EU CITIZENSHIP

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Abstrakt

Příspěvek se zaměřuje na definici občana EU. Nyní je v pravomoci členských států rozhodnout kdo je jejich státním příslušníkem. Avšak tato situace občas vytváří rozdíly mezi postavením obyvatel Evropské unie. Příspěvek se zaměřuje na funkcionální přístup k definici občana EU, jako je tomu v případu Velké Británie. Také diskutuje statut ne-občanů a vyškrtnutých osob v Estonsku, Lotyšsku a Slovinsku. Cílem příspěvku je opět otevřít diskuzi na téma kdo by měl být občanem Evropské unie a kde je demos Evropské unie.

Klíčová slova

Občané EU, ne-občané, vymazané osoby

Abstract

The paper tries to focus on the definition of EU citizen. Nowadays, member states have in their discretion the decision on who is their state national. However, this situation sometimes creates discrepancies between the positions of inhabitants of the European Union. Paper focuses on the functionalist approach to definition of the EU citizen, such as in case of Great Britain. It also discusses the status of non-citizens and erased persons in Estonia, Latvia and Slovenia. Aim of the paper is to open again the discussion on who should be the European Union citizen and where is the demos of the European Union.

Key words

EU citizens, non-citizens, erased persons

European Union citizenship presents a new concept of relation between state and international organization. Declared by Maastricht Treaty, the citizenship assures existing rights of citizens such as right to move freely within the communities and supplements them by political rights. Citizenship of the Union was largely discussed; German Constitutional Court in its famous Maastricht judgment stated the absence of people of Europe. Amsterdam Treaty stated the

subsidiarity of EU citizenship. Rights of EU citizens are defined in primary law; there are no express duties of EU citizens. Some rights that are named as rights of EU citizens are in fact rights of persons with residence in the EU.

EU citizenship may not be considered as nationality in the material sense. The concept of relation between citizens and state is being discussed, namely the no demos theory. We may state that citizenship of the EU is a set of rights granted to nationals of EU member states and doesn't represent nationality of the Union. The very content of the citizenship is not similar to content of nationality, e.g. the possibility to move freely is not unconditional; citizens have limited possibilities to participate in the political life of the Union. Member states decide independently on who is their citizen. Citizens of the EU don't have responsibilities adequate to those of state nationals. EU is a sui generis integration, many of its features are original and it is not possible to categorize them. Possibly, a new institute was created capable of creating a separate category.

From the character of European integration as well as from the rights and duties of EU citizens can be derived following characteristics of EU citizenship[1]:

- Derivativeness (citizenship is dependent on the citizenship of member states, the member states solely may decide on who is their citizen, with the exeption set in case Micheletti v. Delegacion del Gobierno en Cantabria[2]**),**
- content of the citizenship is limited by EU competences,
- mediateness,
- subsidiarity, proportionality (these principles must be kept when applying citizenship rules)
- connection to integration stage,
- inviolateness by flexibility principle , (see A. of the TEC
- interstate element, (the Court of justice stated several times that the citizenship rules cannot be applied to wholly internal situations, see e.g. C-148/02, p. 31)
- supremacy.

Fundamental right is to move freely within the Community (though the Treaty grants some exemptions). The Court of Justice set rules for expatriation. The Treaty defines political rights of EU citizens. These have right to vote and stand as candidate in municipal elections, states

[1] See Kudelová, M. Občanství ČR a EU. Diploma Thesis. Brno: MAsarykUniversity, 2007.
[2] Judgment of the Court of 7 July 1992, Mario Vicente Micheletti and others v Delegación del Gobierno en Cantabria, Reference for a preliminary ruling: Case C-369/90.

may however preserve the function of mayor for its nationals. Citizens have also right to vote and to stand as a candidate in elections to the European Parliament in the Member State, in which they reside, under the same conditions as nationals of that State. The Treaty however doesn't define subject of the right to vote in European Parliament elections. Among other rights are petition right, right to apply to the Ombudsman, right of access to documents, right of diplomatic and consular protection. Some rights were defined by the Court of Justice.

European Union sometimes affects spheres that are in competence of member states, if they influence the freedom to move freely within the community, as e.g. in case of granting surname. Reverse discrimination is however in some cases possible.

Genuine link between the citizen and the state is not necessarily permanent residence; condition of residence is unacceptable e.g. for restitution of property, or in case of retribution of war victims.

Who is EU citizen?

According to the Treaty, A 17, e*very person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship.*

It is the power of the member states to determine who their national is, and therefore the national of the European Union. There are however some limits set by the case Micheletti v. Delegacion del Gobierno en Cantabria[3]**.**

Some EU member states have a special, functional approach to the definition of EU citizens. Problematic is the position of member states citizens who reside in the overseas countries and territories. According to Mortelman a Temmik, these citizens don´t posses the freedom of movement. It has to be stated that, according to the Treaty, these citizens are EU citizens according to the Treaty as long as the state doesn´t distinguish between citizens of the continent and overseas citizens[4]. In the following text, we will focus on some of these states. In fact, lots of permanent inhabitants in the member states do not hold EU citizenship.

[3] Judgment of the Court of 7 July 1992, Mario Vicente Micheletti and others v Delegación del Gobierno en Cantabria, Reference for a preliminary ruling: Case C-369/90.

[4] see Torre, L. M. European Citizenship. An Institutional Challenge. Hague: Kluwer Law International. 1998, p. 134

Great Britain

In the year of accession of Great Britain to the EU (1973), a declaration was made to interpret the term British Citizen for the purposes of the European Communities. The declaration was amended following the adoption of British Nationality Act and the Maastricht Treaty. The British Nationality Act 19815 abolished the status of citizenship of the United Kingdom and Colonies and divided those who held that status into three categories:

> (a) British Citizens, including citizens of the United Kingdom and Colonies with the right of abode in the United Kingdom;
>
> (b) 'British Dependent Territories Citizens, comprising citizens of the United Kingdom and Colonies who did not have the right of abode but satisfied certain conditions concerning connection with a British Dependent Territory deemed to confer on them immigration rights to that territory;
>
> (c) 'British Overseas Citizens, comprising all citizens of the United Kingdom and Colonies who did not become British Citizens or British Dependent Territories Citizens. Having no connection with any British Dependent Territory, they may be refused any immigration rights[6].

Among those citizens didn´t belong British Dependent Territories Citizens and British Oveseas Citizens.

The case Kaur (C-192/99) tried to challenge the conception of British Overseas Citizens and British Dependent Territories Citizens as set in the British declarations. The main argument was the case Micheletti that stated that: *Member State can define the concept of 'national only if it has due regard to Community law and, consequently, only if it observes the fundamental rights which form an integral part of Community law.* However, the Court stated that: *In order to determine whether a person is a national of the United Kingdom of Great Britain and Northern Ireland for the purposes of Community law, it is necessary to refer to the 1982 Declaration by the Government of the United Kingdom of Great Britain and Northern Ireland on the definition of the term 'nationals which replaced the 1972 Declaration by the Government of the United Kingdom of Great Britain and Northern Ireland on the definition of the term 'nationals, annexed to the Final Act of the Treaty concerning the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the European Communities.*

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[5] Amended by British Overseas Territories Act 2002

[6] See C-192/99, 10

The Federal Republic of Germany

In the year 1957 Germany made a declaration that not only Germans of German nationality in the sense of the German citizenship act but also Germans in the sense of the A. 116, i.e. ethnic Germans in Eastern Europe, Volga – Germans (Wolga Deutsche), are to be considered Citizens for the purposes of EC[7].

Thus Great Britain and Germany created a special, functionalist nationality for the purposes of the Communities.

Spain

Spain entered into several international Treaties that allow multiple nationality in case of Latin-Americans. If a Spain kingdom citizen acquires nationality of some of the contracted Latin-American countries, he doesn´t lose his Spanish nationality. Citizenship is just „en hibernacion" (dormant), and restores during the residence in Spain[8].

Different situation applies for Gibraltar that is nowadays a territory of the United Kingdom. Following the Mathews vs. United Kingdom judgement[9], the United Kingdom declared to assure the voters of Gibraltar the right to vote in European Parliament elections. Spain disagreed with this concept claiming mainly that only EU citizens have, according to the Treaty, right to vote to the European Parliament. The ECJ stated that, *as regards the Treaty's articles relating to citizenship of the Union, no principle can be derived from them that citizens of the Union are the only persons entitled under all the other provisions of the Treaty, which would imply that Articles 189 EC and 190 EC apply to those citizens* ***alone****.*

Other countries

We could continue the list of countries by naming other former colonial countries such as Belgium or The Netherland, but the focus of the paper should be on the other group of countries: those who - when trying to implement democracy and cope with the past, themselves breached the rule of law or at least didn´t keep the morals of the nowadays international human rights standards.

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[7] see de Groot, G. The Nationality Legislation of the Member States of the European Union. In Torre, L. M. European Citizenship. An Institutional Challenge. Hague: Kluwer Law International. 1998str. 125

[8] See cited document, s. 128

[9] See ECHR, Application no. 24833/94, http://www.legislationline.org/legislation.php?tid=57&lid=4937

The case of Latvia and Estonia

Estonia and Latvia implemented in their legislation the term non-citizen. This approach is not based on international law rules. Over 600 000 persons (former Russians from the Soviet Union) lost their citizenship. The non-citizen status have inhabitants that came to Latvia and Estonia during the Soviet occupation. In Latvia, citizenship possess only 75% of inhabitants, the others are non-citizens or foreigners. Major part of non-citizens are nonethnic Latvians who came during the soviet occupation. After the decline of the Soviet era, those inhabitants lost their former soviet citizenship but didn´t acquire citizenship of other state[10]. The status of these citizens is described in the Law "On the Status of Former USSR Citizens Who are not Citizens of Latvia or Any Other State". There exists a possibility of naturalisation.

Non-citizens have the right to live in the territory, but they don´t have any political rights and they may not work in the public service. They possess a special non-citizen passport and they cannot travel freely within the EU.

The situation was discussed in the European Court of Human Rights case Slivenko v. Latvia no. 48321/99. The Court decided the breach of A. 8 of ECHR (right to private and family life).

Slovenia - The Izbrisani (Erased residents)[11]

Similar problem occurred in Slovenia where some persons were erased in 1992 from the registry of permanent residents. These were over 18.000 people[12] from the former Yugoslavia, who were not Slovenian origin, but were so-called 'new minorities" including ethnic Serbs, ethnic Croats and ethnic Bosnian Muslims, ethnic Albanian Kosovars and ethnic Roma which the government sought to force out of the country. 'Old minorities' include ethnic Italians and ethnic Hungarians, specifically mentioned in the December 1991 Constitution[13]. Some sources call this measure as “soft genocide” or “administrative genocide”[14].

Later, Slovenian courts ruled that the erasure was unconstitutional, but the erased lived for about ten years as „outlaws”, without rights to social services, jobs or housing.

[10] http://www.pobalti.cz/clanek.html?id=1080

[11] erase, red pencil, rub out, score out, scratch out, delete, expunge, obliterate

[12] Some sources declare them to be 30.000 – see http://www.preventgenocide.org/europe/slovenia/

[13] See http://www.preventgenocide.org/europe/slovenia/

[14] See Fussel, J. The Izbrisani Issue in Slovenia.

Conclusion

EU member states decide on who are their citizens. Some of them have even created a functionalist approach and classified different categories of citizens. Due to colonial history of some countries, such approach may be comprehensible. The case of Latvia or Estonia shows the perils of this approach: thousands of people living in the country, thus having a genuine link with the state, are not regarded as nationals and posses an unprecedental status that doesn´t allow them to take advantage from EU law. This concept shows us that nationals of member states enjoy often different rights.

According to the Fifth Report on Citizenship of the Union, the Commission is aware of these problems (mainly of non-citizens and the erased) and has received a *number of complaints, NGO reports, petitions and EP questions concerning problems in certain Member States linked to the acquisition and loss of nationality.* Though it is not in EU powers, the Commission has sought to contribute to solutions linked to this issue *by promoting integration and by using the Community instruments at its disposal such as ensuring that Member States strictly implement EC anti-discrimination legislation.* One of the proposed measures is granting the citizenship rights to persons who have possessed permanent residence in one of the member states for some period of time (e.g. 5 years).

There seems to be one solution of the problem that has already been proposed by the Commission but hasn´t found the necessary consensus among the member states to become a binding legal act: granting the EU citizenship rights to persons with permanent residence.

The idea is actually not as a major breakthrough as it would seem: some citizenship rights are in fact granted to persons with permanent residence (such as petition right), some rights – such as right to vote and stand as candidate in the European Parliament elections – are, as seen in the case of Spain vs. UK, not restricted strictly to nationals of member states.

References:

[1] Kudelová, M.: *Občanství ČR a EU*, Brno: Masarykova univerzita, 2007.

[2] British Overseas Territories Act 2002

[3] Judgment of the Court of 7 July 1992, Mario Vicente Micheletti and others v Delegación del Gobierno en Cantabria, Reference for a preliminary ruling: Case C-369/90.

[4] Torre, L. M. European Citizenship. An Institutional Challenge. Hague: Kluwer Law International. 1998.

[5] http://www.preventgenocide.org/europe/slovenia/

[6] British Overseas Territories Act 2002

[7] Law "On the Status of Former USSR Citizens Who are not Citizens of Latvia or Any Other State"

[8] http://www.am.gov.lv/en/policy/4641/4642/4651/

[9] Burca, G., Craig, P. *EU Law. Texts, Cases and Materials*. Third edition. Oxford : Oxford University Press, 2003.

[10] ECHR, Application no. 24833/94,

http://www.legislationline.org/legislation.php?tid=57&lid=4937

[11] Fussel, J. The Izbrisani Issue in Slovenia.

[12]http://www.preventgenocide.org/europe/slovenia/

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