

Rethinking EU Citizenship: Towards the Postmodern Ethics of Citizenship

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Abstract. The concept of EU citizenship reflects EU politics of (fixed) identity, which guarantees rights only to the homogenous groups (and individuals as representatives of these groups). Hence, it leaves room for marginalizing, othering, excluding and other forms of discrimination, by creating binary oppositions: we/they, citizen/alien, EU/non-EU and so forth. EU citizenship is based on the modernist ethics of priority of right over the good. It is created to promote European idea, so it has only instrumental value. On the other hand, the politics of affinity leads to the substantive EU citizenship founded on multiple identities. The politics of affinity requires a new ethics which will lead to transformation of the main concepts of EU legal discourse.

Keywords: *Europe, citizenship, identity, right, good*

INTRODUCTION

The purpose of this inquiry is to show that the EU politics of identity which determines EU citizenship has to be replaced by non-universalist and non-essentialist politics. Essentialist and exclusive conceptions of citizenship still exist as a dominant paradigm of EU citizenship. The concept of EU citizenship should not be based on exclusive conception of identity, which implies homogenization.¹ The essentialist conception of citizenship may lead to Euro-nationalism. Political and cultural pluralism together with the different affinities of every individual based on multiple identities, require breaking with homogeneity and sameness.² The concept of EU citizenship should not be perceived as fixed by territory and residence. On the other hand, the idea of European identity should not be tied to a certain

¹ Carl F. Stychin, "Desintegrating Sexuality: Citizenship and the EU", *Citizenship and Governance in the European Union*, ed. by Richard Bellamy and Alex Warleigh, Continuum, London and New York, 2001, p. 112

² Hall (1996) and Delanty (2000) argue that every identity is built on some kind of exclusion.

religion or culture. Carl F. Stychin refers to this less essentialist politics as to politics of “affinity”.³ “A politics of affinity differs from one centered on a fixed identity in that affinity suggests that the fictions of a homogeneous and totalizing group attribute have been rejected in favor of a recognition that a shared characteristic and experience - which may lead to (or require) common endeavors – cannot overwhelm the differences that exist between the members of the group.”⁴ The politics of affinity requires the new ethics of citizenship which will not give the priority to the essentialist and rationalist notion of right over the contingent and particularistic notion of good. This new ethics of citizenship will embrace a fluid concept of identity.

1. EU’s POLITICS OF IDENTITY

1.1 *The Idea of European identity*

In the following lines, it will be shown that the concept of EU citizenship is based on the determined conception of European identity, which is mostly defined by territory and residence⁵ and the “common heritage” of European people.⁶ However, the nature of this “common heritage” is mostly understood as homogeneous.

“European identity” is established and promoted by the *Declaration of the European Identity* of the Nine Member States of the Community in 1973 in Copenhagen. In 1995, the *Charter of European Identity* is established. In this Charter, European identity is described as based on “unity in diversity and common values for all citizens.”⁷

European identity is also described as being a question of education, not birth. However, these two statements seem to be contradictory. “European

³ Carl F. Stychin, “Desintegrating Sexuality: Citizenship and the EU“, p. 112

⁴ Ibid, p. 113

⁵ As it can be perceived from the article 17 of the *Maastricht Treaty*, which establishes EU citizenship.

⁶ The common heritage and values of European people are emphasized in the *Declaration of the European Identity* of the Nine Member States of the Community in 1973 in Copenhagen. It is also emphasized in the *Convention for the Protection of the Architectural Heritage of Europe* (Granada, 30 October 1985), the *European Convention on the Protection of the Archeological Heritage* (revised) (Valleta, 16 January 1992), etc.

⁷ *Charter of European Identity*, “Towards a European Identity“, <http://www.eurit.it/euritplace/diba/citta/cartaci.htm>

values” are defined as built on historical roots in classical antiquity, Christianity, Renaissance, Humanist movement, Enlightenment and further in the development of democracy, rule of law and human rights.⁸ European values are perceived as cultural and historical unity. This understanding leaves room for distinguishing between European values and non-European values, between Europeans and others. The consequence of this point of view is exclusion and marginalization of a number of people in the EU. “Without significant exceptions, the universal speeches of modern Europe assume silence about the non-European world. There is incorporation, inclusion; there is direct rule, there is coercion, but, rarely, there is recognition.”⁹

On the other hand, understanding European identity as a homogeneous concept based on European values which are derived from “European” history and “European” culture, “makes invisible the (...) contributors of non-European origin to the economic, cultural and social life of Europe.”¹⁰ Subsequently, the statement that the question of Europeaness is a question of education seems contradictory to other definitions and descriptions of Europe, European values and identity described in the *Charter of European Identity*.

In the *Charter of European Identity*¹¹ it is argued that “fundamental European values are based on tolerance, humanity and fraternity.”¹² Concepts

⁸ Ibid, “Europe as a Community of Values“

⁹ Said, E. W, *Culture and Imperialism*, Chatto and Windus, London, 1993, p.58

¹⁰ Kofman, E. and Sales, R, “Towards Fortress Europe“, *Women’s Studies International Forum*, Vol. 15, part I, 1992, p. 24

¹¹“In the speech of the European Parliament on March 8th 1994, the poet Václav Havel [former] President of the Czech Republic, indicated the need for the Charter of European Identity. The idea was taken up by Europa-Union Deutschland which, at its 40th Congress held in Bramen on 5.11.94 decided to undertake the work of producing such a Charter. For this purpose a working group met on 17-19 February in Cusdore (Thuringia) with the task of drawing up the first draft. After the publication of this draft in the *Europäische Zeitung* and the public presentation of the text at a symposium held in the House of Deputies, Berlin, on May 6th, 1995, wide-ranging discussions took place inside Europa-Union, in which the European Federation for Education and Science and members of the European Union of journalists were also involved. During the process more than 500 draft amendments were submitted. The working group then held a second meeting in Bonn on September 9th, 1995, to study these suggestions and work on their second draft of the Charter. (...) This draft was then debated once again at the 41st Congress of Europa-Union Deutschland in Lübeck, October 27-28th and passed in October 28th 1995, with only two votes against.“

¹² *Charter of European Identity*, “Europe as a Community of Values“,

<http://www.eurit.it/eurplace/diba/citta/cartaci.htm>



of “humanity” and “fraternity” are perceived as defined by nature, and, thus, universal. Humanity is considered as based on human nature, which is the same for all human beings, while fraternity is perceived as a fixed concept defined by “natural blood tie”.

According to Derrida, both concepts are founded on a fixed conception of identity, on which the entire Western tradition is based.¹³ Those concepts have their origin in the American and French Revolutions. *Declaration of American Independence*¹⁴ asserts that rights it declares are “evident”. Thus, they are inherent. The rights granted by the *Declaration of Man and Citizen*¹⁵ are considered as universal and natural. According to the Article 1 of the *Declaration of Man and Citizen*: “Men are born and remain free and equal in rights. Social distinctions may be founded only upon the general good.”

In those documents identity is understood as free of difference. The politics and culture are created as a set of homogeneous groups in which individuals realize their identities.¹⁶ In his *Politics of Friendship*, Derrida argues that natural fraternity does not exist. Fraternity and humanity are both constructed terms constantly open to different interpretations.

Václav Havel, former President of the Czech Republic, who indicated the need for a *Charter of European Identity*, claims that European identity is based on European values, which origin from the antiquity and Christianity. He argues that European values have “obvious metaphysical roots”.¹⁷ Indeed, it can be argued that European values and heritage as homogeneous categories derive from Western metaphysics, which according to Heidegger ended with Nietzschean philosophy.¹⁸ Western metaphysics is the metaphysics of

¹³ Jacques Derrida, *Politics of Friendship*, Verso, New York, 2006

¹⁴ It is established by Continental Congress on July 4, 1776.

¹⁵ It was adopted on 26/27 August in 1789 by the National Constituent Assembly, during the period of the French Revolution, as the first step toward writing constitution of France.

¹⁶ “Derrida observes that all claims to cultural and national identity have homogenizing logic, that they level out differences, create imaginary and purified forms of identities, and eliminate the non-identical and the differed from their midst.” (Seyla Benhabib, “Democracy and Difference: Reflections on the Metapolitics of Lyotard and Derrida”, *Journal of Political Philosophy*, Volume 2, Number I, 1994, I-23, p. 20)

¹⁷ From the speech made by former President of the Czech Republic to the European Parliament in Strasbourg on March 8th, 1994, www.europa-web.de/europa/02www/203chart_gb.htm

¹⁸ However, this argument can be called into question, because there are many contemporary thinkers who still employ metaphysical categories, which are usually ascribed to modernist thought. On the other hand, there are some parts of Nietzschean philosophy which can be

representation which aimed at giving a true picture of reality governed by the law of reason.¹⁹ However, it succeeded only to create an artificial picture estranged from the real, based on the essentialist and universalist discourse.²⁰

The consequence of this form of thinking is homogeneous picture of European heritage, as one of the foundations of European identity. However, there are different perspectives on “European heritage” and “European values”, but they all presume unity. “The *European Convention* rejected inclusion of a reference in the proposed *European Constitution* to Christianity and/or God. (...) This compromise text has not satisfied those who want to see European identity defined as Christian, and Christian values included in the *European Constitution*. German chancellor Angela Merkel reopened the issue in 2006, supporting the campaign of Pope Benedict XVI to include reference to a specifically Christian heritage. In his controversial speech in Regensburg in September 2006, Pope Benedict emphasized both the European nature of Christianity and the Christian nature of Europe.”²¹

European heritage and values are also perceived as defined by common cultural and historical experience. It is also considered as based on tolerance, the rule of law and human rights.²²

Postmodernist authors criticized modernist metaphysics arguing that discourses and concepts are not determined, but fluid.²³ Postmodern authors argue that everything differs from everything, and therefore, there is no permanence, and thus, no identity. Subsequently, the self and identity can be considered as narrative constructions continuously reinterpreted into different affinities, characters and drives. From a postmodern point of view, Europe, as well as European identity can be perceived as narrative constructs. Lowenthal states that even Europe can be perceived as a “mental construct”, it does not

read as postmodern (for example, Nietzsche’s account on “the self“ represented in his Will to Power), although historically his philosophy does not belong to this stream.

¹⁹ See Thomas Bridges, *The Culture of Citizenship: Inventing Postmodern Civic Culture*, State University of New York, 1994,

²⁰ This is argued by a number of poststructuralist and postmodernist authors.

²¹ Pan-European Identity, www.absoluteastronomy.com/topics/Pan-European_identity

²² Recently, it started to be perceived as a “mental construct“ by many authors, but this perspective is not acknowledged by European law.

²³ The importance of the postmodern thought for the transformation of the concepts of EU citizenship and European identity will be explained in the second part of this paper.



represent reality, but the construction.²⁴

European identity may be perceived as a metanarrative²⁵ founded on the myth which creates European values. This metanarrative is based on the idea about common European history and culture, which include Ancient Greece, Ancient Rome, Middle Ages, the Renaissance, the Enlightenment and liberalism and presuppose democracy, tolerance and the rule of law. However, this point of view ignores the fact that blood conquest, violence and intolerance dominated European history and, thus, can be considered as the foundation of European heritage.

1.2. The idea of fluid identity

The conception of citizenship based on fixed identity constructs a public sphere which does not embrace the difference. Williams argue that “identity has been used as a focus for gathering people together under the banner of some unifying notion or characteristic (...) The development of collective identities in this way has always been fundamentally concerned with acts of power.”²⁶ According to Hall, identities are based on “the unchanging oneness” that overcomes “superficial differences”.²⁷

However, European identity and citizenship should embrace the idea of a fluid identity, which represents dynamic, hybrid and changeable category. The modern idea of identity is based on the Cartesian idea of the unitary subject. Descartes employs the “method of systematic doubt” to examine all knowledge in order to get firm and certain knowledge. He states: “I noticed that, during the time I wanted this to think that everything was false, it was necessary that I, who thought this, must be something. And noticing that this truth – I think,

²⁴ Lowenthal, “European Identity: Emerging Concept“, *Australian Journal of Politics and History*, vol. 46, No. 3, 2000, p. 314

²⁵ Metanarrative is a totalizing idea which gives a comprehensive explanation of knowledge, historical events and different theories. It is based on a fixed notion of an identity because it unifies different human experience, by postulating universal explanations and values. Many authors argue that it represents the act of power, because it ignores heterogeneity of human existence. On the other hand, some authors argue that the critique of a metanarrative represents a particular kind of metanarrative itself. However, this argument is not valid, because the critics of metanarratives argue that the meaning is constructed, and, therefore, always open for reinterpretations.

²⁶ Williams, A, *EU Human Rights Policies: A Study in Irony*, Oxford University Press, 2005, p.184

²⁷ *Ibid*, p. 185

therefore I am – was so firm and so certain that the most extravagant suppositions of the skeptics were unable to shake it, I judge that I could accept it without scruple as the first principle of the philosophy I was seeking.”²⁸

Descartes makes a distinction between the mind and body, which produces binary oppositions: self/other, objective/subjective, and so forth.²⁹ He emphasizes the difference between the rational, conscious, unified and knowing subject, on the one hand, and an object, on the other hand. However, the idea of fluid identity does not embrace a stable, unitary, conscious and self-identical subject. Fluid identity is based on the assumption that the subject is produced by discourse. Consequently, identity is shifting, fragmented and multiple. It cannot be considered as rational and it is always in the process of reconstruction.³⁰ This approach emphasizes that meaning is not fixed, it is deferred and represents an interplay between two opposites. Thus concepts such as “identity”, “difference”, “equality”, “nature”, etc. are always open to different interpretations.

The idea of the European Union requires the notion of fluid identity. Thus, “the developments in the European Union have brought forth the possibility of membership in various overlapping and strategically interacting political communities on supranational, national and subnational levels and have unleashed the potential of rethinking citizenship, community and identity.”³¹

According to Kostakopolu, the idea of EU citizenship should be based on the assumption that citizens have multiple identities. It should not be based on the foundationalist notion of the community or the essentialist conception of identity.³² The values of political pluralism and cultural multiplicity require breaking with homogeneity and sameness.

²⁸ Descartes, R, *Discourse on Method and Meditation on First Philosophy* (D. A. Cress, Trans.), Hackett, Indianapolis, 1993, p. 19

²⁹ According to Derrida, Descartes was not the first to produce these binaries which can be found in the entire Western metaphysics from Plato’s philosophy.

³⁰ “Rather than viewing self as an objectifiable, cognitive essence, poststructuralists argue that identity processes are fundamentally ambiguous and always in a state of flux and reconstruction.” (David Collinson, “Rethinking Followership: A Post-structuralist Analysis of Follower Identities“, *The Leadership Quarterly*, 17, 2006, p.182

³¹ Kostakopolou, T, “Towards a Theory of Constructive Citizenship in Europe“, *Journal of Political Philosophy*, Volume 4, Number 4, 1996, p. 344

³² *Ibid*, p. 344

1.3. The concept of EU Citizenship Inside the Framework of European Legal Discourse

The concept of EU citizenship is defined by Article 8 of the *Maastricht Treaty*³³, “Every person holding the nationality of a Member State shall be a citizen of the Union.”³⁴ According to the Article 49 of *Maastricht Treaty*, every European country founded on principles of democracy may apply for the membership in European Union. However, it is not defined what “European” means and whether this concept is defined by geography, history, culture, or belief. Some authors argue that *Maastricht Treaty* is about the states of Europe, not peoples.³⁵

Maastricht Treaty clearly defines who are and who are not EU citizens and creates binary oppositions: we/they, citizen/alien, EU/non-EU, and so forth. Some authors argue that European citizenship should be attributed to all residents in the European Union, not only to the nationals of the Member States.³⁶ This definition causes a lot of paradoxes and it creates inequality and discrimination, especially for the individuals who come from the “third” countries³⁷. In some states these individuals would become European citizens by getting nationality, while in other they would not.³⁸

In the *Amsterdam Treaty* (1997) it was emphasized that national citizenship is complemented and not replaced by EU citizenship. “In the *Treaty of Amsterdam* there was added a new light: the right to use any recognized Community language and to have answer in the same language; EU citizens and any natural or legal

³³ I.e. the *Treaty on European Union*.

³⁴ The definition of EU citizenship is broadened by *Amsterdam Treaty*. It is emphasized that “citizenship of the Union shall complement and not replace national citizenship.”

³⁵ Nicoll, W, “Maastricht Revised: A Critical Approach of the Treaty on European Union”, *The State of the European Community: Maastricht Debates and Beyond*, Longman, Colorado, 1993

³⁶ Lehning, Percy B, “European Citizenship: Towards a European Identity?”, *Law and Philosophy*, Kluwer Academy Publishers, Volume 20, No.3, May 2001

³⁷ This concept is part of the international and European legal discourse. However, it is discriminative and should be changed. If all individuals should be treated as equal, which is asserted by international human rights instruments, they should all be perceived as citizens of one world.

³⁸ “German nationality was denied to a third generation Turk, although he/she and his/her parents were born in Germany, meanwhile it was granted automatically to any ethnic German coming from the old Soviet Union, although he/she didn’t know anything about German language or culture. In other countries, as France, this same person would have already acquired the French nationality and, in consequence, the European citizenship.” (The History of European Union, The European Citizenship, www.historiasiglo20.org/europe/ciudadident.htm)

person residing or having a registered office in a Member State now have access to Parliament, Council and Commission documents in specified conditions. ”³⁹

Although the concept of EU citizenship has developed from *Maastricht Treaty* to *Amsterdam Treaty*, there is no substantive change in this concept. Downes emphasizes that *Amsterdam Treaty*⁴⁰ does not provide a more substantive rights.

On the other hand, ”the possession of the formal status as a national is decreasing in importance as a requisite to the enjoyment of certain key citizenship rights, including the right to remain in a territory of a particular state. This can be illustrated by the position taken by the European Court of Human Rights in *Beldjoudi v France*. ”⁴¹

In *Beldjoudi*, the European Court of Human Rights “found that an Algerian national who had spent his whole life in France could not be deported from France because he was in possession of ‘effective nationality’ of the country, meaning that all his friends and immediate family resided there and he was clearly connected to French, not Algerian Society. Even the fact that Monsinour Beldjoudi lacked the formal status of a French citizen was unable to convince the Strasbourg Court that he could be deported without violating of Article 8 of the *European Convention on Human Rights*. A right to remain in the country and not to be deported, can thus belong both to persons in possession of a formal citizenship status and to those possessing ‘effective nationality’.”⁴² However, this case does not represent a substantive change of the idea of EU citizenship. According to Kochenov, EU citizenship remains “purely derivative”⁴³ and dependent on the nationality of a Member State.

On the other hand, *Grzelczyk*⁴⁴ “is an important judgment because it

³⁹ Santiago, M.B, *Union Citizenship: The Long Path of a Concept*, February, 2009, p. 5

⁴⁰ The main objective of the *Amsterdam Treaty* was to modify certain regulations of the Treaty of European Union, the constituent treaties of the European Communities (Paris and Rome) and of some acts related to them.

⁴¹ Kochenov, D, “European Citizenship and the Difficult Relationship Between Status and Rights“, *Columbia Journal of European Law*, Vol. 15, No.2, 2009, p. 176

⁴² *Ibid*, p.176,177

⁴³ *Ibid*, p. 183

⁴⁴ “*Grzelczyk* was the first judgment which dealt with the right of economically inactive persons to reside in another Member State. The case concerned a French national who, for three years had studied in Belgium and had worked there to pay for his studies. In the fourth and last year of his studies he stopped working in order to concentrate on his studies. He applied for the minimum subsistence allowance (the so-called “minimex”), but did not fulfill



recognizes expressly that EU citizenship allows nationals of other Member States who are lawfully residing in that Member State access to social benefits⁴⁵ beyond existing secondary Community law.”⁴⁶ However, according to Van der Mei, cases of Sala⁴⁷ and Grzelczyk⁴⁸ do not represent a substantive change of the exclusionary nature of the EU citizenship. “Economically inactive can still be required to present proof that they will not become a burden on the host of State’s social assistance schemes. Grzelczyk does not imply recognition of a general unconditional right to freedom of movement. The ruling merely implies that Union citizens who have initially convinced the host State’s authorities that they are able to provide for themselves but who, contrary to initial expectations, become temporarily in financial need do not automatically lose their right to reside. Secondly, Grzelczyk does not necessarily imply that Community students can actually claim social assistance in the host state. The ruling merely implies that Community students can claim social assistance benefits where, and under the same conditions as, national students have right to such benefits. National social assistance laws, however, may contain eligibility criteria, which students often are not able to meet (...) Further, Article 12 (1) of EC Treaty does not object to national rules which make entitlement to social assistance and other minimum subsistence benefits subject to requirements of habitual residence or domicile on the national territory.”⁴⁹

EU citizenship is still not perceived as an independent right to move and

the condition set by Belgian law (to be a Belgian or a worker). (...)ECJ considered that the condition which had been imposed, by reason of not being imposed on Belgian nationals too, discriminated on grounds of nationality. ECJ found that articles 12 and 18 EC Treaty precluded entitlement to a non-contributory benefit, such as the minimex, from being made dependent on a condition that did not apply to nationals of the host Member State as well. “ (Rudy Grzelczyk, *EU Case Law (2001)*, <http://www.eucaselaw.info/rudy-grzelczyk-2001/>)⁴⁵ “The revolutionary case of saga about European citizenship starts in the decision of European Court of Justice C- 85/96 *Martinez Sala v Freistaat Bayern* [1998] ECR- I -2691. Martinez Sala was greeted as potential bridge between the orthodoxy of economic rights for economic migrants and the new horizons lit up by comprehensive rights to equal treatment of Union citizens.“ (Hamernik, P, *On EU Citizenship in the Light of Objective Justification of National Rules in the ECJ Case-Law*, www.enelsyn.gr/papers/.../Paper%20by%20Pavel%20Hamernik.pdf)

⁴⁶ Rudy Grzelczyk, *EU Case Law (2001)*, <http://www.eucaselaw.info/rudy-grzelczyk-2001/>

⁴⁷ C-85/96 [1998] ECR-I-2991

⁴⁸ C-184/99 [2001] ECR-I-6193

⁴⁹ Van Der Mei, P, *Free Movement of Person within European Community* , p. 150 in Hamernik, P, *On EU Citizenship in the Light of Objective Justification of National Rules in the ECJ Case-Law*, www.enelsyn.gr/papers/.../Paper%20by%20Pavel%20Hamernik.pdf

reside inside the framework of the EU. This is confirmed by Article 8a of the *Maastricht Treaty*: “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 this Treaty and by the measures adopted to give it effect.”

Thus, rights from EU citizenship are not unconditional. This can be perceived in the case of Mr. de Cuyper.⁵⁰ “Mr. de Cuyper was Belgium citizen who was granted unemployment allowances and also was exempted from the condition to be subject of control procedure, however, only if he stays resident in Belgium to monitor his employment and family situation.”⁵¹

Kostakopolou argues that EU citizenship should be based on domicile, not on nationality. Consequently, third country nationals would be granted the rights and the protection that is guaranteed to all Union citizens.⁵² “A paradigm of citizenship based on domicile could also lay the foundations for an inclusive European identity and for the formation of a ‘heterogeneous’ democratic European public. In such a public, individuals can participate as individual citizens and members of communities and groups which have equal status in the public sphere.”⁵³

It can also be argued that the rights guaranteed to the EU citizens by *Maastricht Treaty*⁵⁴ are based on some metatheoretical presuppositions, such as young/old, educated/non-educated, citizen/foreigner and so forth. The right to free movement mostly adheres to academic, educational and political field.⁵⁵

⁵⁰ C-406/04, 18.07. 2006

⁵¹ Hermenik, P, *On EU Citizenship in the Light of Objective Justification of National Rules in the ECJ Case-Law*, www.enelsyn.gr/papers/.../Paper%20by%20Pavel%20Hamernik.pdf

⁵² Kostakopolou, “Towards a Theory of Constructive Citizenship in Europe”, *Journal of Political Philosophy*, Volume 4, Number 4, 1996, p. 345

⁵³ *Ibid*, p. 346

⁵⁴ The rights guaranteed to the EU citizens are: right to move and reside freely within the territory of the Member States (Article 8a); “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 “ (Article 8b), “the right to petition the European Parliament in accordance with Article 138d“ (Article 8d), the right to “apply to the ombudsman“ (Article 8d). “Every citizen of the Union shall, in the territory of the 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 authority of any Member State on the same conditions as nationals of the State.“ (Article 8c)

⁵⁵ See Dirk Jakobs and Robert Mair, “European Identity: Construct, Fact and Fiction“ in Gastelaars and Ruijter (eds.), *A United Europe: The Quest for a Multifaced Identity*, Shaker, Maastricht, 1998, p. 13-34



Getting a job in other European countries is mostly an option for young citizens.⁵⁶ This points to another binary hierarchy – young/old.

According to Balibar, *Maastricht Treaty* excludes “third” country residents.⁵⁷ Thirteen millions of “third” country inhabitants, who are also contributors of European culture and civilization have a status of the second class citizens, although they have a long-term or permanent residence in Europe.⁵⁸ According to Hansen, third countries nationals are mostly granted social and economic rights inside the legal order of the European Union. However, they are not granted the political rights. They “face a double limitation: in most cases they lack the right to work in EU countries other than one in which they reside, and they lack the rights of political citizenship in their country of residence: the right to run for office, to vote and to work in the public service and in some professions.”⁵⁹ Consequently, another dichotomies arise: nationals/non-nationals, us/them, EU/non-EU immigrants⁶⁰ and so forth.

The *Treaty on European Union* or *Maastricht Treaty* established the citizenship of the European Union to make European identity stronger. “In comparison with citizenship of the state, citizenship of the Union is characterized by rights and duties and involvement in political life. It is designed to strengthen the ties between citizens and Europe by promoting the development of a European public opinion and European political identity. This concept comes under the first pillar of the Treaty on European Union.”⁶¹ European Parliament also emphasizes the connection between citizenship and identity, by asserting “practical measures

⁵⁶ Ibid.

⁵⁷ Étienne Balibar, *Nous, citoyens d'Europe? Les frontières, l'État, le peuple*, Éditions la Découverte, Paris, 2001

⁵⁸ Ibid.

⁵⁹ Hansen, R, “A European Citizenship or a Europe of Citizens? Third Country Nationals in the EU”, *Journal of Ethnic and Migration Studies* Vol. 24, No. 4, October 1998, p. 751, 752

⁶⁰ “In countries as Belgium, Denmark, France, Germany, Britain and the Netherlands, the foreigner is most frequently regarded to be Turkish, Arab or Asian (...) although in reality most non-nationals are often of European nationality. In addition these non-European foreigners are disliked more than European foreigners. It seems that the identification with the European project remains marginal but that at the same time the boundaries between ‘us’ and ‘them’ are drawn between natives and immigrants from other EU-countries on the one hand, and immigrants from outside Europe and especially from ‘non-white countries’ on the other hand.” (Dirk Jakobs and Robert Mair, “European Identity: Construct, Fact and Fiction” in Gastelaars and Ruijter (eds.), *A United Europe: The Quest for a Multifaced Identity*, Shaker, Maastricht, 1998, p.15)

⁶¹ Citizenship of the Union: Introduction, <http://europa.eu/scadplus/leg/en/lvb/123001.htm>

capable of contributing to the development of a European Community consciousness.”⁶²

EU citizenship can only be perceived as a tool of promotion of EU identity. However, even understood in this way, it still represents the product of the policy of the fixed identity defined by residence and borders. It does not embrace the possibility of identity without sharp borders. It can also be argued that this conception of citizenship is imperialist.

There are a lot of authors who equate European citizenship with EU citizenship, which makes another problem. For example, Jones argues that it can be doubted whether EU citizenship exists. He argues that the entities to which notion of “EU citizenship” can be applied are equally problematic. Jones argues that Europe is not a city nor a town, and that is why the notion of “European citizenship” is problematic. According to Jones, it is mostly argued that the concept of European citizenship refers to a new EU polity. He emphasizes that the notion of “polity” is also vague.⁶³ However, the main problem with this perspective is that it equates European with EU citizenship. Europe consists of the number of countries and peoples who are not part of the European Union. If European and EU citizenship are equated, the existence of these peoples as citizens of Europe is denied. They are perceived as non-existent as well as the states who are not the members of EU, since equation of European with EU citizens reduces Europe to European Union.

According to Šlosarčik, there are three interpretations of EU citizenship that can be recognized. Firstly, EU citizenship can be perceived as an effective tool which can create a more integrated European “supranational organization”.⁶⁴ Secondly, EU citizenship can be read as an establishment of EU population, which consists of Member States’ nationals, which create body of the sovereignty in the EU. EU population will, together with the EU and Member States, govern the process of broadening of the European integration. And, thirdly, EU citizenship can be an effective tool of improving lives of the Member States’ citizens.

It can be argued that EU citizenship only represents an instrumental good (

⁶² Andrew Williams, *EU Human Rights Policies: A Study in Irony*, Oxford University Press, 2005, p.181

⁶³ R. J. Barry Jones, “The Political Economy of European Citizenship“, *Citizenship and the Governance in the European Union*, ed. by Richard Bellamy and Alex Warleigh, Continuum, London and New York, p.143

⁶⁴ Ivo Šlosarčik, “Governance and the Influence“, www.Ise.ac.uk/collections/EPIC/documents/IC2000.htm

a means to an end). It has a clear purpose and it is not defined as good in itself (a substantive good). EU citizenship is established to promote European project - European identity and economic integration of the European Union.⁶⁵ Consequently, the rights guaranteed to the EU citizens also represent an instrumental good. “For example, the original justification for sexual equality rights – fundamental to European rights discourse – was not a broad-based concern with participation by women on equal terms in the public sphere, but a desire to ensure a level playing field in the most of factors of production between the member states of the European Economic Community.”⁶⁶ On the other hand, as a fixed concept, EU citizenship excludes great number of EU citizens, and thus the rights it provides are not substantive.

According to Percy B. Lehning, the distinction between objective and subjective EU citizenship can be made:

“Objective citizenship is the extent to which the rights extended to individuals within the EU by the EU amount to the creation of an EU ‘citizenship’, and the extent to which the necessary political institutions, which make participation in a common set of political institutions possible, have been institutionalized.”⁶⁷

“Subjective citizenship is the extent to which individuals actually conceive themselves as ‘citizens’ of the EU and have a sense of ‘belonging’ to that supranational Union.”⁶⁸

For the empirical setting of the EU citizenship the objective citizenship is enough. EU citizenship does not require subjective citizenship. On the other hand, subjective citizenship is not sufficient condition for getting the status of EU citizen. EU citizenship has only instrumental value because objective citizenship, defined by treaties and many other EU political institutions, does not necessarily include individuals’ feeling of belonging to European Union. On the other hand, European identity, which is regarded as the foundation of European citizenship, does not embrace an identity based on the individual’s interpretation and reconstruction of European history. The main paradox that arises from this point of view is that from

⁶⁵ According to a number of authors, in the Treaty of European Union, rights are guaranteed to the “market citizens”. However, the conception of “market citizenship” also represents the policy of identity, because it is based on the homogenous group. In this way, citizens who do not belong to this group are excluded.

⁶⁶ Carl F. Stychin, “Desintegrating Sexuality: Citizenship and the EU“, p.109

⁶⁷ Percy B. Lehning, “European Citizenship: Towards a European Identity?“, *Law and Philosophy*, Kluwer Academic Publishers, Volume 20, No.3, May 2001, p. 273

⁶⁸ *Ibid*, p. 274

the EU citizenship are included many who do not consider themselves Europeans, while many individuals who feel this way are excluded.

2. THE POLITICS OF AFFINITY – TOWARDS A NEW ETHICS OF CITIZENSHIP?

2.1 *The Postmodern Ethics of Citizenship*

In the recent studies the distinction between ethics of justice which is based on the principle of the priority of right over the good, on the one hand, and ethics of care which is based on empathy is made. The ethics of justice is based on reason, which is considered the same for all human beings, while the ethics of care embraces contextuality and feeling. In the following lines it will be argued that the modern liberal political thought is mostly based on the ethics of justice, while the postmodern thinkers, may be considered as representatives of the ethics of care. The ethics of justice emphasizes equality, impartiality, objectivity and decision-making based on universal rules.⁶⁹ On the other hand, the ethics of care is often described as based on contextual and holistic approach. It emphasizes the uniqueness of each ethical situation.

However, the postmodern ethics of citizenship based on the idea of the fluid identity should embrace both ethics. This was implicitly argued by Derrida who rejected all kinds of binary distinctions such as: right/good, reason/feelings, universality/particularity and so forth, because they create exclusion and equality.

According to Thomas Bridges, an instrumental notion of citizenship origins from the ethics based on the principle of priority of right over the good.⁷⁰ The right is perceived as a universal, rational concept which is independent of any particularistic conception of good. Bridges argues that the whole modernist liberal thought is influenced by this conception of justice.⁷¹ Modernist liberal political thought is based on universalist conception of reason which is immanent to all human beings. Notions of “freedom”, “equality” and “rights” on which the concept of citizenship is built are considered as developed from human rationality.⁷² They

⁶⁹ Botes, A, “A Comparison Between the Ethics of Justice and the Ethics of Care“, *Journal of Advanced Nursing* 32 (5), 2000, p. 1072

⁷⁰ Thomas Bridges, *The Culture of Citizenship: Inventing Postmodern Civic Culture*, State University of New York Press, 1994, www.cvrp.org/book/Series01/I-26/contents.htm

⁷¹ Bridges emphasizes that the modernist liberal political theory is influenced by European Enlightenment.

⁷² The notion of European citizenship evolved from the French revolution which was influenced by Enlightenment.

are perceived as absolute truth, which transcends any particularistic, contingent conception of good. According to Bridges, the postmodern liberal thought requires a new ethics of citizenship, which would be built on the concept of good, which will include different particularistic and cultural values. Hence, citizenship will be understood as contingent cultural (or narrative) construct.

Bridges argues that Rawls introduces postmodern conception of liberal doctrine in his *Political Liberalism*. However, Rawls also advocates the principle of right over the good, which was not recognized by Bridges. On the other hand, Rawls's conception of justice which is based on the principle of priority of right over the good, does not completely exclude the domain of good and in some cases the "right" and "good" interweave.

Bridges correctly identifies the problem that arises with modernist political theory based on the principle of the priority of right over the good. In this way a number of binary oppositions is created: right/good, universal/particular, necessary/contingent, etc. In the modern thought the first principle is regarded as dominant, because it was considered as based on reason. However, founding the postmodern ethics on the reverse order and arguing about the priority of good over the right, would establish hierarchies that existed in the modern thought. They would just have a different order. In this way, discrimination and exclusion that exist in the origin of the modern thought, which is often emphasized by postmodern thinkers, would not be resolved. Therefore, postmodernist ethics should reject dichotomies by establishing the principle in which the right and the good intertwine.

According to Rawls, the principles of right are the product of collective choice, while the principles of good are based on the choice of the individuals. Every individual has a right to choose her own principles of good, her metaphysical, religious or philosophical doctrine, and, thus, her conception of good life. But while the "good" individual can choose, the principles of "right" are established by public reason. However, in Rawls's theory of international justice, the public reason is not fixed. It is not specified by any comprehensive doctrine or political conception. The idea of public reason contains a form of public political deliberation.

Sandel argues that it is impossible to separate the "right" from the "good" or political from moral sphere.⁷³ He emphasizes that in order to decide what the right is, a certain conception of good must be included. Therefore, moral questions cannot be separated from the political questions, because in many cases they interweave.

⁷³ Michael Sandel, *Liberalism and the Limits of Justice*, Cambridge University Press, 1982

It seems that Rawls's answer is that peoples governed by public reason can make a consensus about the rights, but still the different interpretation of the role those rights play will remain. Consequently, different individuals and peoples do not need to be in moral agreement on the justification of the principles of justice, just on the principles themselves. In this way, the "right" and "good" interweave.

On the other hand, by defining public reason as a non-fixed term, Rawls leaves room for the new conception of citizenship. This conception of citizenship challenges the old one, and redefines the notions of "identity" and "membership". By transforming these notions it avoids marginalizing, othering, stigmatising and other forms of discrimination. Consequently, it creates new forms of political creation.

According to Rawls, the perspective of citizenship cannot be understood in a minimalist way. Instrumental citizenship cannot provide the foundation for an effective civic culture. In his *Political Liberalism*, Rawls argues that citizenship is a substantive good, desirable in itself.⁷⁴

The postmodern ethics of citizenship will not deny a particular conception of good founded on the particular way of life. EU citizenship is composed of many narratives and different world views. It is a dynamic category, which continually changes, which cannot be reduced to membership or a territory. Hence, EU citizenship should be multiple citizenship based on the multiple identities. Bridges argues that the postmodern ethics of citizenship should not only explain what it means to be a citizen, but also to make clear why it is good to be a citizen. This is the main difference between ethics based on the priority of the principle of right (which gives only a normative standpoint of citizenship) and the ethics in which the right and the good intertwine (which also promotes the difference, and thus gives a substantive standpoint of citizenship). This ethics is based both on justice and care. It applies rule accompanied with empathy, i.e. care. "Social and moral phenomena are bound in terms of interpersonal relations, context and values, and are multifaced and dynamic in nature."⁷⁵

The postmodern ethics of citizenship in which right and good interweave rejects false dichotomies between "rationality" and "irrationality", "reason" and

⁷⁴ The politics of the individual in Rawls's political philosophy is a moral conception. According to Rawls, moral personality has two powers: the capacity for a sense of right and justice (the capacity to be reasonable) and the capacity for a conception of the good (the capacity to be reasonable). The reasonable and the rational are complementary ideas.

⁷⁵ Botes, A, "A Comparison Between the Ethics of Justice and the Ethics of Care", *Journal of Advanced Nursing*, 32 (5), 2000, p. 1073

“emotion”, “objective” and “subjective” and so on. It rejects the picture of law as rational and neutral instrument of justice. Young argues that ethics based on the principle “one size fits all” should be rejected. “Equal treatment requires everyone to be measured according to the same norms, but in fact there are no ‘neutral’ norms of behavior and performance. (...) This implies that instead of always formulating rights and rules in universal terms that are blind to difference, some groups sometimes deserve special rights.”⁷⁶ The law and judicial reasoning should also include empathy. This is necessary because every case is unique and particular. This idea was expressed by many feminist theories. “They have seen the ‘objectiveness’, ‘rationality’ and emotional distance that judges are supposed to inhabit not only as unattainable, but also as not to be aspired. For example, Lynne N. Henderson has called for empathy in judicial reasoning, arguing that legality gives judges a way to escape responsibility, and Carrie Menkel-Meadow has called for an inclusion of ‘ethics of care’ in the judicial processes.”⁷⁷ Applied to citizenship, this ethics does not recognize borders, and exterminates othering and stigmatizing.

2.2 The Politics of Affinity

The postmodern ethics of citizenship can be based on the Derrida’s critique of essentialist and universalist conception of identity. Derrida emphasizes that the entire Western discourse is based on the concept of identity. “Because our metaphysical tradition teaches that man is identical to himself, a coherent personality free from internal difference, we have been encouraged to seek our identities through membership in undifferentiated, homogenizing groups such as families, friendships, classes and nations.”⁷⁸ According to Derrida, the politics of identity, which privileges unity represents dangerous ethics and politics.⁷⁹ Derrida rejects identity based on totality and unity as an illusion. He argues that language, cultural and national identities are different from themselves. On the other hand, the person is being different from itself.⁸⁰ “Once you take into account this inner and

⁷⁶ Young, I. M., “Polity and Group Difference: A Critique of the Ideal of Universal Citizenship”, *Ethics* 99, 1989, p. 269, 270

⁷⁷ Ivana Radacic, “What is Feminism and Feminist Jurisprudence?”, www.zenska-mreza.hr/Izjave/feminist_legal_theories.doc

⁷⁸ Mark Lilla, “The Politics of Jacques Derrida”, *New York Review of Books*, No 11, June, 1998, p. 39

⁷⁹ John D. Caputo, *Deconstruction in a Nutshell: A Conversation with Jacques Derrida*, 2006, p. 13, <http://books.google.com>

⁸⁰ *Ibid.*, p. 13

other difference, then you pay attention to the other and you understand that fighting for your own identity is not exclusive of another identity, is open to another identity.”⁸¹

In the contemporary civilization, the binary opposition we/they is still employed in the legal discourse, and that is why some authors regard contemporary world as “barbaric”.⁸² Barbarian⁸³ is traditionally defined as a foreigner whose language, customs and culture differ from the language, customs and culture of a “civilized citizen”. The barbarian is perceived as civilized citizen’s other – inhuman, cruel, rude, etc. Thus, the question whether we are moving toward greater freedom or greater barbarianism can be asked.⁸⁴

Derrida introduces the concept of “différance”, which overcomes the fixed identity of “difference”, and is open to different meanings and reinterpretations.⁸⁵ Consequently, heterogeneity and dissociation are promoted. He argues that the concepts of borders, nations, culture, citizenship, etc. do not have fixed meaning. According to Derrida, the meaning is a free interplay between two opposites.⁸⁶ Thus, it is always open to different interpretations. It must be emphasized that Derrida’s idea was not to make new binary oppositions in which the difference will have priority over an identity, heterogeneity over homogeneity, dissociation over association, etc. He argues these concepts have to be rewritten and not perceived as

⁸¹ Ibid, p.13

⁸² Stjepan G. Meštrović, *The Barbarian Temperament: Toward a Postmodern Critical Theory*, Routledge, London and New York, 1993

⁸³ The peoples who were non-Greek, non-Christian and non-Latin, were regarded as barbarians in Western history.

⁸⁴ Stjepan G. Meštrović, *The Barbarian Temperament: Toward a Postmodern Critical Theory*, p. 56

⁸⁵ “Derrida moves from the Saussurean focus on speech to a concern with writing and textuality and replaces the fixed signifieds of Saussure’s chains of signs with a concepts of différance in which meaning is produced via dual strategies of difference and diferral. For Derrida, there can be no fixed signifieds (concepts) and signifiers (sounds and written images), which have identity only in their difference from one another (...) Signifiers are always located in a discursive context and the temporary fixing of meaning in a specific reading of a signifier depends on this discursive context. “ (Weedon, *Feminist Practice and Poststructuralist Theory*, Blackwell, Cambridge, 1987, p. 25)

⁸⁶ Derrida rejects logocentrism which he considers as the main characteristic of the Western thought. Logocentrism associates discourse with logos and creates the philosophy of identity, which establishes binary oppositions: identity/difference, speech/writing, signified/signifier, etc. The first term is considered as dominant because it represents values of western thought and discourse, while the other is perceived as subordinated and defined only through the negation of the first term,



fixed.⁸⁷ In this way, the concept of citizenship would be considered as unbounded. It will embrace various identity possibilities. Subsequently, states and nations are also not fixed entities. “The concepts by which people define who they are – in which they articulate their sense of identity – are all of them concepts without sharp borders, and hence cannot provide a basis for sharp demarcations such as political boundaries between states.”⁸⁸

With the development of information society, the new perspectives of citizenship arise. The citizenship can be viewed as a state of mind. It need not be tied to borderlines. “The map may well be a mental one, however, and its geography may well be one of the imagination. People are always their own cartographers, moving about in a world arranged according to their needs for affiliation and their senses of affinity.”⁸⁹

Derrida does not argue that all forms of unity and gathering need to be overcome.⁹⁰ He rejects the politics which grants rights to the homogenous groups based on fixed identity. This essentialist politics marginalizes and excludes a number of peoples, which is also argued by representatives of the politics of affinity.

The politics of affinity rejects the concept of a fixed identity and the idea of homogeneous groups.⁹¹ Peoples’ identities are multiple and represent a fluid concept always open to changes and refiguration, which results from one’s affiliations and development. Therefore, their particular notion of a good life should not be denied. The politics of affinity leaves room for individuals and groups “for whom the disciplinarity of a singular and totalizing identity is increasingly untenable.”⁹² “Rather, a politics of affinity assumes the existence of cross-cutting cleavages which will pull in different directions on any political subject with respect to most issues of controversy

⁸⁷ “Reconsider all the pairs of opposites on which philosophy is constructed and on which our discourse lives, not in order to see the opposition erase itself but to see what indicates that each of the terms must appear as difference of the other, as the other differed and differed.” (*A Derrida Reader: Between the Blinds*, ed. by Peggy Kamuf, Columbia University Press, New York, 1991, p. 61)

⁸⁸ Onora O’Neil, “Justice and Boundaries”, *Political Restructuring in Europe: Ethical Perspectives*, ed. by Chris Brown, Routledge, London, 1994, p. 78

⁸⁹ Rob Kroes, *Them and Us: Questions of Citizenship in a Globalising World*, University of Illinois Press, 2000, Urbana & Chicago, p. 23

⁹⁰ John D. Caputo, *Deconstruction in a Nutshell: A Conversation with Jacques Derrida*, 2006, p. 13, <http://books.google.com>

⁹¹ E. T. A. Hoffman, German XIX century writer, is one of the first known authors who argue about dissociation and difference as the main characteristic of identity. He expresses this idea in his story “Princess Brambilla” and in a number of other stories.

⁹² Carl F. Stychin, “Desintegrating Sexuality: Citizenship and the EU”, p. 119

(for example, gay Catholics).”⁹³ Therefore, politics of identity does not neglect the difference in favor of a unity and it requires refiguration of the concept of identity employed in European legal discourse.

While the identity politics is based on sameness, the politics of affinity is based on difference. It embraces different models of identity. The core idea of the politics of affinity is “deliberation amongst people who may form an affinity because they have something in common, but who may not consider themselves as sharing an identity, because they do not have that much in common.”⁹⁴ On the other hand, the concepts that politics of affinity employs are continually reconstructed and reinterpreted.

The idea of the politics of affinity is not to completely replace and reject the politics of identity, because in this way it would create binary opposition affinity/identity, where affinity would dominate over identity. If this would be the case, another kind of the politics of identity would be created. The aim of the politics of affinity is to encompass a broader concept of identity which would include different affinities and encounter the difference. Consequently, the term “other” would also be broadened and would not be considered as fixed term. It would be compatible with broadened concept of identity which include different identities which constantly change and depend on the context.

CONCLUSION

Substantive EU citizenship cannot be accomplished by increasing the number of rights or by their transformation in non-economic manner. It can be realized only by the transformation of the rights discourse and the conception of EU citizenship itself. This transformation requires a new ethics of citizenship which is not based on the essentialist and exclusive notion of identity. This, postmodern ethics of citizenship offers a fluid concept of EU citizenship which is not founded on the homogeneous groups of rights based on the principle of priority of (universal) notion of right over the (particular) notion of good. It creates fluid identity of EU

⁹³ Ibid, p. 119

⁹⁴ Carl F. Stychin, *Governing Sexuality*, p. 19



citizenship, which is open to different interpretations and values and leaves room for “Other”.

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