

**THE POSTNATIONAL MODEL OF MEMBERSHIP AND EU  
CITIZENSHIP: A CRITICAL APPROACH**

ULUS SONRASI ÜYELİK MODELİ VE AB VATANDAŞLIĞI:  
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**ABSTRACT**

National citizenship model assumes a close territorial link between the state and its citizens. However, after the Second World War period, rights derived from citizenship have been extended to the non-citizens, which arguably resulted in a deep transformation of the institution of citizenship from national to postnational model of membership. This study seeks to contribute this ongoing discussion in the literature by examining Soysal's postnational model of membership and questioning EU citizenship as a model of such membership. Examining the legal framework of EU citizenship, the study concludes that EU citizenship does not represent a model of postnational membership.

**Keywords:** *National membership, Postnational membership, EU citizenship.*

**ÖZ**

Ulusal vatandaşlık modeli devlet ve vatandaşları arasında yakın bir bölgesel bağ öngörmektedir. Ancak İkinci Dünya Savaşı sonrasında vatandaşlıktan kaynaklı hakların vatandaş olmayan kişilere tanınmaya başlanması vatandaşlık kurumunun tartışmaya açık bir şekilde ulusaldan ulus sonrası üyelik modeline dönüşmesine yol açtı. Bu çalışma, Soysal'ın ulus sonrası üyelik modelini irdeleyerek ve AB vatandaşlığının bir ulus sonrası üyelik modeli olup olmadığını sorgulayarak yazında devam eden bu tartışmaya katkıda bulunmayı amaçlamaktadır. AB vatandaşlığının yasal çerçevesini inceleyen çalışma AB vatandaşlığının ulus sonrası üyelik modelini henüz temsil etmediği sonucuna ulaşmaktadır.

**Anahtar Kelimeler:** *Ulusal üyelik, Ulus sonrası üyelik, AB vatandaşlığı.*

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### INTRODUCTION

After the Second World War, West Europe experienced an economic and political transformation. Economically, workers from third countries have been welcomed by most of the European states in order to fill up the lack of labour forces while there has been an increase in the human rights concerns at political sphere. Increasing number of non-citizen populations especially with regard to the labour migration and refugee movements has caused the discussions not only in the political arena but also in the academic field regarding the issues of citizenship, state sovereignty and migrant rights.

One of the discussions among scholars has been the citizenship concept in the post-war period. New forms of citizenship such as global citizenship, supranational citizenship and postnational citizenship begin to be discussed. In this study, the citizenship discussion is examined with a critical approach by focusing Soysal's postnational model of membership (Soysal, 1994; Ferrajoli, 2002; Jacobson, 1996; Sassen, 2002) and its opponents (Joppke, 1998; 1999a; 1999b; Kostakopoulou, 2001; Weil, 1997; Mouritsen, 2009; Ivic, 2012) with a specific reference to the European Union (EU) citizenship model.

Once identifying the arguments and elements of postnational membership, the study questions EU citizenship as a model of postnational membership. EU declares itself to be a model of supranational citizenship and extends rights exclusive to citizens to non-citizens in a member state due to EU citizenship or due to long term residence permit. There is an ongoing debate in the literature on whether the supranational political order of EU requires a new concept of citizenship (Soysal, 1994; Horvath, 2008; Vink, 2003) or the EU citizenship is still limited by nationality of member states and thus still does not represent a postnational model of citizenship (Savino, 2011; Weil, 1997; Mouritsen, 2009; Ivic, 2012; Tallgren, 2003). Thus, model of EU citizenship deserves a special attention to question whether it is a model of postnational membership or just a deviation from national membership. This study aims to contribute this ongoing discussion in the literature by focusing on the legal framework of EU citizenship by taking into consideration Soysal's postnational membership model.

In the first part of the study, postnational membership is examined in terms of its differences from national membership and its main reasoning. In the second part, the study first examines the rights transformed to EU citizens and non-EU citizens. Then, it questions the arguably declining importance of national membership in EU. Since acquiring EU citizenship and long term residence permit is still under national jurisdiction of member states, the study concludes that importance of national membership in EU has not diminished and even increased.

Thus, EU citizenship does still not represent a postnational model of membership.

## **1. NATIONAL AND POSTNATIONAL MEMBERSHIP**

Citizenship discussions covers several approaches, making the reference to different elements such as state, rights, shared identities and membership in civic or political communities. In the national citizenship model, almost all elements are covered. There is a close territorial link between the citizen and its state. State uses its domestic jurisdiction within this territory. Key institutions such as warfare, industrial development, educational and cultural institutions began to be operated at the national level and the national state became crucial for the socialization of individuals into national citizenship. (Sassen, 2002: 279) Here, the shared nationality is the point that makes the people to be a member of a group. Rights and privileges have a single status which assumes the same rights and privileges for all of the citizens.

In the post-war period, wide-ranging civil and social rights are extended to almost all workers and legal residents. Having a separation, political rights become no longer a prerequisite for social rights. This paves way for discussions questioning whether citizenship can exist beyond the boundaries of national state and whether national citizenship no longer matters. New forms of citizenship such as global citizenship, supranational citizenship and postnational citizenship begin to be discussed.

Global citizenship focuses on the wider human community supporting the universal commitment to respect the rights of all citizens regardless of their nationality (Delanty, 2007: 64). The supranational citizenship mostly covers rights and values of a civil society rather than emotional attachments to territory and cultural affinities (Shore, 2004:27). This notion has its roots from Jurgen Habermas' (1992) concept of constitutional patriotism. It decouples nationality and citizenship and argues that a civic and political participation is based on reason and human rights rather than a national identity based on ethnic and cultural dimensions (Schnapper and Dedios, 1997). Postnational membership refers to the increasing interdependency in the international system. States do not have a complete exclusive sovereignty over territory and population because of the transnational political structures. However, it is also argued that nation-state continues to exist alongside transnational spaces, though nation-states are not necessarily the primary actors in transnational relations (Albrow, 1998).

This study focuses on the postnational model of citizenship and attempts to question EU citizenship as a model of postnational citizenship. In this model, it is argued that citizen is replaced by the individual (Soysal,

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1998: 194). The consistency between territory and citizen has been violated in the post-war period since a guest worker can have rights exclusive to citizens such as working, residence, education or health insurance without having citizenship. Home countries of guest workers and various international organisations such as EU, North Atlantic Treaty Organization or United Nations have also claims for population's social, political, economic activities. In addition to such transnational dynamics, emergence of human rights and formalization and legitimization of these rights through international law "obliged nation states not to make distinction in granting civil, social and political rights" (Soysal, 1994: 145). Thus, it is argued that the pact between state and citizen which "symbolizes the political –cultural integrity of the nation" is broken in the post-war period (Jacobsen, 1996: 9). According to Koopmans and Statham (2001: 5), this has an obvious result for the migrants. Such postnational rights make transnational migration easier since they are guaranteed on the global level without the need of belonging to a particular nation.

Social citizenship shifts the discussion from belonging to a community (identity) to full membership of such community (scope of rights), especially for the EU framework of Economic and Monetary Union (Prentoulis, 2001: 209). Sassen (2002: 281) argues that the formal developments such as EU or the evolvement of international human rights regime might prove the broken nature of the national citizenship as an identity. However, citizenship as an identity which refers often shared values and common culture has not been so much affected by these developments so that it is open to discussion whether or not the cultural integrity of the nation is broken. According to Soysal, in the post-war period, rights and identities are decoupled. Rights "became universalized and abstract" (Soysal, 1994: 8), while identities are "still particular and territorial" (Soysal, 1994: 159). The result is "territorialized nation-state and universal, deterritorialized rights" (Soysal, 1994: 159). It means, "as an identity national citizenship still prevails. But in terms of its translation into rights and privileges, it is no longer a significant construction" (Soysal, 1994: 159). Shore (2004: 27) supports this argument by stating that the rights cannot be meaningfully divorced from identity.

However, Koopmans and Statham (2001: 6) remind the situation of the migrants originating from different cultural and religious backgrounds. When such migrants have special rights or exemptions from duties, the vision of a unitary citizenship with equal individual rights is undercut. Thus, Ivic (2012: 420) argues the need of founding the notion of postnational citizenship on the idea of multiple identities to embrace challenges of globalization and pluralism. There are also counter arguments to the effect of globalization stating that the nation-state is simultaneously strengthened

and weakened by globalization (Held et.al., 1999; Robertson, 2001; Scholte, 2000). Mouritsen (2009: 3) alternatively calls postnationalism as “a banalisation of the status of citizenship – i.e. of its value, seriousness, and meaning – from the points of views of states and individuals alike.” According to him, the shifts towards *ius soli*, dual nationality and shorter waiting periods might deepen Soysal’s postnationalism in the sense that states increasingly recognize that the citizenship should be more accessible and be less related with the ethno-national membership.

One of the basic tenets of postnational membership is the transformation of rights exclusively derived from citizenship to non-citizens by breaking the link between territory and citizen. According to postnationalists, the determinant of such a transformation is the diminishing importance of citizenship due to global changes and increase in individual human rights. This part examines these arguments with the aim of understanding postnational membership before questioning the postnational membership of the EU citizenship model.

### **1a. Transformation of citizenship rights to non-citizens’ rights**

According to postnationalist view, institution of citizenship has experienced a deep transformation because traditionally defined citizenship rights have been expanded to non-citizens. Labour migration and rights provided to guest workers in the post-war period are used as the most common examples. According to Soysal (1994: 139), “incorporation of guest workers is no mere expansion of the scope of national citizenship nor is an irregularity. Rather, it reveals a profound transformation in the institution of citizenship.” Soysal explains the difference between traditional immigration and post-immigration by explaining incorporation. In traditional migration whose examples can be found in the United States of America, there were absorption and naturalization which mean “transformation into formal citizens and assimilation to cultural patterns” (Soysal, 1994: 27). However, by post-immigration, incorporation is not a “part of formal citizenship” (Soysal, 1994: 27) but it is to be a “part of the polity of host country” (Soysal, 1994: 30).

However, Christian Joppke who is one of the scholars criticizing postnational model rejects this core assumption. According to Joppke, civil and social rights have never been depended on citizenship but it was the residing in the territory, instead. He shows as an evidence Article 7 of the Napoleon’s Civil Code adopted in 1804, which states that “the exercise of civil rights is independent of citizenship status” (quoted in Joppke, 1999b: 271). According to him, the personhood rather than citizenship has already existed before the post-war period. “The only class of rights reserved since

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1789 to the citizen is the political right to take part in the formation of the general will and to hold public office” (Joppke, 1999b: 272). In fact, not only political rights but some other rights were exclusive to citizens. For example, “the rights of residence and the free circulation in the metropolitan territory, the right to hold meetings and form associations (...)” are the public rights which only citizens are entitled (Ferrajoli, 2002: 4).

Even when it is agreed upon the changing citizenship in the post-war period by the transnational discourse, the remaining question is whether or not its nature is a temporary or a deep transformation. Regarding this discussion, there are some arguments explaining changing citizenship by the concept denizenship (permanent residence) which focuses on residing rights. The discussion of denizenship is questioning whether or not it is a temporary “deviation from the norm of national citizenship” (Joppke, 1999a: 631) or a new model of membership by which traditional citizenship declines. Despite the rights derived from the permanent residence, there are still differences between citizenship and denizenship. Especially, with the increasing length of stay in a country as a non-citizen, the importance of citizenship also increases in terms of needs for political participation, representation and political influence. (Mouritsen, 2009: 4-5) Especially, when there are large political parties, which might have the luxury of ignoring the interests of migrant groups, the right of permanent residents might be really undervalued and the need for political rights increases. (Mouritsen, 2009: 5) In the next part, the study examines the determinants of this transformation, regardless of the nature of such a transformation, since it would only make sense when this transformation is resulted by the diminishing importance of national citizenship.

### **1b. Determinants of transformation**

One of the bases of postnational argument is the diminishing importance of citizenship. According to Soysal (1994: 137), “in the post-war era, an intensified discourse of personhood and human rights has rent the bounded universality of national citizenship and rights that used to belong solely to nationals are now extended to foreign populations, thereby undermining the very basis of national citizenship.”

The logic behind is the global changes and especially the increase in the individual rights, which have led to the increasing incorporation and made “national citizenship peculiarly less important” (Soysal, 1994: 29). According to Soysal (1996: 18-19), there are four basic elements of post-war global developments in this process. The first one is the post-war internationalisation of labour markets which has resulted in massive migratory flows to Europe. The second development is the massive

decolonisation after 1945 which contributed the broadening of global discourse of rights. The third element is the emergence of multi-level politics such as EU which led to the sharing of sovereignty among local, national and transnational political institutions. Last but not least is the increasing intensification of the global discourse and instruments on individual rights.

According to Soysal, “self definitions and interests of the nation states are conditioned by the institutional rules of the global system” (Soysal, 1994: 133). That means, states are also regarding international concerns in their policy decisions and behaviours. For example, at the end of the 1990s, Germany denied the entry of Gypsies coming from Yugoslavia on the ground of national interests but still provided financial aid on the ground of human rights. Soysal (1994: 158) implements this example as an extension of state responsibilities beyond its national borders. However, it is important to remind that the duty to exercise these rights still belongs to the state and its institutions (Soysal, 1994: 156-157).

As a response to Soysal, Joppke argues that human rights are not from outside but it is an essential principle of national and liberal states. According to him, “constraints are self-imposed rather than externally inflicted” (Joppke, 1999b: 262). Politics of interest groups, domestic legal constraints on execution and moral elite constraints are the three pillars of self-limited sovereignty in contrast with the Soysal’s globally limited sovereignty (Joppke, 1999b: 264-266). He strengthens his argument of domestic roots by using the violations of migrant rights in the new immigrant receiving states of the Middle East or South-East Asia (Joppke, 1999b: 4-5).

Indeed, the driving forces for such a change in the model of citizenship are both domestic and international. That is not only transnational factors as Soysal mainly focus on and that is not only individual nation states and domestic factors as Joppke argues. For example, in the 1970s the foreign workers strikes and then unions who began to represent them have gained impact on state policies. After they have granted residence status, foreign workers could have many ways to bring their demands on the political agenda such as local consultative systems (Jacobson, 1996: 35). While this example illustrates the importance of domestic factor, Germany example shows the mixture of determinants. According to Feldblum (1998: 249), “to differing degrees, the German government, federal and state officials, political parties, far-right, domestic and transnational immigration movements, and European-level groups have all contributed to the shape of German citizenship strategies.”

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Regardless of the driving force discussion, postnationalist argument stresses on the diminishing importance of national citizenship. According to Jacobson (1996: 38), the developments in the post-war period, especially regarding guest workers, “since 1980s, political and civil rights have been progressively extended to the foreign populations.” Thus, the distinction between citizen and non-citizen is diminishing because in order to have access to social services such as education and health insurance; the basic criteria are physical presence and legal alien status rather than citizenship with the exception of civil services and in state loyalty necessary services (Jacobson, 1996: 38-39). One of the examples showing the diminishing importance of citizenship in a host state is the low naturalisation rates. In 1980, the highest rate of naturalisation was only 5% (Sweden) and the lowest was even 0.3% (Germany). In a survey done in 1985 in Germany, more than 70% percent of the foreign population had the right to get the citizenship. However, only 6.2% of them intended to seek German citizenship (Jacobson, 1996: 39-40). As Sassen (2002: 279) also states, dual and multiple nationalities might diminish the importance of national citizenship by weakening the linkage between nationality and citizenship. In the postnational model, basis of legitimization of membership is arguably replaced by the universal personhood and universal human rights. It means, individuals are granted rights and privileges independently of their citizenship in a nation state. That is the priority of individual against citizen. However, the necessary institutions to implement this process are still states.

On the contrary, the opponents of postnationalism argue that human rights reforms such as dual nationality or granted cultural and social rights “often result in the modernisation, rather than the weakening of national citizenship” (Kostakopoulou, 2001: 95). Thus, an increase in these rights should not be interpreted as the weakening of national citizenship but as the strength of modernisation. In addition to this argument, Joppke (1999b: 193) defends that citizenship is still important for immigrants because “a residence law would perpetuate the foreigner status over generations and create permanent national minorities.” According to him, “in Germany, there is no political actor today, the immigrants included, who does not consider the permanent exclusion of second and third generation foreigners from the citizenry as a serious deficit” (Joppke, 1999b: 274). Also for Mouritsen (2009: 4), value of the national citizenship is not decreasing but on the contrary it is increasing. The first sign of it is the states’ efforts to make distinctions between the citizenship and residence. Rights derived from permanent residency are only a step for the citizenship. The second sign is the tightened naturalisation policies and restrictions applied to the status of citizenship.

Leaving the discussions on the determinants for the transformation of citizenship rights to non-citizens aside, there is also another discussion on the model of EU citizenship. Extension of citizenship rights to non-citizens under EU legal framework make the EU citizenship arguably as an example of postnational membership, which is not fixed by borders and identity. The next part seeks to apply Soysal's postnational membership model to the EU citizenship to question whether EU citizenship is a model for postnational membership.

## **2. EU CITIZENSHIP**

The discussion on EU citizenship as being an institutional and conceptual challenge is actually on what it should be or might be rather than what it is (Kostakopoulou, 2007: 633). Liberal nationalists are opposed to the idea of EU citizenship arguing that ethnic homogeneity or a civic culture is needed for the citizenship and the presence of different cultural groups in EU member states is just too much (Miller, 1998). However, the effect of EU citizenship is also not to deny as Tamir (1993) argues that national state is in a transformation from a dominant cultural tradition towards the inclusion of all cultures and traditions. Rumford (2003: 25-26) also argues that EU has the biggest task of managing transnational space as a genuinely European realm distinct from its member states. In other words, EU needs a public space, namely a European society, for EU citizenship.

Indeed, EU has an effort to develop a European identity and citizenship above the level of nation state while supporting the survival of local and national cultures and identities within it (Hafner-Fink, et.al. 2013: 872). Contrarily, Prentoulis (2001: 202) argues that there is no need of a cultural homogenization since the principles of a European constitution may be an opportunity to create a post-national membership. Also for Weiler (1999) European citizenship may base on commitments to the rights and duties rather than emotional attachments or cultural affinities.

According to Meehan (1993: 1), EU citizenship is a new kind of citizenship, different from national or cosmopolitan models and expressed through a complex configuration of EU institutions, states and associations. The study seeks to find out the model of EU citizenship by using legal framework of EU citizenship and postnational elements. It first examines the citizenship rights transformed to non-citizens and questions whether importance of citizenship weakens under the concept of EU citizenship. It then examines the rights provided to non-EU legal residents within member states and questions whether it is only a deviation from citizenship to residing rights or it is a new model of membership.

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### **2a. National citizenship rights transformed to EU citizens' rights**

EU citizenship and the scope of rights provided to EU citizens are defined in Article 8 of the Maastricht Treaty (Treaty on European Union). Accordingly, “every person holding the nationality of a Member State shall be a citizen of the Union” (Art. 8/1). EU citizens have right to move and reside freely within the territory of the Member States (Art. 8a/1) and every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections (Art. 8b/1) and shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State (Art. 8b/2). Besides the transformation of these rights, which are exclusive to the citizens in national membership, the Treaty provides EU citizens also the right of diplomatic protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State in case an EU citizen in the territory of a third country in which the Member State of which he is a national is not represented (Art. 8c).

As Article 8 of the Maastricht Treaty obviously states, rights exclusive to national citizens such as right to reside, right to vote and stand as candidate, right to have diplomatic protection are transferred to every citizen of the Union. However, transformation of such rights does not automatically provide sufficient ground to regard the EU citizenship as an example of postnational model of membership. Because, as Bellamy (2008: 603) states, cooperation between member states in terms of expanding citizenship rights between them does not necessarily undermine the sense of belonging at the national level. That's why, it needs to be questioned whether the importance of national citizenship has been diminished by the EU citizenship.

The aim of EU citizenship is stated as strengthening and consolidating “European identity by greater involvement of the citizens in the Community integration process” (European Commission, 1999: 29). Thus, diminishing importance of national citizenship was obviously not the aim of the establishment of EU citizenship. The intention to protect the importance of national citizenship is also guaranteed by leaving control of providing EU citizenship to member states. Declaration no 2 annexed to the Treaty of Maastricht on nationality of a Member State declares that “(...) the question whether an individual possesses the nationality of a Member State shall be settled solely by reference to the national law of the Member State concerned.” It is also stated that “citizenship of the Union shall complement and not replace national citizenship” (Amsterdam Treaty, Art. 2/9). Indeed, since nationality rules remain within the national law of

member states, it may be argued that EU citizenship in the Treaty is a weak concept with its fundamental deficiency of lacking independency (Prentoulis, 2001: 197).

The *Rottman*<sup>2</sup> decision of the Court of Justice of the EU supported the argument that EU citizenship is not a postnational membership but is still dependent on the member states' nationality. When Germany withdrew Mr. Rottman's naturalisation in July 2000, he had not only the risk of being stateless but also losing his EU citizenship. Thus, the German court referred the case to the Court of Justice for a preliminary ruling and asked whether Germany is still entitled to withdraw naturalisation and whether Austria is obliged to interpret and apply, or even adjust its national law to avoid the legal consequence of loss of citizenship of the Union (para.35/2).

For the first part of the question, the Court concluded that EU member states are not prohibited by the European Convention to deprive a person of his nationality even he would become stateless when that nationality was acquired by means of fraudulent conduct, false information or concealment of any relevant fact attributable to that person (para.52). For the second part of the question, the Court concluded that it is the Austrian courts, which shall decide to recover Mr. Rottman's nationality (para. 63).

In sum, nationality issue is still under jurisdiction of member states and EU does not possess any legal authority on the acquiring of EU citizenship, which can only be acquired through an EU member state. The transformation of rights exclusive to national citizenship to EU citizens might be understood in terms of an effort to contribute to European integration by creating a common EU identity and culture. However, extension of the rights exclusive to EU citizens to non-EU citizens makes the issue more complex.

## **2b. EU citizenship rights transformed to non-EU citizens**

European Council of 1999 in Tampere (para. 21) states that "the legal status of third country nationals should be approximated to that of Member States' nationals. A person, who has resided legally in a Member

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<sup>2</sup> Mr. Rottman was a national of Austria by birth and he was the subject of a judicial investigation in Austria and he transferred his residence to Munich in 1995. In February 1997, Austrian court issued a national warrant for his arrest. In February 1998, Mr. Rottman applied for German nationality and during the naturalisation process, he failed to inform Germany on his judicial investigation in Austria. In January 1999, he was acquired the German citizenship and lost his Austrian nationality since double citizenship is prohibited according to the Austrian law. In August 1999, Germany was informed on the warrant for arrest and on the judicial investigation in Austria and withdrew naturalisation.

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State for a period of time to be determined and who holds a long-term residence permit, should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by EU citizens.” Charter of Fundamental Rights of the EU in 2000 specifically grants freedom of movement and residence “to nationals of third countries legally resident in the territory of a Member State” (Art. 45/2). Finally, Council Directive 2003/109/EC clarifies the exact scope of uniform rights stated in Tampere (Art. 11/1). According to the directive, long term residents shall have equal treatment with nationals in accessing to employment and self-employed activity (Art. 11/1a), education and vocational training (Art. 11/1b), social security, social assistance and social protection (Art. 11/1d), tax benefits (Art. 11/1e), goods and services (Art. 11/1f) and freedom of association and affiliation and membership of an organization (Art. 11/1g).

However, this obvious transformation of rights exclusive to national citizenship and EU citizenship to non-EU citizens might be restricted under certain conditions by member states. Council Directive 2003/109/EC provides ground to restrict the equal treatment with nationals in access to employment or self-employed activities on the ground of reserving such activities to nationals, Union citizens or European Economic Area citizens (Art. 11/3a). Member states may also restrict access to education and training on the ground of requirement of language proficiency (Art. 11/3b). It is also possible for member states to limit equal treatment in respect of social assistance and social protection for the sake of core benefits (Art. 11/4). Additional to the jurisdiction of member states in restricting the equal treatment requirement, member states have also the power to determine conditions for providing long term resident status. Article 5 of the directive entitles member states to require third country nationals to provide stable and regular resources and to comply with integration conditions in accordance with national law.

Thus, despite the gaps between EU citizens and non-citizens such as right to vote and stand as a candidate at municipal elections and in elections to the European Parliament or diplomatic protection, it might be argued that there is a considerable progress within EU in terms of transforming EU citizenship rights to non-EU long term residents. However, it is still under national jurisdiction to decide who fulfils criteria to be a non-EU citizen with long term residence permit and whose rights are restricted by the grounds of core benefits. Howard (2006: 445) also reminds that while EU citizens automatically have the right to live and work in another EU country, non-EU nationals can reside and work in the country that they have the residence permit. Thus, non-EU citizens face a de facto restriction on their labor mobility, different from EU citizens.

## **2c. EU Citizenship: National or postnational?**

Since the transformation of citizenship rights has two dimensions in the EU, the study examines the transformation of both citizenship rights to EU citizens and EU citizen rights to non-EU citizens. In order to determine the model of EU citizenship, each of these dimensions needs to be evaluated individually.

Regarding the transformation of national citizenship rights to EU citizens, Joppke (1998: 30) argues that “citizenship of the EU does not break the association between citizenship and nationality but renews it in a slightly different way” since only the nationals of member states might acquire EU citizens. Thus, the fact that only nationals of member states can obtain EU citizenship makes it still based on nationality (Tallgren, 2003). Supporting Joppke’s and Tallgren’s position, Kostakopoulou (2001: 95) does not regard EU as a postnational model since it is still the free will of member states that accepts EU citizenship and expansion of rights on individuals. On the contrary, Soysal (1994: 147) argues that EU citizenship is breaking the link between the status attached to citizenship and national territory since citizenship in one EU state confers rights in all of the others. However from a perspective of citizenship defined as identity and belonging, a de facto European nationality is required for European citizenship. Thus, European citizenship is a contingent and additional status (Closa, 1992; Reich, 2001). Even if it is feasible to create a European nationality, Shore (2004: 32) argues that it would challenge the aim of integrating Europe among ‘peoples of Europe’ and not a singularly conceived ‘European people’.

This study concludes that despite the transformation of citizenship rights such as right to reside, to vote, to stand as a candidate and right for diplomatic protection, EU citizenship is not a postnational citizenship since the determinant of this transformation is not the diminishing importance of national citizenship. EU citizenship makes the national citizenship even more important since without having citizenship from one of the EU member states, one cannot acquire EU citizenship, no need to remind that it is still under national jurisdiction of member states to provide or withdraw national citizenship as stated in the *Rottman* decision.

Regarding the transformation of EU citizenship rights to legally resident non-EU citizens, Ivic (2012: 426) argues that such a transformation does not change the exclusive nature of EU citizenship since it embraces only legally resident non-nationals besides nationals of the member states and still excludes all others except legally resident non-nationals. However, the fact that EU transforms some rights exclusive to EU citizens such as

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residence, employment, social security and tax benefits to a group of non-EU citizens still prevails. Thus, this argument is not really convincing. Besides the arguments of excluding still others, another argument rejecting the postnational character of EU citizenship rests itself on the differences between EU citizens and non-EU citizens observed in practice because of the distinctive state policies (Joppke, 1998; Mauritsen, 2009). The reason of such differences in practice is Article 11/3 of Council Directive 2003/109/EC, which provides ground for member states to restrict the equal treatment with nationals. Despite the free movement of workers, many public sector jobs may still remain special to citizens. For example in Germany, positions in public transport and education sectors are closed to non-citizens (Mouritsen, 2009: 5). There might be differences in practice between EU citizens and non-EU citizens but grounds for restrictions are also limited and the rights which are traditionally defined as national rights are expanded to the other nationals. Surely, states' cooperation and free will are needed for an effective implementation. However, this argument also seems not convincing enough to reject the postnational character of EU citizenship.

This study, instead, has two basic arguments for the nationalist character of the transformation of EU citizenship rights to non-EU citizens. First, importance of citizenship has not diminished with this transformation. According to Mouritsen (2009: 5), the interest in citizenship is increasing among immigrant groups with temporary residence permit since states increasingly deport non-citizens on the grounds of suspicion of terrorist activity or drug trafficking. In order to transform rights of EU citizenship to non-EU citizens, the European Council preconditioned long term residency in Tampere meeting. So the non-EU citizens with temporary residence permit cannot enjoy from rights as immigrants with long term residence permit. Thus, the importance of national citizenship still prevails for this group. Acquiring national citizenship from one of the member states might also still be important for long term residents since political rights or diplomatic protection continue to be exclusive to EU citizens. Second, similar to the EU citizenship, it is the national legislation of member states, which decide and issue long term residence permit to a non-EU citizen. So rights of non-EU citizens seem to be still dependent upon the member states. Thus, the study concludes that rights transformed to non-EU citizens are only a deviation from citizenship rights to residing rights instead of being a new model of membership.

### **CONCLUSION**

In the citizenship discussion, the national citizenship is argued to shift from belonging to rights under the form of global citizenship,

supranational citizenship or postnational citizenship. This study focuses upon the latter one and aims to question the EU citizenship as a model of postnational citizenship.

Soysal (1994) argues that in the post-war period, the citizenship concept has changed and the importance of citizenship has diminished because of the increasing rights of non-citizens in the host states. Historically, states gave political, social and civil rights to its nationals and by doing so they excluded the 'others'. However by focusing on labour migration and guest workers in West Europe, she observes the expansion of political, social and civil rights to the foreigners as creating a big controversy with the traditionally defined citizenship concept. She brings the concept of universal personhood instead of national citizenship.

According to Soysal in the post-war period, consistency between territory and citizen has been violated because a guest worker can have rights such as working, residence, education or health insurance without having citizenship. The priority regarding rights and privileges began to belong to the individual rather than citizen. Emergence of human rights, increasing interdependency and other transnational developments oblige nation states not to make distinction in granting civil, social and political rights. Thus, according to postnational model of membership, institution of citizenship has experienced a deep transformation because traditionally defined citizenship rights have been expanded to the non-citizens.

Regarding the determinants of transformation Soysal's main focus point is global changes and especially the increase in the individual rights. According to Soysal, self definitions and interests of the nation states are conditioned by the institutional rules of the global system. Against Soysal, Joppke argues that human rights are not from outside but it is an essential principle of national and liberal states. Indeed, the driving forces for such a change in the model of citizenship are both domestic and international.

Extension of citizenship rights to non-citizens under EU legal framework paved the way for the discussion of whether EU citizenship is an example of postnational membership. In order to contribute this debate, the study examined the EU citizenship in terms of the transformation of rights, importance of national membership and jurisdiction of member states. Within the EU legal framework, transformation of citizenship rights has two dimensions: transformation to EU citizens and transformation to non-EU citizens.

The study examined first transformation of the rights exclusive to national membership to EU citizens questioned whether importance of

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citizenship weakened under the concept of EU citizenship. The study concluded that it is still under national jurisdiction of member states to provide or withdraw national citizenship. Thus, EU citizenship is not a postnational citizenship despite the transformation of citizenship rights such as right to reside, to vote, to stand as a candidate and right for diplomatic protection.

Second, the study examined the rights provided to non-EU migrants with long term residence permit within member states. It provided two supportive arguments for the nationalist character of the transformation of EU citizenship rights to non-EU citizens. First, importance of citizenship has not diminished with this transformation. Due to long term residence permit precondition and due to lack of political rights and diplomatic protection, it still makes sense to acquire national citizenship. Second, similar to the EU citizenship, it is still the member states, who decide and issue long term residence permit to a non-EU citizen. Thus, the study concludes that rights transformed to non-EU citizens are only a deviation from citizenship rights to residing rights and EU citizenship does still not represent a model of postnational membership.

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