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EU Citizenship

Basics of EU Law

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## TOPIC

The legal status of the EU Citizenship

Elements of the EU Citizenship

## LEARNING OBJECTIVES

By the end of the lesson, students will have

- had an overview the EU Citizenship
- understood the relation between EU citizenship and MS nationality
- had a general knowledge about the European Citizenship Rights

## MATERIALS

The History of the European Union, the European Citizenship.

<http://www.historiasiglo20.org/europe/ciudad europea.htm>

Patricia Mindus: The Status of European Citizenship: An Overview in European Citizenship after Brexit-[https://link.springer.com/chapter/10.1007/978-3-319-51774-2\\_2](https://link.springer.com/chapter/10.1007/978-3-319-51774-2_2)

## INTRODUCTION

The status of European citizenship was introduced in European law with the Maastricht Treaty in 1992.

Let us see what steps were taken to establish this particular form of status civitatis that differs from the standard legal form of citizenship that we are used to consider equivalent to nationality. It is **additional** to having member state nationality.

It **entails a series of rights** that nationals of member states would not enjoy if they were not European citizens. This confers a degree of independence to the content of the status.

It is **not**, however, **an autonomous status**. Yet, member states are not fully autonomous in exercising discretion over who gets access to the status.

## EU CITIZENSHIP: A BRIEF HISTORY

### The Background

The first practical steps towards EU citizenship were taken in the 1970s.

To be precise, at least since the 1960s, the idea of a European citizenship had been proposed on different occasions, albeit in a rather indefinite manner. The *free movement of persons* over the free movement of goods as it would be a first step towards European citizenship.

It was suggested that a European identity would be needed to deepen integration. The lack of a *European identity* was one of the weaknesses of the European Community.

At the Copenhagen summit a document on European identity was drafted, in which, mostly in general terms, emphasis was laid on common cultural heritage. The political aim of strengthening integration between member states started taking shape during the next summit in Paris. It was suggested that the involvement in the integration process of the citizens of the member states could enhance a future European identity. From here came the idea of having a common status civitatis.

It resulted in the **1974** report on special rights by the Belgian Leo **Tindemans**. In this report it was recommended that certain rights should be attributed to the ‘ressortissants’ of the member states, that is, their nationals. They included the right to vote and stand in elections for the European Parliament and the establishment of a European passport, which would lead to the so-called passport policy.

This report, however, did not claim the rights in question to be of European citizens, but to be necessary for a ‘Europe of citizens.’ Tindemans handed in the report on the 29th of December 1975 and the Commission started to look into the so-called question of special rights.

Tindemans’ ideas were later revived by the European Parliament that presented a series of resolutions on European integration, considering the possibility of ascribing special rights to citizens of member states.

The still rather imprecise idea of European citizenship came to the fore again in February **1984**, when, in preparation of the **Fontainebleau** intergovernmental conference, the European Parliament presented a draft Treaty on the European Union, in which explicit mention of European citizenship was made in terms similar to those later adopted.

The Treaty establishing the European Community, better known as the **Maastricht Treaty**, **created the status of European Citizenship** and, ascribes a **series of rights** to citizens of the member states in the second part relating to citizenship: Articles. 18–21 TEC

These establish, first of all, the **right to free movement** within the Union (Article 18 TEC; now TFEU Article 21), the **right to vote and stand in elections** both at the local and at the European level at the same conditions as first country nationals (Article 19 TEC; now TFEU Article 22).

The Treaty also provides for the right to **consular protection** by member states in a third country where the right-holder's home state is not represented (Article 20 TEC; now TFEU Article 23), as well as the **right to petition** the European Parliament and to appeal the **European ombudsman** in cases of maladministration (Article 21 TEC; now TFEU Article 24). The final provisions of Article 22 TEC (now TFEU Article 25) provide that provisions may be adopted to strengthen or to add the rights laid down. It is thus an open list, a fact that is confirmed by other aspects too.

In fact, the **rights listed** in the second part of the Maastricht Treaty **are not exhaustive** of the status of the European citizen. This is not merely because of subsequent regulatory actions and later treaties, such as the Amsterdam Treaty, the Charter of Fundamental Rights of Nice or the Lisbon Treaty that have indeed added rights.

It is so also because a series of legal positions have been ascribed to the European citizen in the **case-law of the European Court of Justice**. European citizens do not only have the rights listed under the heading relating to European citizenship in the treaties. These rights are also determined by case-law and by secondary legislation, that is, the legal acts, listed in Article 288 TFEU, including regulations, directives, decisions, recommendations and opinions. Its case-law departed from the principle of effectiveness with the **Micheletti ruling**.

This ruling concerned Mario Vicente Micheletti, an Argentine dentist holding an Italian passport *ex iure sanguinis* who was refused a permanent residence card from Spain in March 1990. In a preliminary ruling procedure, the Spanish court raised in cases of multiple nationality, the citizenship that prevails is that of state in which the person had her former habitual residence before arrival on Spanish territory; in this case, Argentina. However, the judges in Luxembourg considered that the provisions of Community law precluded a member state from refusing to grant the benefit of 'community rights' to an individual in possession of both the nationality of a member state and that of a third country, on the sole basis that the member state did not recognise the person to be a second country national, that is, a person having the nationality of another member state.

Basically, under EU law, a member state may not decide who are to be considered as nationals of another member state and therefore no additional criteria can be added to assess citizenship, such as the genuine link doctrine: Merely having the nationality of a member state is sufficient to be recognised by the European legal system as a second country national.

## The CHARACTER OF UNION CITIZENSHIP

European citizenship is a status that has a very specific character: It is **derivative**. A person gains access to the status by already having access to another status: that of national of a member state for the purposes of EU law.

The Article 20 TFEU (ex Article 17 TEC) provides the following:

*‘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.’*

Nationality of a member state is therefore a necessary criterion for the acquisition of European citizenship.

To limit state discretion in this area would have required harmonisation of domestic legislation on acquisition and loss of nationality. The harmonisation of nationality laws is important if the point is to prevent possible conflicts between the different domestic laws, to limit the possibilities of states to indirectly influence common rules, or to limit states’ possibilities to exercise discretion when granting access to European citizenship for third country nationals (Nascimbene 1998).

It is worth noticing that the wording of the Article 20 TFEU has changed in the course of time: European citizenship is not merely ‘derivative’ (Treaty of Maastricht) but then also ‘**complementary**’ (Treaty of Amsterdam) and, after the Treaty of Lisbon, EU citizenship is said to be ‘**additional**’.

This change is, to a great extent, the reflection of the development of the case-law (e.g. Rottman), according to which EU member states are not unbounded in stripping their own nationals of nationality in ways that would violate Union law. To be precise, the question whether an individual possesses the nationality of a Member state is no longer settled solely by reference to national law. So whereas in determining loss of citizenship states need to take into account EU law, and in particular general principles of EU law (such as the principle of proportionality), it is safe to say that nationality laws of member states is the legal source par excellence that determines access to the status. So supranational scrutiny of state discretion in this area is increasing, but this does not imply that states do not have discretion in defining their citizenship policy.

The fact that member states control access to the status may seem straightforward, but it is also a source of intricacies: There are 28 access gates to the status. **The Member States are free to determine the access criteria.**

There are several consequences. A first consequence is that even though it is often claimed that all nationals of member states are European citizens, it is more accurate to say that a Union citizen is a national of a member state for the purposes of European law.

## ENTITLEMENTS CONNECTED TO THE STATUS

What holds EU citizenship rights together is the **principle of non-discrimination** on grounds of nationality (Art. 18 TFEU). The entitlements connected to EU citizenship share the assumption that the nationality a person holds is irrelevant for the purpose of enjoying the rights attributed by the Union. In this sense, European citizens are equal before EU law in their citizens' rights.

Over the years, we have witnessed an extension, or development, of **rights**. In the original Maastricht Treaty from 1992, the entitlements associated with European citizenship consisted of the following:

- **The right to free movement and residence throughout the EU (and the right to work)**
- **Electoral rights (active and passive) to the European Parliament in any member state**
- **Local electoral rights (active and passive) in the EU state of residence, under the same conditions as the nationals of that state**
- **The right to consular protection abroad by any member state if there are no diplomatic or consular authorities from the citizen's home state**
- **The right to petition the European Parliament**
- **The right to petition the Ombudsman**

The treaties that followed have added entitlements: The Amsterdam Treaty from 1997 added the right to address the EU in any official language and to receive a reply in that same language (Art. 24). The Nice Charter, or Charter of Fundamental Rights of the European Union, from 2000 added the right to access documents from the European Parliament, the Council and the Commission (Art. 15) and the right to good administration (Art. 41). This Charter, even though authoritative, was not recognised as binding law until it was incorporated into the Treaty of Lisbon in 2009.

The major innovation that the Treaty of Lisbon added to the list of entitlements associated with Union citizenship was, however, another: **the European Citizens' Initiative** (Art. 11 TEU & Art. 24 TFEU), according to which EU citizens, representative of a cross-national opinion, present thus in several member states, can suggest to the Commission that it activate its

legislative function on a particular matter. To activate a citizens' initiative, it is necessary that one million EU citizens, coming from at least seven member states, sign the initiative.

Once it is activated, the Commission may decide to propose legislation as a result of it.

Entitlements have not only become more numerous, but they have also come to be interpreted as covering a higher number of persons and situations. This is largely due to the activity of the **European Court of Justice**, which has often extended the personal scope of entitlements.

**Key rulings** in which the Luxembourg Court played an active role include the following:

In the ruling **Rudy Grzelczyk** (C-184/99), the court declared that 'EU citizenship is destined to be the fundamental status of nationals of the Member States.'

Non-economically active citizens had restricted rights to residence because of secondary law. In 1999 the ruling **Baumbast** (C-413/99) established that residence rights derive directly from the EU Treaty. Secondary legislation can limit this right but only in observance of the principle of proportionality.

In the ruling **Zhu & Chen** (Case C-20/02), it was found that primary caretakers of minor EU citizens have a residence right: more precisely, it was found that denying residence to the third country national mother of a minor EU citizen 'would deprive the child's right of residence of any useful effect.' In **Ruiz Zambrano** (Case C-34/09) the Court supplemented the protection of the status of Union citizenship with the requirement that the substance of rights attached to the status be enjoyed; *Article 20 TFEU precludes national measures which have the effect of depriving citizens of the Union of the genuine enjoyment of the substance of the rights conferred by virtue of their status as citizens of the Union*. A refusal to grant a right of residence to a third country national with dependent minor children in the Member State where those children are nationals and reside, [...] has such an effect.

The court resorted to the 'substance' of European citizenship to ground the entitlement of a third country national to reside and work in Belgium as the father care-taker of two children who had been born nationals of Belgium in order to avoid statelessness that would have followed from being born by Colombian nationals who did not reside in Colombia.

However, the genuine substance doctrine has a quite limited ratio decidendi and is not likely to be applied broadly. Recently, the Court of Justice seems to have taken a more restrictive view.

A highly significant ruling for the arguments made in the following case **Janko Rottman v. Freistaat Bayern** (Case C-315/08). The case regarded loss of EU citizenship. The Court of Justice concluded that 'a citizen of the Union who is faced with a decision withdrawing his [citizenship], and placing him (...) in a position capable of causing him to lose the status

conferred by Article 17 EC [Article 20 TFEU] and the rights attaching thereto falls, by reason of its nature and its consequences, within the ambit of European Union law.’ Since Rottman, member states are subjected to the general principles of European law in matters such as loss of Union citizenship. This means that member states are not unbounded in denationalising or imposing loss of status civitatis. This, to some, is a first crack in the idea that nationality law belongs to the field of ‘core sovereignty’ to use the phrasing of the German constitutional Court.

## CONCLUSION

When first introduced, European citizenship was often depicted as being the world’s first post-national status. It is connected to entitlements that may rightly be called supranational and transnational, but it is dependent on the nationality laws of European member states.

A better characterisation would be to say that European citizenship is a status civitatis, the criteria determining the access to and loss of which, are determined at the domestic level. It is also a status sui generis. It differs from nationality in unitary states and from dual citizenship in federal settings.

Finally, it is connected to entitlements that are different in kind. We may call it a birth-right status in a multi-level polity. It is this status that some now fear losing.

## SELF-TESTING QUESTIONS

What does it mean to be a citizen a European Union citizen?

When was European citizenship introduced as a concept?

Which rights do EU citizens enjoy?