenship has been like an eye-catcher, a sort of advertisement in order to bring the people close to the European Union. It is interesting to consider in this context the absence of duties related to those rights. If the main feature of European Citizenship' statute was "making the European Union attractive to citizens", showing them how convenient it would be to belong to it, would this idea be as convincing if it also implied additional obligations? Would citizens assume that? In fact, European Citizenship does not project any strong feeling of belonging although that was exactly its purpose. Personally, we have felt more "touched" by the new European Union since no one asked us to show our passports while crossing certain internal borders of the Community (by Schengen provisions; for example, when going from Czech Republic to Poland). This example is the

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<sup>1</sup> Chapter V of the EU Charter on Fundamental Rights, articles 39-46.

freedom of movement, which is, formally, one of European citizens' rights but, mainly, one of the community freedoms created at the very beginning. People do not feel closer nor bound to the European Union because of European Citizenship. If being a European citizen is synonymous to having rights, what is the significant difference of such category when those rights may be also enjoyed by "non-European citizens"? If some of those rights may be, in fact, enjoyed by "non-European citizens", is then nationality of a Member State the chosen criteria for acquiring European citizenship, really adequate? We think it is important in the future to make these rights more "meaningful", to rebuild them, so that the consequences of European Citizenship to become relevant for people's lives.

## **7. Concluding Remarks**

European citizenship is not a new invention, or a purely symbolic idea. It goes back to the legal order created by the original Treaty of Rome and decisions of the European Court of Justice which can be invoked not just by Member States but also by individuals. The European Union is a reality but a single European public space has not emerged yet. The European Citizenship could play a crucial part in fostering a common European public space. European Citizenship could encourage Europeans to become active citizens and participate in governance process. There were identified a number of major differences between the national public space and the proposed European one (Guibernau & Guibernau I. Berdún, 2001, pp. 188-190): The EU is not only young, but it has had up till now mainly an economic basis, while national public spaces have developed over a long period of time (at least since the French Revolution). National public spaces were created within rigid state borders (even allowing for the existence of multinational states). The way in which the EU is evolving seems to prefigure a vast space 'from the Atlantic to the Urals', to use de Gaulle's well-known expression. Borders may be on the way out, but it is not clear how to build the 'common house'. While national identities are still strong, European identity is still in the making process.

The majority of national public spaces are constituted by the presence of a common language. The European Union has 23 official and working languages. They are: Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish and Swedish. The first Community Regulation determining official languages was passed in 1958. It specified Dutch, French, German and Italian as the first official and working languages of the EU, these being the languages of the Member States at that time. Since then, as more countries have become part of the EU, the number of official and working languages has increased. However, there are fewer official languages than Member States, as some share common languages. In Belgium, for example, the official languages are Dutch, French and German, whilst in Cyprus the majority of the population speaks Greek, which has official status.<sup>1</sup> There are two main entitlements for languages with "official and working" status: documents may be sent to EU institutions and a reply received in any of these languages EU regulations and other legislative documents are published in the official and working languages, as is the Official Journal. Due to time and budgetary constraints, relatively few working documents are translated into all languages. The European Commission employs English, French and German in general as procedural languages, whereas the European Parliament provides translation into different languages according to the needs of its Members. Having a European passport, being able to freely travel around Europe (at least for the citizens of those countries which have signed the Schengen Agreement) and a few more

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<sup>1</sup> [http://ec.europa.eu/education/languages/languages-of-europe/doc135\\_en.htm](http://ec.europa.eu/education/languages/languages-of-europe/doc135_en.htm).

trappings do not make for what Ralph Dahrendorf calls 'hard citizenship'. It is true that the members of the EU may feel that they belong to a community of sorts and that they share, to a certain extent, some ideas and aspirations. But to move to something more substantive, to develop a more "meaningful" citizenship, institutional and symbolic developments will have to be accompanied by educational ones. Even if European identity is not meant as a substitute for regional and national ones, but rather as complementary to both, history teaches us that it would be naive to think that it can grow quickly and without hurdles (Guibernau & Guibernau I. Berdún, 2001). On the whole, this bundle of rights may appear as limited, but there is no reason why the idea of European citizenship could not be taken much further even within the existing institutional framework. European citizenship holds the potential to encourage greater engagements with the European project. It is in this sense that individuals could feel motivated to participate in governance processes shaping the European Union. On the development of European citizenship depends the European Union's search for common European values for which the Charter of Fundamental Rights provides a context. Developing European citizenship is not only in the interest of the European Union institutions but also of citizens themselves.

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