

Citizens and European Institutions

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Abstract

The citizen is the pawn around whom the European institutions run, having the permanent duty of granting their fundamental rights and freedoms in a sound, non-discriminatory legal context.

Hence, the aim of the present paper is to raise the awareness of the citizens regarding their rights within the European Union and also their limitations. In this respect, I will identify the main EU institutions and their functional mechanisms which liaise civil participation in the decision-making process at EU level. For instance, I will approach the following institutions as human rights defenders: the European Parliament with the pertaining Committee on Petitions; the European Commission with the European Citizens' Initiative and the Eurobarometer; the European Ombudsman. Through these accountable institutions, citizens are provided with reliable remedies to their issues, remedies which represent a favourable premise for increasing transparency in the conduct of public administration.

Keywords: citizen; European institutions; good administration

JEL Codes: H83, K38

1. Introduction

The institutions, bodies, offices and agencies of the European Union form the administrative apparatus of EU, which responds to the needs of the EU citizenry. From the legislative to the executive role, and also within the power of judicial control, the Union's institutions respect the democratic values of the rule of law, providing EU citizens with mechanisms for civil participation in the Union's decision-making process.

Notably, the citizen becomes a link in the European decision-making process, together with the European Commission, which proposes the adoption of new legislative acts, on the one

hand, and the European Parliament and the Council of the European Union, which adopts EU legislation.

This paper is structured in three sections apart from the introduction and conclusions, in accordance with the set objectives, as follows: ***European institutions – Human Rights Defenders, European citizens and their rights, Binomial EU citizen – European institutions.***

Given the mechanisms for lodging a complaint within EU, namely the European Parliament's Committee on Petitions, the infringement procedure opened by the European Commission, the Aarhus Convention, the Berne Convention, the European Anti-Fraud Office and the European Ombudsman, opting for one of them for reporting a violation of European Union law is influenced by many factors. Among these factors, the most important are the conditions relating to the nature of the applicant, the competence of the institution or body, the reason for action, the material, financial and time resources available to the applicant. Accordingly, the present paper reviews the mechanisms of civil participation in several fields of interest.

2. European institutions – Human Rights Defenders

The European Union represents a geopolitical entity founded from the need of a “United States of Europe” (Winston Churchill) to restore democracy in Europe and counter the idea and realization of a new armed conflict. The European Union first set up an economic cooperation organization, creating the European Economic Community (1957, Treaty of Rome). Of the six founding states, the European Union currently consists of 27 Member States, including Romania.

The European Union is based on the rule of law and operates on the basis of founding, amending and acceding treaties, most recently amended by the Treaty of Lisbon in 2007 (in force since 2009), as follows: Treaty on European Union (TEU); Treaty on the Functioning of the European Union (TFEU); Treaty establishing the European Atomic Energy Community; Charter of Fundamental Rights of the European Union.

These treaties constitute rules of primary law, forming part of Community legislation containing the rules of procedure of the European institutions, which increases the transparency and effectiveness of policies adopted at EU level.

The creation of this community of public international law was the foundation of Europe's economic recovery, which has since benefited from a political, economic and, to a large extent, monetary union.

The Treaty on European Union, known as the Maastricht Treaty, which came into force on 1 November 1993, establishes the European Union as a common political union and European citizen institution for nationals of Member States, as well as the right to petition the European Parliament and the European Ombudsman. The institutions of the European Union stipulated in the Treaty on European Union are as follows (Treaty on European Union, 2012):

- "European Parliament;
- European Council;
- Council of the European Union;
- European Commission;
- Court of Justice of the European Union;
- European Central Bank and
- European Court of Auditors".

Other EU bodies (European Union, official website, n.d.) are: the European Economic and Social Committee; European Committee of the Regions; European Investment Bank; European Data Protection Board, European Ombudsman and so on, each of them being assigned tasks in service of states and/or individuals.

Most EU institutions were created from the moment of the European Community establishment. The Treaty of Nice in 2001 sought to prepare the EU for significant enlargement and the Convention on the Future of Europe pursued the development of a new legal basis for the Union, in the form of a Treaty establishing a Constitution for Europe, which was not ratified. The constitution aimed to transform the existing European Union and the European Community into a single European Union, which should have functioned on the basis of a single constitutional treaty. Only the European Atomic Energy Community (Euratom) was to continue to function as an independent community, although closely associated with the European Union, as before (European Commission, official website, 2016).

As the European Convention on Human Rights is the main instrument for the protection of fundamental rights at EU level, all Member States absorbed IT as an EU *aquis* lever. The European Commission has repeatedly proposed (in 1979, 1990 and 1993) the accession of the EC to the Convention. When asked for an opinion on this subject, the Court of Justice found in 1996, in its opinion 2/94, that the Treaty does not provide for any EC competence to adopt human rights rules or to conclude international conventions in this field, which made accession legally impossible. The Lisbon Treaty remedied this situation by introducing Article 6 (2), which made EU accession to the European Convention on Human Rights mandatory. Therefore, as regards respect for the fundamental rights, the EU is under the control of an external court, namely the European Court of Human Rights (ECHR). This accession would allow EU citizens, but also third-country nationals located in EU, to challenge directly before the ECHR, on the basis of the Convention provisions, legal acts adopted by the EU and also the Member States. (European Parliament, 2021).

3. European citizens and their rights

The individual rights of citizens and European citizenship are enshrined in the Charter of Fundamental Rights of the European Union, in the Treaty on the Functioning of the European Union (TFEU) and in Article 9 of the Treaty on European Union (TEU). These rights are a key factor in the process of shaping European identity. A Member State may be penalized if it seriously infringes the basic values of the Union.

European citizenship, as originally defined and later enriched by other European regulations and case law, guarantees freedom of movement and residence in the territory of the EU Member States, the right not to be discriminated against on the grounds of nationality, the right to choose and candidate for election, the right to petition, as well as rights related to social security, medical benefits and education.

When we talk about public administration within the Union, there is a need to highlight the observance of the principles of good administration, which should ensure an efficient, transparent public management, guided by clear and accessible administrative procedures.

The right to good administration is enshrined in Article 41 of the Charter of Fundamental Rights of the European Union, which, since the entry into force of the Treaty of Lisbon on 1 December 2009, has become a source of primary legislation at Union level. Thus, “everyone

now has the legal right to the proper administration of his or her affairs within the EU institutions". (European Ombudsman, 2002)

According to the Charter of Fundamental Rights of the European Union, the right to good administration includes the right of an individual to (Charter of Fundamental Rights of the European Union, article 41):

- "be heard, before any individual measure which would affect him or her adversely is taken;
- have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy";
- receive the rationale of the administration for its decisions.

On the other hand, Jacob Söderman, the first European Ombudsman, externalized the effort to define good administration by the European Code of Good Administrative Behavior, ratified by the European Parliament resolution of 6 September 2001.

The Code outlines the expected behavior of the Union institutions, which will serve as a reference in the Ombudsman's examination of an alleged case of maladministration, with provisions on the time frame within which the author of a request or complaint must be informed on the obligation to send the correspondence of the competent service to solve it, on the obligation to listen to the citizen and to analyze his observations when the administrative decision determines consequences that affect his legitimate rights or interests and the obligation to give reasons for decisions which infringe the rights or legal interests of a natural person or a legal person governed by private law and to specify the means of appeal (Nicu, 2006).

The right to petition is also stipulated in the Charter, which provides that "any citizen of the Union and any natural or legal person residing or having its registered office in a Member State (Charter of Fundamental Rights of the European Union, art. 44) is entitled to address the European Parliament".

Not only does the EU citizenship confer rights guaranteed by sound legislative bases but also incurs civic responsibilities.

Civil participation in the elaboration of EU public policies can be achieved through various initiatives, participatory tools such as: *European Citizens' Initiative; the Europe for Citizens programme; public consultations; dialogues with citizens; civil society dialogue*. EU citizens

also have certain levers at their disposal that they can use when they consider that their fundamental rights in relations with the EU institutions and bodies have been violated. These tools can be either bottom-up or top-down. Whereas petitions to the European Parliament and complaints to the European Ombudsman fall into the bottom-up category, leading in some instances to inquiries and changes, public consultations and dialogues with citizens are top-down tools (Rusak, 2018, p. 10).

One way to spread EU values is to organize campaigns to raise awareness among European citizenry and the international community, as well as to draw national governments' attention to issues of particular interest. Annually, since 1983, under the generic name *European Year of...*, various themes are promoted, among which we mention: *equal opportunities for all* (2007), *intercultural dialogue* (2008), *combating poverty and social exclusion* (2010), *volunteering* (2011), *active ageing and solidarity between generations* (2012), *the citizens* (2013-2014) and so on. *The European Year of Rail* has taken place in 2021 during a 2 months criss-cross (september – october) of the European continent by the railway in order to promote travel by train as a safer and greener means of transport. In this respect, local, national and cross-border projects that address the theme chosen for that year often receive additional funding.

Through the European years, the EU institutions and national governments also send a strong political message and are committed to taking this issue into account in future policy-making. In some cases, the European Commission may propose new legislation in this area.

4. Binomial EU citizen – European institutions

First of all, participatory democracy can take many forms, ranging from citizens' initiatives to substantiated proposals from an economic organization, non-governmental organizations, professional associations, educational and/or research institutions, public authorities, where the EU citizens intervention is possible.

The ***European Citizens' Initiative (ECI)*** is the latest but remarkable instrument of democratic participation at EU level, being the first transnational instrument. The European Citizens' Initiative meets the requirement of bringing the decision closer to the citizens. It is the way in which citizens can propose legislative projects on the agenda of the European Union, in areas where the Union has powers in lawmaking. Previously, the right of legislative initiative within the European Union was exercised only by the European Commission, as the

main implementing body and as a representative of the European Union's interest. The Maastricht Treaty (1992), strengthened by the Lisbon Treaty (2007), also gives the European Parliament the right of legislative initiative, allowing it to ask the Commission to present a proposal. At the same time, Member States, within the framework of the joint foreign and security policy, have the right of legislative initiative.

Through ECI, citizens, if there are collected one million signatures from people in at least a quarter of the Member States, can invite the Commission to propose a legal act in line with the EU Treaties. Since 2011, when a regulation laying down detailed procedures for ECI was first implemented, six such initiatives have successfully reached the Commission's table. Starting in January 2020, new rules will be applied to make ECI more accessible, with 11 initiatives currently ongoing.

According to the official website of the European Parliament, a total of 85 initiatives were registered up to November 2021, of which 6 were successful, entailing the Commission's obligation to communicate its decision and, in favourable cases, to implement regulations to improve the situation exposed.

The *EU citizenship report: empowering citizens and protecting their rights* prepared by the European Commission in 2020 takes stock of the progress made on EU citizenship since the last report in 2017. The report also sets out new priorities and actions to empower the EU citizens, such as an update of the EU guidelines on free movement, taking into account the lessons learned during the COVID-19 pandemic.

The report addresses issues of democratic participation and inclusion of EU citizens, free movement of citizens and labor mobility, protection of EU citizens and promotion of EU values, solidarity in actions involving citizens and their awareness of their guaranteed rights and freedoms.

Moreover, the above-mentioned report is supported of facts and law by the results of public consultations of EU citizens on their rights, held between July and October 2020, the European Commission being interested in the opinion and perception of both individuals and a wide range stakeholders, such as public administration authorities, local and national authorities, non-governmental organizations, intergovernmental organizations, political parties, European institutions, private entities, researchers, academia. There were 343 respondents to this public consultation, of which about 90% are individuals, and the rest

belongs to organizations and other categories. Although public consultations are not characterized by representativeness, given the distinct impact of covariant variables, they reveal the way in which the analyzed phenomena are perceived, offering explanations on the way of life of the participants. Moreover, the report in question is supported in law and in fact by the results of public consultations of EU citizens on their rights, held between July and October 2020, the European Commission being interested in the opinion and perception of both individuals and a wide range stakeholders, such as public administration authorities, local and national authorities, non-governmental organizations, intergovernmental organizations, political parties, European institutions, private entities, researchers, teachers. There were 343 respondents to this public consultation, of which about 90% are individuals, and the rest come from organizations and other categories. Although public consultations are not characterized by representativeness, given the distinct impact of covariant variables, they reveal the way in which the analyzed phenomena are perceived, offering explanations on the way of living of the participants.

To summarize, as a result of documentation analysis, we can draw up the following conclusions:

- 36% of those who answered a seven-question questionnaire (approximately 270 respondents) consider that they are somewhat informed about their rights as EU citizens, while 20% consider that they are quite poorly informed;
- the level of awareness of EU citizens' rights decreases with age, but is higher in case of graduates and postgraduates;
- 43 respondents considered themselves discriminated on grounds of nationality when exercising their right of free movement within the EU;
- about 50% of respondents have lived or are living for more than 3 months in another EU member state than the country in which they were born;
- those who have moved to another country, although fairly well informed before moving, have encountered administrative problems related to social benefits, health insurance, registration procedures, tax policy, etc .;
- respondents consider that an electronic identification system for administrative purposes, as well as existing sites at national level, would be useful in the context of the mobility of individuals within the EU;

- more than 80% of respondents voted in the last European elections in 2019, and 46% of respondents believe that electronic voting offers more benefits than risks;

- the right to consular protection was exercised by a small number of citizens, for issues such as the loss of travel documents, legal issues, including arrest. Although experiences involving consular protection in third countries, where there is no embassy or consulate of the country of residence are rare, respondents believe that EU delegations should play an active role in providing support to third countries and consular cooperation should be intense;

- the majority of EU citizens who have received medical services in a non-EU Member State of residence have not exercised their right to reimbursement of the value of cross-border medical services;

- 49 respondents lived in one state and worked in another, but only 20 of them were exempted from payroll taxation and in the state of residence;

- in the context of the COVID-19 pandemic, 168 respondents were informed about the repatriation flights organized for EU citizens who were in other states.

Briefly, EU citizens consulted on this initiative consider that information on citizens' rights is lacking, and that awareness-raising campaigns should be developed through media channels. At the same time, the lack of information at national level is the most common barrier, followed by limitations such as language and administrative procedures.

The actions that the European Commission will implement throughout the year 2021 aim at:

- updating the directives on the exercise of the voting rights of mobile citizens in local and European elections;

- involvement of citizens in the legislative process;

- the inclusion of EU citizens through the "*Citizens, Equality, Rights and Values*" programme;

- launching various funding mechanisms for culture, promoting EU values;

- updating the guide on the right to free movement and residence (2009) in 2022 taking into account the diversity of families, various new measures, the jurisprudence of the European Court of Justice;

- implementation of new measures to combat discrimination etc.

The Commission also consults the public through *Eurobarometer*, which compiles statistics on various topics of public interest. Thus, the European Commission is an institution concerned with the life, standard of living, respect for the rights of EU citizens, seeking to eliminate legal uncertainties in the exercise of their rights.

The European Parliament is the only democratically elected EU institution; namely, it Article 39 of the Charter stipulates that “every citizen of the Union has the right to vote and to stand as a candidate in elections to the European Parliament, in the Member State in which he or she resides. the same conditions as the nationals of this state”.

Any EU citizen, anyone residing in a EU country, any company, organization or association based within the borders of the European Union, so all physical and legal residents of EU Member States can ***petition the European Parliament*** for the application of EU law or in order to take a position on certain issues. The right to petition is the oldest participatory instrument, as enshrined in the Maastricht Treaty, and the conditions for the admissibility of petitions submitted to the Committee on Petitions reject, on average, one third of petitions due to addressing issues beyond the EU's remit (Rules of Procedure of the European Parliament, Title IX, Rule 226).

Based on the work of the Committee on Civil Liberties, Justice and Home Affairs, Members of Parliament debate and adopt, in plenary, resolutions on the situation of fundamental rights in the EU and on a number of particular issues related to the protection of these rights in the Member States.

The ***European Ombudsman*** is an institution that investigates complaints about maladministration by EU institutions and bodies. Complaints may be lodged by nationals of Member States or residents of the Union or by EU-based associations and businesses.

The institution of the European Ombudsman aims at the improvement “of the protection of citizens or any natural or legal person residing or established in a Member State in cases of maladministration by the institutions, bodies, offices or agencies of the European Union; and thus strengthen the openness and democratic scrutiny of the decision-making process and administration at the level of the EU institutions”.

Based on art. 43 of the Charter, “any citizen of the Union and any natural or legal person residing or having its registered office in a member state have the right to refer the matter to

the European Ombudsman for maladministration in the work of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union in the exercise of its jurisdiction”.

The European Ombudsman operates in various fields, the ultimate goal being to ensure the implementation of good administration principles at the European Union level. As a human rights defender, its scope refers without being limited to: transparency of the EU decision-making process and guarantee public access to it through existing modalities, “including public access to documents and information, as well as the role of the lobby” 39; ensuring the proper conduct of civil servants from an ethical point of view; compliance with procedures and principles in the management of Union public funds; ensuring the observance of the fundamental rights provided for in the Charter of Fundamental Rights of the European Union; implementation of administrative procedures and practices at the level of the EU institutions and bodies in compliance with the implementing rules; solving problems related to EU staff.

Thus, if a citizen considers that he has been the victim of abusive behavior, discrimination, abuse of power, refusal to provide information, unjustified delay or incorrect procedures applied by an entity mentioned above, the citizen can call to a non-contentious means of resolving the issue, in this case the European Ombudsman, a public defender of citizens' rights.

In literature (Lae, 2011), the Ombudsman is seen as a “cheaper” alternative to the CJEU for the following reasons: the complainant must not have necessarily suffered harm before making a complaint to the Ombudsman; the applicant is not obliged to exhaust the remedies against the defendant before submitting the complaint to the Ombudsman; no fees are charged and legal representation is not required; the applicant must not submit evidence of the alleged maladministration; the non-contentious procedure is faster than the one initiated in the courts of the Union.

Although the solutions adopted by the Ombudsman are not binding on the entities to which they are addressed, the acceptance rate of the recommendations made by the Ombudsman is quite high, at around 80%, which reflects a high degree of confidence in the Ombudsman from the EU institutions or bodies. Furthermore, it also gives confidence to the citizens, who are encouraged to resort to this non-contentious remedy.

According to a study carried out by the CEE Bankwatch Network in 2006 (CEE Bankwatch Network, 2006, P. 10), the European Ombudsman is the best option in situations related to: respect of the fundamental rights of citizens under the Charter; transparency of the EU institutions and access to information and documents; delay or failure to respond to requests to the EU institutions; selection and recruitment procedures and the rights of civil servants⁴⁰. Although still in the first decade of activity at the time of the study, the Ombudsman has since enjoyed positive feedback from the complainants, proposing to expedite the examination of complaints within one month of their registration, with the closure of the inquiry (if any) within one year.

5. Conclusions

In conclusion, there are currently many levers for involving citizens in the Union's decision-making process. It should be noted, however, that in order to consider certain initiatives, it is necessary to jointly employ a large number of citizens (for example, one million signatures in the case of ECI), which makes it difficult to address certain critical situations. Whether we are talking about the general interest or the particular interest, there are mechanisms that address many issues related, in general, to legality and good governance at EU level.

Civil participation in the elaboration, implementation and/or surveillance of a public policy at the EU level implies the acknowledgement of individual or entities' rights in order to support or sanction the measures imposed. From an economic point of view, numerous initiatives of citizens refer to taxes, energy consumption and resources, climatic change, unemployment, litigations and so on; therefore, the engine around which civil participation is encouraged comes down to welfare.

References

Studies, guides and reports

1. CEE Bankwatch Network, *Citizen's guide to European complaint mechanisms*, 2006.
2. European Commission, *EU Citizenship Report 2020: Empowering citizens and protecting their rights*, 2020, retrieved from https://ec.europa.eu/info/sites/default/files/eu_citizenship_report_2020_-_empowering_citizens_and_protecting_their_rights_en.pdf.
3. European Commission, *Results of the Public Consultation on EU Citizenship Rights 2020*, retrieved from https://ec.europa.eu/info/sites/info/files/results_of_the_public_consultation_on_eu_citizenship_rights_2020_-_factsheet_en.pdf.
4. Lae, Elena, *The Impact of the European Ombudsman on the European Commission: Improvements in Methods of Operation and Evolving Principles of European Good Governance*, 2011.
5. Nicu, Alina Livia, *The European Code of Good Administrative Behaviour and the Romanian Administrative phenomenon*, Danubius Proceedings, Vol. 1, 2006, pp. 108-114.
6. European Ombudsman, *The European Code of Good Administrative Behaviour*, 2015.
7. European Parliament, *The Protection of Article 2 TEU Values in the EU*, 2021, retrieved from https://www.europarl.europa.eu/ftu/pdf/ro/FTU_4.1.2.pdf.
8. Russack, Sophia, *Pathways for Citizens to Engage in EU Policymaking in Direct Democracy in the EU: The Myth of a Citizen's Union*, Rowman & Littlefield International, 2018, pp. 9-41.

Legal acts

1. Treaty on European Union (consolidated version), OJ C 326, 26.10.2012, pp. 13–390.
2. Charter of Fundamental Rights of the European Union, OJ C 326/26.10.2012.
3. Rules of Procedure of the European Parliament, 9th parliamentary term, January 2021.

Websites

1. <http://europedirectbucuresti.ier.ro/wp-content/uploads/Brosura-ED-Initiativa-cetatenescă-europeana.pdf>, accessed: 10.05.2021.
2. https://europa.eu/european-union/about-eu/institutions-bodies/european-committee-regions_ro, accessed: 11.05.2021.
3. <https://op.europa.eu/webpub/com/abc-of-eu-law/ro/>, accessed: 05.05.2021.
4. <https://www.eesc.europa.eu/ro/our-work>, accessed: 11.05.2021.
5. <https://www.europarl.europa.eu/at-your-service/ro/be-heard/citizen-s-initiative>, accessed: 12.05.2021.
6. <https://www.europarl.europa.eu/factsheets/ro/section/187/institutiile-si-organele-uniunii-europene>, accessed: 05.05.2021.
7. <https://www.europarl.europa.eu/factsheets/ro/sheet/18/ombudsman-european>, accessed: 15.05.2021.