

THE EUROPEAN CITIZENSHIP AND THE TRANSITORY MEASURES FOR ROMANIA AND BULGARIA AFTER THE ADHERENCE TO THE EUROPEAN UNION

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Abstract

The citizenship was strongly identified with the national identity as a person's social and legal status was linked to his state of origin (from where the connection between citizenship and patriotism according to the most recent analyses), the next step was the activation of the preoccupation for the citizens' equal rights, followed by the extension of the citizen rights at the work and life conditions (together with the civilian and political rights), more recent one has arrived to the promotion of the concept of "multiple citizenship" due to the citizens' mobility and the society's evolution, an approach that allowed the applicants to be simultaneously citizens of 2 or more countries. This vision has evolved to what we call "transnational citizenship", effective only in the case of the European citizens that have more rights and obligations towards the Community besides the classical ones towards their state of origin. The criterion of the territorial belonging appears in this way as more and more surpassed, the citizen conscience and the effective representation of the role of the new citizenship orientating itself towards the fidelity to an abstract principle promoted by an organization, an over-national entity or a network of independent structures, strongly marked by globalization.

Keywords: Citizenship, transition, clause, rights, adherence, integration, belonging

INTRODUCTION

The formal institution of the Union's citizenship was made once with the Treaty signed at Maastricht on 7 February 1992 in which the second part is dedicated precisely to "The Union's Citizenship". Article 8 that later became Article 17 of the Treaty of the European Community attributes the European citizenship "to anyone that has the citizenship of a member state"¹. It presents the concept of *European citizenship* with complementary character, it does not replace the national one. So, any person that holds the citizenship of a member state of the European Communities is considered citizen of the European Union. Including rights, obligations and the participation at the political life, the European

¹ Article 21 EC (The Treaty of the European Community - europa.eu/scandplus/treaties/eec_eu.htm).

citizenship aims at the consolidation of the European Union's image and identity and the citizen's more profound implication in the process of European integration.

The Amsterdam Treaty aligns this conception and raises the concrete problem of the access to the rights that the European citizenship confers for the citizens of the third parties countries that obtained a right of residence on the territory of the member states. It is about the *inclusive citizenship* evoked above that is about the model of *belonging* at a space of residence legally recognized.

One can not talk about an autonomous notion of citizenship of the Union because of the complementarity of the European citizenship towards the national one as the determination of the recipients of the subjective positions at which they refer depends on the national legislation. Through this, the concept of citizenship of the Union does not seem innovative towards the past. The extension *rationae personae* of the community liberties, and especially of the liberty of movement of the persons always depended, in the treaty's dispositions, on the notion of citizenship given by each state as these liberties applied especially to the citizens of the member states. There is though a point that brings a new element in defining the status of the Union's citizen at which we will come back later, applied not only to the citizens of the member states but recognizing certain rights in close connection to the status of EU citizen to anyone who "has residence" in the Union².

This enlargement of the application sphere of the notion can be explained, in a certain measure, by the tendency of the community norms to address their own "natural recipients" in the basis of the principle of residence in one of the member States, and not just of a *status civitatis* (Nascimbene 2006, 8).

MATERIAL AND THE METHOD

The various interpretations of the notion of citizenship of the union is due to the fact that the Union does not have the fundamental character of the political community or of a state entity endowed by general competences. As a matter of fact, the obligations of the EU citizen are not specified explicitly, only a list of tutorial rights. So, one can conclude that one can not talk about the participative character or about the citizen's subjection to the State (necessary requisites of the notion of citizenship in technical-judicial sense) because the rights conferred to the community citizen find solving in requests tutored from the judicial point of view not against the Union, but against the member States. One talks more likely about a citizenship "of new type" as the judicial-political "community" is new as well from which the citizens are part and at which they take part through their institutions (and especially by electing the Parliament).

The Directive 757 from 2000 that advances the concept of civic citizenship also has to be remembered which implies the payment of the taxes and rates for the resident that is legally accepted on a certain territory as well as the taking part at the edification of the political community, that is the taking part at the creation of a

² The Treaty, Articles 194 and 195 EC .

unitary frame to allow an integrative situation of all the residents, regardless of the provenience country, each being perceived as legitimate citizen.

Any person having the nationality of one of the member states according to the effective laws in the respective state is citizen of the European Union. The citizenship of the European Union comes in the completion of the national citizenship, making possible the exertion of some of the rights of the Union's citizen on the territory of the member state in which the citizen lives (and not only in the country from which the citizen comes, as it happened before). Additionally, the European citizenship has at its base the common principles of the member states, included in the Amsterdam Treaty: the principle of liberty, the principle of democracy, the principle of respecting the human rights and the fundamental liberties and the principle of the state of right and it stems out of the man's fundamental rights and from the specific rights given to the European citizen (rights of free movement and civic rights) described in the Treaty. The Amsterdam Treaty, entered into effect on 1 May 1999, strengthens the protection of the fundamental rights, condemns any form of discrimination and recognizes the right to information and the protection of the consumers.

The Union's citizenship adds to the national citizenship and does not replace it. The citizens of the Union have the right to free movement and stay on the territory of the member states; the right to vote and be elected in the European Parliament as well as in the local elections in the member state where they have their residence; the right to benefit of protection from the diplomatic and consular authorities of any member state; to present petitions to the European Parliament; to address the European Mediator or to address the consultative institutions and organs of the Union and to receive a reply. The Schengen Agreement constitutes norms that do not pertain to the community right and nor to the Union right. The Schengen Space presents itself as a space of freedom: the interstate frontiers can be crossed without a control of the persons, they being either nationals or not of a state that is part at the agreements. The distinction remains between the citizens of the Union and the nationals of the third party states because the later ones do not benefit from the stay right but only from the right to move for 3 months inside the Schengen space.

DISCUSSIONS

The fundamental rights and the democratic values are respected in the member states of the European Union, they being signatories of some texts like The European Convention of Human Rights (1950), The Universal Declaration of Human Rights (1948), the European Social Charter (1962) or the Charter of Fundamental Social Rights of Workers (1996). The Union and its member states are in this way obliged to respect these values, the organisms that watch at their respect being the national Courts of Justice and the European Court of Justice. If a member state brakes the fundamental rights and the democratic values flagrantly and systematically, the Union can impose it political or economic sanctions. One of

the conditions that has to be fulfilled for the adherence to the European Union is the respect of these fundamental rights.

The Union's commitment was officially reaffirmed in December 2001 when the Charter of the fundamental rights of the European Union was adopted. This document is structured in 6 chapters – The Dignity, the Liberties, the Equality, the Solidarity, the Citizenship and the Justice – comprising totally 54 articles that define the fundamental values of the European Union and the civic, political, economical and social rights of the European citizen. The Charter's first chapters are dedicated to the human dignity, the liberty of expression and of conscience. In the chapter "Solidarity" the social and economical rights are introduced like: the rights to strike, the employees' right at information at consulting, the right to have both family life and professional life, the right to social protection and to the social services from inside the European Union, the health protection.

The Charter of Fundamental Rights of the European Union also promotes the equality between the sexes and it introduces rights like: the data protection, the prohibition of the practice of eugenics and the cloning of the human beings, the right to a protected environment, the children and the elderly's rights or the right to a good administration.

The citizenship of the European Union offers rights to the citizens of the member states and consolidates the protection of their interests:

-the right to free movement, the right at sojourn, of establishing, the right at work and study in the other member states of the Union: the Union's legislation establishes though numerous conditions for the exertion of these rights. A sojourn certificate is necessary for a sojourn that is longer than 3 months. The entrance on the territory of another member state can only be prohibited for security and public health reasons and the interdiction has to be justified (as well as for expulsion); the right to vote and the right to candidate at the elections for the European Parliament and at the local elections in the state of residence in the same conditions as the citizens of the respective state;

-the right to benefit of consular protection from the diplomatic authorities of another member state on the territory of a third party state (a state that is not member of the European Union) in the case in which the state from where the citizen comes does not have diplomatic or consular representation in the respective third party state;

-the right of petition in front of the European Parliament and the right to appeal to the European Ombudsman (the People's Attorney) for the examination of the cases of bad administration from the community institutions and organisms. The European Commission, having the role to watch over at the Treaty's respect, watches the appliance of the provisions linked to the European citizenship and it elaborates periodic rapports on the progresses that were realized and on the difficulties that were encountered.

In the Amsterdam Treaty it is specified that any European citizen and any physical or judicial person having the headquarters in a member state has access right to the documents of the European Parliament, of the Council of the European

Union and of the European Commission in the limits of the reasons of public or private interest. The citizen's information is considered a priority by the European institutions. In 1998, the European Commission launched the information service "Europe direct" with the purpose of informing the citizens on the possibilities and the rights that are offered to them through the European citizenship.

We try to read the transition measures applied to the new states in the moment of the adherence at the European Union in the light of the 2 articles that put the bases of the notion of European citizenship. The transitory arrangements were applied to allow the 15 states of the Union (EU-15) the derogation from the articles 1-6 of the Regulation 1612/68EEC³ for a certain period of time. The workers' right to free movement won by the new states (10 states in 2004: Hungary, the Czech Republic, Estonia, Latvia, Lithuania, Poland, Slovakia, Slovenia, Malta and Cyprus; Bulgaria and Romania in 2007) by the signing of the Treaty of adherence created a true "phobia" of the immigrants in the Old States that were trying to take care of their national labour market through restrictions applied to the newcomers.

The transitory arrangements apply for a period of maximum 7 years after the scheme 2 years+3 years+2 years and have as purpose the governing of the migratory influx through "national measures" or through rules established through bilateral agreements⁴. The first transitory phase comprises the first 2 years from the adherence date and it gives the old member states the possibility to derogate or not from the articles 1-6 of the Regulation 1612/68/ECC⁵, so from the free access at work. The states that decide to apply the transitory measures have to respect 2 conditions though. The first condition refers to the so-called stand still clause (Pop, Gherghina and Jiglău 2007, 106) by which the old states are prohibited to apply some new drastical measures than those existent at the signing date of the Treaty of adherence.

The second condition can be named in short "the community preference" as the old member states have to give priority to the workers having the nationality of one of the new States over the non-community residents. The situation was checked, for example, in Italy in 2004 once with the adherence of the 10 states of Central and Eastern Europe. In 2004, Italy's position towards the new states was different to the attitude adopted in 2006 with respect to Romania and Bulgaria's citizens. The measures of transition applied for a period of 2 years (2004-2006) consist in establishing some admission quotas in Italy for various categories of workers. So, for the year 2004, 50.000 workers coming from 17 countries were

³ The Official Journal of the European Community, (27 martie 1972), 195.

⁴ *The Commission (DG Enlargement), Free Movement for Persons - A Practical Guide for an Enlarged European Union (Brussels, 2002).*

⁵ Articles 1-6 of the cited regulation refer to the appliance of Article 39 relatively to the choosing of a workplace

admitted with season work contracts⁶. Amongst the 17 countries the 8 post-Communist countries numbered themselves (Hungary, Poland, Latvia, Lithuania, Estonia, the Czech Republic, Slovenia and Slovakia). This quota contained the ulterior distribution for various categories of workers.

A few months later, on 20 April 2004, the president of the Council of Ministers issued a new decree⁷ by which it introduced a new quota of 20.000 admitted workers, this time reserved exclusively to the citizens of the new member states, adding to the initial quota that referred to foreigners in general. The motivation of this stipulation is interesting: in the decree's preamble, starting from the premise that 20.000 entrances for the subordinated work were authorized for the year 2004, reserved to the foreigners from the states that signed agreements of cooperation in matters of migrations, "the stipulation of a corresponding quota reserved to the citizens of the 8 member states of the European Union is considered necessary, respecting in this way the principle of the <<community preference>>⁸.

The purpose of the transition measures is the reduction of the risk at which the highly developed member states expose themselves to suffer an invasion of the national labor market because of the difference of income between these and the citizens of the new member states. The derogations from the appliance of the principle of free movement presents itself in various ways, depending on the state that applies them. So, the United Kingdom and Ireland chose the path of full liberalization but without the access at measures of social and public assistance for the new citizens, Italy, Spain and Portugal chose the system of the entrance quotas, and Germany and Austria opted for the most restrictive measures (being themselves the promoters of these "transitory arrangements", followed step-by-step by the other member states). Sweden is the only country that did not impose any restrictions neither in 2004, nor in 2007. The new member states can limit the access of the citizens of the old States on the national work market at their turn, in the basis of the reciprocity principle.

The major challenge for the new member states (for Romania and Bulgaria also from 2007) is though the correct knowledge of all these diverse forms of limitation of the free movement as the Adherence Treaty does not impose to the all member states to inform the European institutions. The communication of the adopted measures of transition remains an obligation for each state in part and often these pieces of information do not arrive adequately at the interested receivers.

Another intrinsic contradiction of these stipulations is the risk of the alimentation of the illegal work. The appliance of some measures regarding the

⁶ *The Decree of the President of the Council of Ministers*, (19 December 2003), „The transitory programming of the influx of entrances of extra-community season workers on the state territory for the year 2004”, in *GURI* n. 18 (23 January 2004), 16.

⁷ *The Decree of the President of the Council of Ministers*, (20 April 2004), „The transitory programming of the influx of entrances of extra-community season workers on the state territory for the year 2004”, in *GURI* 102 (3 May 2004): 5.

⁸ The Decree 20 April 2004, 6.

access at the work market that is different from one state to another implies the fact that a citizen admitted legally on the territory of a member state due to the absence of the control at the internal frontier arrives in a state where he does not have the right to get hired. The only remaining situation is to work illegally which does not improve with anything the already existent situation of the state of provenience before the adherence to the European Union. A solution to this problem would have been (as it was suggested many times) the total elimination of the restrictions once with the unification of the internal frontiers – a solution according to the notion of “European citizenship” that puts all the citizens of the Member States on the same position of formal equality.

The Council, on the basis of a rapport of the Commission, has to analyse the functioning of the transitory stipulations before the end of the first 2 years of restrictions. Each state has to inform the Commission about the necessity of the continuation of the appliance of the national measures if the perturbations on the internal labor market still exist. The Council does not have the power to suspend these measures even if they are not justified anymore. Each member state can give a greater liberty to the workers’ movement or it can decide for the total opening of the labor market in the second phase of the “transitory arrangements” (3 years)⁹.

The national measures should be eliminated after the 5 years from the adherence but a third phase of another 2 years is foreseen in which the restrictions can be maintained only if the governments of the EU countries demonstrate that serious perturbations occurred on the work market through the arrival of the workers from the new member states. Paradoxically, even though being European citizens with full rights in the basis of article 17 EC, the citizens of the new countries that entered EU see this right limited for them because of economic considerations for a period of at least 7 years. A double contradiction can be noticed here: 1) the initial premise that through the attribute of free movement conferred through the European citizenship – article 17 EC the economic connotation of the Community is surpassed (the restrictions imposed to the new member States are a step back to the economic agreements regarding “the active citizens”) and 2) the brake of the principle of non-discrimination after nationality¹⁰ as far as the free access on the market of the labour forces is concerned.

Those who lived and worked in one of the member states of EU-15¹¹ for an uninterrupted period of at least 12 months before the adherence can continue to work there in conditions of equality with the other workers from EU-15. The same treatment applies to those that receive work permit for 12 uninterrupted months

⁹ After the 2 years of restrictions “the Commission expects that only few Member States will continue to restrict work permits, while in other countries, people from the future Member States would be totally free to get a job” (European Commission, Directorate-General Enlargement): 4.

¹⁰ Article 12 „The Amsterdam Treaty” – The portal of the European Union, eur-lex.europa.eu.

¹¹ Germany, France, Italy, Luxembourg, Belgium, the Netherlands, the United Kingdom, Ireland, Denmark, Greece, Spain, Portugal, Austria, Finland, Sweden .

after the adherence but this right is only valid for the state that gave it. If the worker decides to abandon voluntarily the workplace from that member state in this time interval he loses the stay and work right in the respective state. One can note here another contradiction between the regime applied to the citizens of the new states and the status of the citizens from the non-EU countries but who have residence in one of the EU-15¹² states regulated through the directive 2003/109. The non-EU citizens that obtained the residence permit in one of the member states are free to look for a workplace and establish themselves in another member state. The discriminatory treatment as far as the new member states are concerned appears the more revolting from this point of view but one can notice what I was saying at the beginning, the tendency to create a status of European citizen based on residence and not only on the residence of a member state.

The impose of the national measures is noticed each time at the adherence of new states with a development level that is inferior to the old member states at a more careful analysis of the extension process of the European Union. One has recurred at such measures in 1981 at Greece's adherence, in 1986 for Spain and Portugal, in 2004 for the 10 countries of Central and Eastern Europe and in 2007 for Romania and Bulgaria. They were not adopted at Denmark, Ireland and UK's adherence (1972) and at Austria, Finland and Sweden's adherence in 1994.

As far as the states' decision regarding the Romanian and Bulgarian's access on the labor market is concerned is concerned until 31 December 2008 (the first phase of the restrictions) 3 categories of solutions can be identified: *hard* transitory arrangements applied in most EU-15 countries (except for Italy and Sweden), the partial opening in Italy and Hungary and the full opening: Sweden and the new member states from 2004.

Italy foresaw a period of transition of 1 year before the total liberalization of the movement of the Romanian and Bulgarian employees but it decided to open immediately the labour market for a few sectors: for the management and highly qualified personnel, agriculture, tourism-hospitality, house activities – domestic work and nurses, constructions, season activities. The workers' access will be monitored for the other sectors without introducing though the system of quotas¹³. The possibility of the immediate integration of the Romanian and Bulgarian workers is given through this measure, liberalizing those sectors of the economy with the highest demand and insufficient offer nationally, so still an economic strategy.

The members of a Romanian or Bulgarian's family (husband/wife, the children) that already received the work right before 1 January 2007 have immediate access to work in the respective state but if the work right is received after the adherence date the members of the family will benefit from this right only

¹² The Directive 2003/109 [2004], *J.O.L* 16/44, regarding the long term residence Ireland, UK and Denmark are not obliged through this directive.

¹³ Governo Italiano, Presidenza del Consiglio dei Ministri. „The Circular of the Council of Ministers of the Italian Government”, (28 December 2006),

after they will have stayed with authorization of residence in the respective country, from 1 year and a half to 3 years, depending on the respective state. This stipulation is contrary to article 10 of the Regulation 1612/68/EEC that gives the worker the right to reunify his family and article 10 can not be subjected to the derogations of transitory type¹⁴. Even the so called *stand-still* clause is broken in this way as before the adherence a more favourable treatment was applied in the basis of the directive of the Council 2003/86 regarding the right of the non-EU citizen to family reunification. This directive established the maximum term of 12 months in which a member state had to give the members of the family of a non-EU citizen the authorization for access on the labour market¹⁵.

The discrimination of these citizens is all the more unacceptable as the agreements that were precedent to the adherence of the states of Central and Eastern Europe did not contain such limitations for the members of the family.

The knowing of these measures with all the adopted variants in the different member states gives the citizens of the new states the possibility to reclaim their rights and fight for the unification of the social policies under the sign of the equality conferred through “the European citizenship”¹⁶. Romania’s major challenge from the point of view of the principle of the free movement of persons should be of opposite sign: from EU to the national territory and the effective adoption of the community *acquis*. The situation has a good precedent in Spain and Portugal’s adherence at EEC in 1986 when thousands of Spanish emigrants returned in their native country and the results are seen today when Spain is one of the countries most assaulted by immigrants.

CONCLUSION

If the citizenship was strongly identified with the national identity from the initial stage and until the limit of the advanced modernity that we cross because a

¹⁴ As it was said in a previous section “The Treaty of adherence gives the right to derogations only from the articles 1-6 of the regulation 1612/68.

¹⁵ The Directive of the Council 2003/86/EC, 22 September, *JUUE*, (2003), L 251/12, article 14(2), also see the comments made by Adinolfi, 485-498. ¹⁵ *Governo Italiano, Presidenza del Consiglio dei Ministri*. „The Circular of the Council of Ministers of the Italian Government”, (28 December 2006),

¹⁵ As it was said in a previous section “The Treaty of adherence gives the right to derogations only from the articles 1-6 of the regulation 1612/68.

¹⁵ The Directive of the Council 2003/86/EC, 22 September, *JUUE*, (2003), L 251/12, article 14(2), also see the comments made by Adinolfi, 485-498.

¹⁶ „Denying core free movement to workers, even on a temporary basis, strips citizenship of much of its substance in terms of the social rights to which mobility gives rise, thereby denying a significant proportion of individuals with any tangible means of staking their claim in this community”: Stalford, *Free movement Post Accession - Transition arrangements in Poland and Bulgaria*, lucrare prezentată la Symposium on Science Policy, Mobility and Brain Drain in the EU and Candidate Countries, University of Leeds, Iulie 27-28, (2003) cited in Adinolfi.

person's social and legal status was linked to his state of origin (from where the connection between citizenship and patriotism according to the most recent analyses), the next step was the activation of the preoccupation for the citizens' equal rights, followed by the extension of the citizen rights at the work and life conditions (together with the civilian and political rights), more recent one has arrived to the promotion of the concept of "multiple citizenship" due to the citizens' mobility and the society's evolution, an approach that allowed the applicants to be simultaneously citizens of 2 or more countries. This vision has evolved to what we call "transnational citizenship", effective only in the case of the European citizens that have more rights and obligations towards the Community besides the classical ones towards their state of origin. The criterion of the territorial belonging appears in this way as more and more surpassed, the citizen conscience and the effective representation of the role of the new citizenship orientating itself towards the fidelity to an abstract principle promoted by an organization, an over-national entity or a network of independent structures, strongly marked by globalization.

The edification of a transcontinental Union (the concept of "the Black Sea – internal sea of the European Union is evoked for a few years" (Pop, Gherghina and 2007, 110), which implies the progressive adherence of the neighbouring countries) by promoting the values of the democracy and of the exponential economic increase – balanced through social levers which could ensure the development and the prosperity at continental scale, so the consolidation of the European socio-economic model, cannot and does not have to cancel the national and regional specificity, but promote a common action that can put in value a diversity of options under the sign of subsidiary, leaving each entity large spaces of autonomous "civilization adventure".

As a matter of fact, the idea that the European community model of society will be thorough by the promotion through the 3 essential missions: the consolidation of the system of socio-economic development in order to ensure prosperity and solidarity to the citizens, the development of its security, liberty, justice space to give its entire sense to the European citizenship, the emancipation of the Union as global actor through the exertion of some global responsibilities.

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