

GOVERNANCE AND CITIZENSHIP IN THE EUROPEAN UNION – THE INFLUENCE OF CULTURE

CITIZENSHIP OF THE EUROPEAN UNION – IMPACT OF POLITICAL CULTURE ON UNDERSTANDING OF THE CITIZENSHIP IN THE UNITED KINGDOM, FRANCE, GERMANY AND THE CZECH REPUBLIC

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Introduction – Object of the paper

European citizenship is rather new phenomenon in European legal order, being introduced by the Maastricht Treaty and modified by Amsterdam Treaty. Albeit not playing extremely important role in lives of European citizens at present, in combination with direct elections to the European Parliament the citizenship of the EU could be a basis for radical shift in understanding of the EU status in the future.

This paper will analyze the compatibility of the concept of European citizenship with constitutional and political traditions of the United Kingdom, France and Germany. Further, this paper will try to predict its future position in the Czech Republic and its implementation into the Czech legal and political system.

Theoretical and practical impact of the European citizenship in the 90s

The Maastricht Treaty introduced a new phenomena into community primary law – the citizenship of the European Union. The article 17 (ex-art. 8) says :

Citizenship of the Union is hereby established. Every citizen holding the nationality of the Member State shall be a citizen of the Union. (Maastricht version) Citizenship of the Union shall complement and not replace national citizenship. (Amsterdam amendment)

The rights and obligations emanating from the citizenship of the EU are then specified in following articles (art. 18-22/ ex-art. 8a-8e). They include right to free movement and residence (art.18), active and passive electoral rights in the municipal elections and elections into the European Parliament (art. 19), right for diplomatic protection (art. 20), petition rights to the European Parliament and right to refer matters to Ombudsman (Art. 21). Further, the Treaty contains a mechanism for expansion of rights derived from the citizenship of the EU – acting on proposal from the Commission, the Council of Ministers can unanimously

strengthen or supplement aforesaid catalogue, in co-decision with the European Parliament (art. 22).

At the European level, three readings of the citizenship of the European Union can be identified :

First, according to contemporary doctrine of both international and constitutional law, the population and citizenship are (in conjunction with territory and effective governance) conditions sine qua non of any statal structure. Then, the establishment of the citizenship of the EU can be interpreted as a step towards creation of more integrated European supranational organization – a kind of European super federation. However, the EU citizenship *shall complement and not replace national citizenship* (art. 17, sent. 3). The last sentence, added by the Amsterdam Treaty, weakens radically pro-federalist interpretation of the EU citizenship. Experience of federal and/or con-federal states and their regulation of citizenship can be used as a blueprint there, albeit in limited scale¹.

Secondly, the citizenship of the European Union is interpreted as a recognition of the European population (population of member states) as a body which holds the popular sovereignty in the EU framework. Majority of member states' constitutions contains a reference to "people" or "nation" which the state sovereignty is vested in. The community law does the same implicitly by establishment of the citizenship of the EU. Since 1979, the "EU people" or "EU nation" have even an institution which can directly represent their interest at the community level – the European Parliament. Then the EU people shall be one of the three entities, together with member states and the European Union itself, which govern the work and expansion of the European integration – the former represented by the Council and the latter by the Commission.

The problems of the second reading of the EU citizenship are inherently encoded in the used terminology. When using terms like "sovereignty", "popular sovereignty" or "nation" one simply cannot escape the fact of endless disputes over their content and meaning. Another critique of the interpretation of the EU citizenship as the expression of popular sovereignty is based on fact that there is still no European-wide political debate and/or European-wide public forum. According to the critiques, the European popular sovereignty cannot be expressed in other than purely formal way and can never replace national sovereignty of member states, as the citizenship of the EU can never replace citizenship of member states. This critique generally originates from German legal background and will be discussed in the sub-chapter on Germany in more detail.

The third reading of the EU citizenship is the "practical" one. European citizenship is interpreted a tool of improving lives of citizens of member states – not matter whether in the EU territory or abroad. The symbolic value of the EU citizenship may be important, the more important is the protection of a particular citizen in foreign dangerous country outside Europe or the fact that a particular man or woman do not have to spend money and go to their domestic state only to vote in the EP elections. This reading of the EU citizenship is more about concrete rights than far future and theoretical concepts.

¹ See J.H.H. Weiler: THE CONSTITUTION OF EUROPE, Cambridge University Press 1999, pp324-356

As following pages will show, the member states discussed (the United Kingdom, France and Germany) have not stuck exclusively to any of the three readings of the European citizenship. Instead, they seem to combine all of them in order to make the doctrine of “dual citizenship” (citizenship of the EU and citizenship of a member state) compatible with their own constitutional tradition.

Compatibility of “dual citizenship” in tradition of member states

In order to accept the doctrine of the EU citizenship, the member states have to clarify three main questions:

1. What new obligation will emerge for us ?
2. Who will be the citizens of the European Union ?
3. Is the EU citizenship compatible with our constitution ?

United Kingdom : How to be a subject and a citizen at one time?

Paradoxically, the United Kingdom was the country, where the ratification of the Maastricht Treaty has met the smallest obstacles, not matter how famous is the United Kingdom for its Euro-skepticism². The adoption of the Maastricht Treaty, which included the introduction of the citizenship of the EU, had to survive neither constitutional review nor referendum.

Due to the character of British constitutional system, the only formal change in British domestic legal order was amendment of the European Communities Act 1972. The British Nationality Act 1981, which regulates the process of acquisition of British citizenship, remained uninfluenced. During a year following ratification, a several laws regulating local election, election to the European Parliament and social security system have been amended – without significant opposition in the Parliament or public debate.

The fact that the community law does not regulate whether an individual possesses nationality of particular member state, was crucial for British approach to the citizenship of the EU. British Nationality Act 1981 has introduced several categories of British citizenship (British citizenship, British Dependent territories citizenship and British Overseas citizenship) – but only a holder of the first category of citizenship is considered to be citizen of the European Union. Additionally, after transfer of sovereignty over Hong-Kong back to China, the United Kingdom has adopted for Hong-Kong inhabitants specific simplified procedure for acquisition of British citizenship – which remains also out of sphere of the EU regulation.

Concluding, the United Kingdom constitutional tradition cause only marginal obstacles for incorporation of the concept of the EU citizenship into British legal system. The scale of debate connected with the citizenship issue was radically lower than debate connected with other issues raised by the Maastricht Treaty – such as parliamentary sovereignty, Common Defense and Foreign Policy or Economic and Monetary Union.

² E. Best : THE UNITED KINGDOM AND THE RATIFICATION OF THE MAASTRICHT TREATY, in Ratification of the Maastricht Treaty (Vanboonacker ed.), 245

France : National sovereignty, popular sovereignty and citizenship

The French Constitution of the V. Republic (1958) holds that:

National sovereignty shall belong to the people, who shall exercise it through their representatives and by means of referendum. No section of the people nor any individual may arrogate to itself, or to himself, the exercise thereof. Suffrage may be direct or indirect as provided by constitution. It shall be always universal, equal and secret³.

In France, the crucial term connected with two interrelated terms : popular sovereignty (la souverainete populaire) and national sovereignty (la souverainete nationale). The former one focuses on the individual French citizens as holders of sovereignty; the later vests the sovereignty to the corpus of the French nation, which shall be more than the simple group of all French citizens, which live in the territory of French Republic at present⁴.

Until 1992, French constitution contained no direct and explicit reference to the European integration. The legal basis for French participation in the EC was a standard international treaty combined with rather obscure formulation of the Preamble to the French Constitution 1946 (the Preamble to the Constitution 1946 is still part of French constitutional order) which enabled treaty-based “limitation of French sovereignty”.

The situation has changed in 1992. The V. Republic has introduced a new judicial institution into French constitutional system : Constitutional Council. It can review compatibility of any international treaty with French constitution. If Constitutional Council finds a conflict between the constitutional text and international pact, the Council can freeze the ratification procedure. Then, the only way open for the treaty ratification is the amendment of the constitution.

The situation described occurred during Maastricht Treaty ratification process. Before its conclusion, the French president requested the Constitutional Council to decide on the compatibility of the Treaty with French Constitution. In so called Maastricht opinion I⁵, the Constitutional Council declared dominant part of the Treaty compatible with the Constitution. It declared that French Constitution generally enables transfers of French sovereignty to international bodies. However, the Council identified three areas, where the transfer of powers requires explicit constitutional authorisation : establishment of the economic and monetary union, the citizenship of the Union and the immigration affairs.

The Council’s main problem with the EU citizenship has rooted in French electoral system. Senate, the higher chamber of French Parliament, is elected by representatives from French magistrates. French sovereignty is vested in French citizens who exercise it through their representatives. If a foreigner was elected into magistrate, he could directly influence the composition of the Senate – then the parliament would not reflect the opinion of the French people and exercise of French sovereignty would be perverted.

To solve this problem, the French constitution has been amended in order to expressly provide for participation of foreigners in municipal elections. Article 88-2 holds that:

³ Art. 3

⁴ Georges Burdeau et. al.: Droit Constitutionnel ([23th ed.] Libraire generale de Droit et Jurisprudence, Paris 1993), 181

⁵ Judgment of Constitutional Council of April 11,1992 (Maastricht I)

Subject to reciprocity and in accordance with the terms of the Treaty on European Union signed on 7 February 1992, the right to vote and stand as a candidate in municipal elections shall be granted only to citizens of the Union residing in France. Such citizens shall neither exercise the office of mayor or deputy mayor nor participate in the designation of Senate electors or in the election of senators. An institutional Act passed in identical terms by the two assemblies shall determine the manner of implementation of this article.

The constitution amendment has opted for the narrowest possible change, only to fulfil the requirements of Maastricht Treaty. Foreigners may vote in the municipal elections and be elected into the council of municipality but they can neither become a mayor nor vote in indirect election in Senate.

France thus saved their constitutional doctrine but sentenced itself to never ending cycles of constitutional amendments following every change of community primary law (in reality, it has already happen after the Amsterdam Treaty when the constitution has been amended again)⁶.

Germany : Practical support but theoretical limitations of the European citizenship

For the clarification of the German approach to the citizenship of the European Union, the “Maastricht-judgement” (Maastricht-Urteil) of German Constitutional court⁷ has prominent position. Even before ratification of the Maastricht Treaty, German government has initiated pro-European amendment of the Basic Law . New “European Article” No. 23 has been added giving explicit authorization for German participation in the post-Maastricht European Union.

However, even this governmental attempt to be “on the right side of the law” was not totally successful. Not the ratification of the Maastricht Treaty but the constitutional amendment itself was challenged before the Constitutional court. Legal basis for such a action were so called “super-rigid” or “non amendable” provisions in the Basic Law⁸.

The German Constitutional court in its expanded judgement upheld constitutionality of the European Article, and implicitly the constitutionality of the ratification of the Maasrticht Treaty. However, the pro-European decision has been accompanied by remarks which seem to reflect very reserved approach to more intensive stages of the European integration.

According to German constitutional judges, the European Parliament cannot be the representative of European polis at the community level. The reason why is absence of an European political debate, European political parties and universal European election system. The Court repeatedly stressed that member states are “masters of the treaty”. The legitimacy of the European Union is derived from derived from the member states and not directly from their inhabitants.

⁶ See S. Mouthaan: AMENDING THE AMENDED CONSTITUTION, European Law Review 23 (1998), 593

⁷ BVerfGE 89, 155 [1993] (Maasrticht-Urteil)

⁸ Basic Law, Art. 79 (3)

Therefore, some author interpret the Maastricht-judgment as Court's prohibition of creation European super-federation in the future and as conservation of the traditional concept of national state and nation-based citizenship⁹.

Czech Republic : New state and new rules

The Czech Republic has emerged on the political map as an independent state on January 1, 1993. However, it is the successor state of the Czechoslovak Republic both in formal and material sense.

Czech approach to the citizenship shows rather traditional picture. The preferred method of the acquisition of Czech citizenship is based on *ius sanguinis*, while *ius soli* is used as supplementary method. Czech citizenship law¹⁰ contains possibility of acquisition of the Czech citizenship by birth, adoption, declaration and naturalization. Specific preferential treatment is granted for inhabitants from the Slovak Republic.

However, the Czech legal order is reluctant to recognize dual citizenship. As a general rule Czech citizen cannot have another citizenship– there are exceptions such as children from mixed marriages. The ban of dual citizenship does not imply some kind of sanction for a person who possesses two or three citizenship – the Czech institutions simply do not take another citizenship into account.

In connection with expected Czech accession to the European Union, profound constitutional changes are discussed. At present, the Czech constitutional order is in position of France or Germany – it is blind to the existence of the European Union.

Constitutional order of the Czech Republic operated with dual citizenship only in very exceptional situation. Generally shared social agreement exists, however, that the EU membership will imply intensive constitutional changes. Compared with other constitutional amendments, the question of the citizenship stays rather out of center of public debate at present.

The implementation of the EU citizenship will be accompanied by others EU amendments in one constitutional “packet”. Therefore, the debate about the European citizenship will probably be pooled with other sensitive topics, such as acquisition of land estate by foreigners or the adoption of the Schengen *acquis*.

⁹ The literature analyzing the Maastricht-Urteil is expanded. For instance see S. J. Boom: THE EUROPEAN UNION AFTER MAASTRICHT DECISION (IS GERMANY THE VIRGINIA OF EUROPE?) available at www.law.harvard.edu/Programs/JeanMonnet/papers/, Nigel Foster: THE GERMAN CONSTITUTION AND EC MEMBERSHIP, Public Law 39 (1994), 392-408, Joachim Wierland: GERMANY IN THE EUROPEAN UNION: MAASTRICHT DECISION OF THE BUNDESVERFASSUNGSGERICHT, European Journal of International Law 5 (1994), 259-266, Manfred Zuleeg: THE EUROPEAN CONSTITUTION UNDER CONSTITUTIONAL CONSTRAINTS: THE GERMAN SCENARIO, European Law Review 22 (1997), 19-34

¹⁰ Act 40/1993 (as amended)

Prospects of European citizenship : Harmonization or deepening of national specifics?

Member states do not share general opinion in relation to the doctrine and future of the citizenship of the European Union but they have adopted the minimal standards required for citizens of other member states.

The further expansion of rights and duties derived from the European citizenship requires unanimous approval of all member states. In this area, every single state is really the master of the treaty.

Another aspect of the future of the European citizenship is its symbolic value – both at community and national level. The twelve yellow stars on passport can generate more links of sympathy among inhabitants of the EU member states than long legal catalogue of rights and obligations.

Future of European citizenship is unclear. One variant of its development is to remain in today's limited form. The other is expansion of the citizenship to equivalent of citizenship regimes of member states, and possibly replacing them. However, the absolute elimination of citizenship of member states by that of the EU does not seem to be the issue of the day. Keeping in mind low level of predictability in this area, the concentration on the promotion of the still existing system is perhaps the most effective solution. The grand changes will come automatically. Or not.