

# **European Citizenship -Belonging to an “Unidentified Political Object”<sup>\*</sup> European Union and Legal Theory-2**

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European citizenship as it was first implemented by the Treaty Establishing European Union (1992) created a legal category for the nationals of Member States within the European Union. The European citizen, as a bearer of rights and duties, was equipped by a double loyalty: first stemming from her being a ‘national’ of her ‘Member State’ which had its historical and conceptual origin in the European nation-state and the second the new ‘created’ part of her identity that is the European citizenship which was later in Amsterdam announced that should not replace but complement her national citizenship. Every citizen of the European Union is therefore also a ‘national’ or a ‘citizen’ -or both- of a Member State.

## **1. Citizenship-The Concept**

As it was used in the Ancient Greece, citizenship was a privilege for the free men who could participate in the governance of ‘polis’.<sup>1</sup> And it implied a border that separated the citizen from the others -slaves, women, children- which was according to Aristotle determined by his taking on political, legal and administrative duties. Aristotle discusses on a definition of citizen and comes out with: “the person who has the op-

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<sup>\*</sup> It was Jacques Delors who used this metaphor to define European Union in 1985.

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<sup>1</sup> Derek Heater, *Yurttaşlığın Kısa Tarihi*, çev. Meral Delikara Üst, Ankara: İmge, 2007, pp.15-48.

portunity and talent to participate in administration of polis”<sup>2</sup>. Then, the citizenship of Ancient Greece is “ the conduct of civic affairs by all free men in the polis”<sup>3</sup> and this definition may be said to have influenced the perception of the concept up to now.

In the Roman Empire, *cives Romani* (Citizens of Rome) and *peregrine* (aliens, foreigners) were distinguished. And the *ius civile* could only be applied to the citizens. Here again a citizen had rights and these included the right to vote and stand for in the elections, right to legal affairs and right to marry.<sup>4</sup>

The citizens of Rome had a two leveled citizenship : *patricius* had the participation and status as elements of their citizenship while the *plebs* had only the status. And to be a Roman citizen meant to have a valid legal status<sup>5</sup>.

It was with the rise of the nation states, however, when citizenship found its exact definition and gained importance. After the French Revolution it was considered as an element of or associated with ‘*the nation*’. The nation was made up of ‘*enlightened*’ citizens freed from their engagements and identities, not of sole individuals. And the borders of citizenship extended parallel to the political and civil rights granted.<sup>6</sup> This perception of citizenship, just like in the ancient Greece, had a virtuous dimension: ‘*citoyens*’ were united by freedom, equality and brotherliness<sup>7</sup>

Leaving aside the historical roots of the concept, it should be noted that there are two main approaches to the issue of citizenship in political theory; namely liberal and communitarian arguments, taking their philo-

<sup>2</sup> Aristoteles, “Politika”. Trans: Mete Tunçay. Remzi Kitabevi İstanbul:1990, pp. 69-81

<sup>3</sup> The Norton Dictionary of Modern Thought. W. W. Norton&Company, USA:1999, p. 124

<sup>4</sup> Belgin Erdoğmuş, Roma Hukuku. Filiz Kitabevi. İstanbul:1995, pp. 112-3. V. Diakov- S. Kovalev, İkçağ Tarihi, Cilt:2 Roma, çev. Özdemir İnce, Yordam Kitap: İstanbul 2008, pp. 70-1

<sup>5</sup> Füsün Üstel, Yurttaşlık ve Demokrasi. Dost Yay. Ankara:1999, pp. 53-5

<sup>6</sup> Ibid, p. 54

<sup>7</sup> Stefan Kadelbach, Union Citizenship. Harvard Jean Monnet Working Paper 9/03. <http://www.law.harvard.edu/programs/jeanmonnet>, retrieved 12. 8.2009, p. 12

sophical background from Hobbes and Rousseau respectively. And if there is one common point of these two views, then that is ‘the contract’. Both Rousseau and Hobbes claim that in the beginning of social life there was a contract be it because of a common will to unite powers<sup>8</sup> or “to get rid of the result of people’s natural feelings that is the situation of war”<sup>9</sup>.

According to the liberal view the state is based on force and is an artificial structure that can decide on the citizens life and death matters. There is no legitimate moral basis the state can rely on because the citizens do not share a “good life” perception.

On the contrary, for communitarians, “citizenship is actualized solely in the collective practice of self-determination”<sup>10</sup> that is the participation in self-rule. From this point of view, taking part in a community is neither functionalist nor artificial but it has a value “in itself”<sup>11</sup>. The community is something more than the sum of its parts, the individuals: it has a sense of shared practice. Rousseau defines the citizen as following: “Those who are associated in it take collectively the name of *people*, and severally are called *citizens*, as sharing in the sovereign power, and *subjects*, as being under the laws of the State”<sup>12</sup>.

## 1.1 Definition and limits

If citizenship is simply defined as the relationship between individual and polity, then it has three *constitutive* elements: polity/community, individual and the practice of citizenship.<sup>13</sup> Polity/community

<sup>8</sup> Jean-Jacques Rousseau, *Toplum Sözleşmesi*. Adam Yayınları. İstanbul: 1999, pp. 24-5. Compare *The Social Contract*, [http://www.constitution.org/jjr/socon\\_01.htm#002](http://www.constitution.org/jjr/socon_01.htm#002), retrieved: 12.7.2009

<sup>9</sup> Thomas Hobbes, *Leviathan*. YKY. İstanbul: 2004, p. 127

<sup>10</sup> Jürgen Habermas, “Citizenship and National Identity”. In: *Between Facts and Norms ‘Contributions to a Discourse Theory of Law and Democracy’*. Polity Press. UK : 1997, p. 498

<sup>11</sup> Füsün Üstel, *op. cit.*, p. 67

<sup>12</sup> Jean Jacques Rousseau, *op. cit.*, p. 27

<sup>13</sup> Antje Wiener, *‘European’ Citizenship Practice*, Westview Press. USA: 1998, 22. See also Ulrich K. Preuss “Bürgerschaft in der Europaeischen Union” In: “*Vom Ewigen Frieden und Wohlstand der Nationen*” ed. Ulrich Menzel. Suhrkamp. Frankfurt: 2000, p. 248

and individual are in an interactive relationship which could be called as ‘citizenship practice’.

On the other hand, taking into account the progress it has lived through, it has three *historical* elements:

*i. Rights:* A citizen has civil, political and social rights and these rights are what attaches the individual to the polity legally and make her a legally definable subject. Reciprocally citizenship is what defines a member of polity that embraces rights and duties.<sup>14</sup>

*ii. Access:* The partaking of citizen in politics originates from the perception of ‘active citizen’ which finds its basis in the republican or communitarian view of citizenship<sup>15</sup> From a legal perspective a citizen has both the right and the duty for such a participation. But this right and duty is subject to certain opportunities or constraints in the community.<sup>16</sup> Access to political participation and elimination of obstacles are maintained by state institutions.

*iii. Belonging:* This aspect of citizenship may simply be explained as belonging to a community but the historical context it is planned to put into is not satisfied with this explanation. When we talk about belonging we generally imply belonging to a nation-state. Because identity and the national ties around a community are what makes up the contemporary sense of belonging.<sup>17</sup> In this context citizenship has a mutual relationship with nationality.

Taking all these elements into consideration, it might be useful to start with an attempt to define. Leaving aside the purest definition above (relationship of individual and community) citizenship is “the ability of individual to use her political and public rights as a member of a political community”<sup>18</sup> or “what defines a member of a polity that embraces full

<sup>14</sup> Jan M. Broekman, *A Philosophy of European Union Law*. Peters. Leuven: 1999, pp. 298-301

<sup>15</sup> Füsün Üstel, *op. cit.*, p. 69

<sup>16</sup> Anje Wiener, *op. cit.*, pp. 25-6

<sup>17</sup> Amaryllis Verhoeven, *The European Union in Search of a Democratic and Constitutional Theory*. Kluwer Law int. The Netherlands: 2002, pp. 177-181

<sup>18</sup> J. C. Gautron, “Avrupa Yurttaşlığı ve Fransa’daki Hukuki-Siyasi Tartışmalar”, *M. Ü Avrupa Topluluğu Enstitüsü Avrupa Araştırmaları Dergisi*, cilt5, no: 1-2. İstanbul: 1997, p.226

rights and duties”<sup>19</sup>. Habermas refers to the concept in his ‘Citizenship and National Identity’ as “ Today ‘*staatsbürgerschaft*’ or ‘citizenship’ are used not only to denote organizational membership in a state but also for the status materially defined by civil rights and duties”<sup>20</sup>. Taking these contributions into account, citizenship may be defined as the mutual relationship of legal subjects, equipped with rights and duties, with the political community they live in - with its, albeit eroding, contemporary perception: the (nation) state.

The idea that citizenship is a framework that is filled within the nation state leads to the conclusion that it is quite natural to accept its being conditioned by ‘nationality’<sup>21</sup>

## 1.2. Filling out the Framework: Citizenship and Nationality

Although it can not be associated with the concept historically, citizenship has a strong relationship with nationality. Their difference is not only that nationality has a more ‘legal’ sense<sup>22</sup> but also that it has ‘identity’ as an element if not in its center, then in its periphery. When thoroughly investigated, belonging is the legal determination of separating the self from ‘other’ and that separation builds identity. The repulsion of the other determines self<sup>23</sup> and that is realized through belonging. And belongingness is inherent in nationhood.<sup>24</sup>

There are two basic standpoints about the concept ‘nation’ in European political theory and these are political-voluntary oriented approach

<sup>19</sup> Jan M. Broekman, op. cit., p.281

<sup>20</sup> Jürgen Habermas, op. cit., p.498

<sup>21</sup> Jan Broekman, op. cit., p. 282

<sup>22</sup> Ercüment Tezcan, *Avrupa Birliği Hukukunda Birey. İletişim yay.* Istanbul: 2002, p. 20

<sup>23</sup> Betül Çotuksöken, *Avrupa: Öznenin Doğum Yeri. Doğu-Batı*,14. FSK Yayınları. Ankara:2001, pp. 48-52. See also Ian Ward, “ Identity and Democracy in the New Europe”, *The EU and its Order: The Legal Theory of European Integration*, Blackwell Publishers, UK: 2000

<sup>24</sup> J. H. H. Weiler, “Do the New Clothes Have an Emperor?”. In: J. H. H. Weiler, *The Constitution of Europe*. Cambridge University Press, UK: 1999. p.247

of France and ethnical-cultural determined nation concept of Germany.<sup>25</sup> The two views find their origins in history<sup>26</sup> of the two countries' nation-building processes. German nation finds its root in the early 19<sup>th</sup> century when the German people were under the threat of Napoleon and were in search of defining themselves repulsing the others such as Polish or Slavic people.<sup>27</sup> On the contrary France's nation-building took place as symbolically expressed by Renan : 'the existence of a nation is ... a daily plebiscite' and transformed from a pre-political quantity into a constitutive feature of the political identity of the citizens of a democratic polity<sup>28</sup>

Although in its classical usage nations were:

"communities of the people of the same descent who are integrated geographically in the form of settlements or neighborhoods and culturally by their common language, customs, and traditions, but who are not yet politically integrated through the organizational form of the state"<sup>29</sup>

a nation as we use it today may be defined as people seeking political consciousness and wish to be a political subject or treated as one.<sup>30</sup> Here we come face to face with the 'people' or '*volk*' as a very German concept, being a member of which determines nationality. It also is the basis for the above mentioned organic-cultural perception of a nation which takes *ius sanguini* as its motto for unification. *Ius sanguini* is a principle of international law which foresees that the person is the national of the state of her mother or father's whereas *ius soli* principle sees the person as a national of the state she is born in ( *sanguini* meaning blood and *soli* the soil in Latin).<sup>31</sup>

<sup>25</sup> Ernst-Wolfgang Böckenförde. Staat, Nation, Europa: Studien zur Staatslehre, Verfassungstheorie und Rechtswissenschaft. Suhrkamp Taschenbuch Wissenschaft. Frankfurt: 1999, pp. 61-6

<sup>26</sup> Ozan Erözden, Ulus-Devlet. Dost Kitabevi. Ankara:1997, pp. 91-5

<sup>27</sup> Ernst-Wolfgang Böckenförde, op. cit., pp. 60-63

<sup>28</sup> Jürgen Habermas, op. cit., p. 494

<sup>29</sup> Ibid, p.495

<sup>30</sup> Ernst-Wolfgang Böckenförde, op. cit., p. 37

<sup>31</sup> Rona Aybay, Vatandaşlık Hukuku, Aybay yayınları. İstanbul: 2001, p. 14

A *volk* is an organic concept. It pre-dates historically, and precedes politically the modern state.<sup>32</sup> There was a German *volk* before Germany formed a nation-state. According to this point of view, the 'nation' is a modern appellation, in context of modernist political theory and international law, of the pre-existing *volk* and the state is its political expression<sup>33</sup>.

Citizenship is in a close relationship with nationality that makes the latter more than just a neighboring but a relative concept. Weiler claims that nationality is inextricably linked to citizenship, citizenship not simply as the code for group identity, but also as a package of legal rights and duties, and of social attitudes.<sup>34</sup> This aspect of citizenship is an inheritance of the French Revolution. In spite of the fact that citizenship and nationality were born as two different concepts as mentioned above, the Revolution not only made citizens out of individuals but also turned citizenship into a concept of nation state and this fact equipped the citizen with the rights and duties, we seem to take for granted today.

The contemporary citizenship is based on two distinct notions: citizenship as a legal entitlement to rights and duties on the one hand, and nationality as adherence to the nation on the other<sup>35</sup> even though scholars like Habermas claim that citizenship 'was never really tied to national identity' and 'the nation state sustained a close relationship between 'demos' and ethnos only briefly'<sup>36</sup>

Citizenship after the Revolution, then, having a close relationship with nationality acquired *ethnos* as an element, the legal form of which leads to nationality.<sup>37</sup> This being the issue, post-national attempts take place to 'decouple citizenship from *ethnos*' and new forms of citizenship

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<sup>32</sup> J. H. H. Weiler. Demos, Telos and the German Maastricht Decision, Paper 6/95, retrieved 3.3.2004 <http://www.law.harvard.edu/programs/JeanMonnet>, 1995), p.4

<sup>33</sup> Ibid, p. 4

<sup>34</sup> J. H. H. Weiler, "Do the New Clothes Have an Emperor?" In: J. H. H. Weiler, The Constitution of Europe. Cambridge University Press, UK: 1999. p.251

<sup>35</sup> Amaryllis Verhoeven, op. cit., p. 160

<sup>36</sup> Jürgen Habermas, op. cit., p. 495

<sup>37</sup> Jan M. Broekman, op. cit. , p.281

status are offered for the sake of long term non-national inhabitants<sup>38</sup> Also as a result of movement of labor and the pressure from globalizing markets, a new form of 'global citizenship' on grounds of self-control of actions is more frequently pronounced as a demand.<sup>39</sup>

From a purer legal perspective, there is a complication. The terms citizenship and nationality are in turn used for one another<sup>40</sup>. Historically, in the era of colonialism, citizenship was used to define the people of the home country whereas nationals were the people of colonies who only had the obligation to allegiance<sup>41</sup>. The terms are not associated in the law of the USA, too. The term national includes the people under the obligation of permanent allegiance on the equal footing with the citizens. For example, the people of Samoa island are non-citizen nationals. The difference between the two terms may be explained according to Rona Aybay by the fact that citizenship is referred to as a concept of internal law whereas nationality is used to determine a concept of international law. In international law, nationality is taken as a basis for a state's jurisdiction but furthermore the ties of nationality between individual and state should be proven effective- that is the connection of the national to the state should be proven by means of 'genuine, existential and emotionally rooted commitment'. And in many constitutions nationality itself does not establish rights and duties but sometimes it is the condition for reserved rights such as voting or military service.<sup>42</sup>

On the other hand, leaving aside their close relationship -or even association by some scholars, in legal practice, citizenship has looser and weaker interpretations. This may be due to, quoting Jan Broekman's words, the fact that 'citizenship is not the legal expression of something that is ontologically given but a legal construction'<sup>43</sup>, in other words its

<sup>38</sup> J. H. H. Weiler. *Demos, Telos and the German Maastricht Decision*, Paper 6/95, retrieved 3.3.2004, <http://www.law.harvard.edu/programs/JeanMonnet>, 1995), p.4

<sup>39</sup> Michael Hardt, Antonio Negri, *İmparatorluk*. Ayrıntı Yayınları. İstanbul: 2003, pp.398-401

<sup>40</sup> Ergin Nomer, *Vatandaşlık Hukuku*. Filiz Kitabevi. İstanbul: 1999, p. 12

<sup>41</sup> Rona Aybay, *op. cit.*, pp.6-7

<sup>42</sup> Stefan Kadelbach, *op. cit.*, p.12

<sup>43</sup> Jan Broekman, *ibid.* p. 282

having a fictitious nature or a legal mistrust to a political originated concept. Whatever the case is, although some states employ both citizenship and nationality in their legislation<sup>44</sup>, still, only nationals can be in full possession of all political rights and nationality remains to be a means of exclusion.

## 2. Building Up a *Demos*-European Citizenship

European Union today is in the middle of its evolution from a common market to a federation of states or a European super-state the main actors of which are the Member States and their nationals. And citizenship is the roof found for these nationals under which they will no longer be seen as economic figures but the holders of political power and authors of law - the *demos* of European democracy.

European citizenship is by every means a concept beyond the terminology of nation state. First, obviously there is not one European nation. Second, it is a kind of citizenship without a state as we know it even from the federal states such as United States. And the involvement of these citizens in the political process, namely the relation between the polity and individual is far more complicated than we experience in nation states.

But law does not only exist inside the state; “it has other equally important theatres”.<sup>45</sup> Therefore the notion of citizenship examined so far, has to be reviewed and re-interpreted for this post-national polity. For this, the framework will be constructed by founding Treaties which make up the primary legislation of the Union.

The issue not falling in the scope of merely politics or law but also the very field of culture- because of its close ties with identity building- European citizenship as a concept has been in the center of many

<sup>44</sup> Like in ‘Grundgesetz’, Article 33/1 of Germany : “Every *German* in every Land has the same *citizenship rights*” (Italics added), ‘German’ referring to organic conception of national.

<sup>45</sup> Neil MacCormick, Democracy, Subsidiarity, and Citizenship in the ‘European Commonwealth’. In: Constructing Legal Systems, “European Union” in Legal Theory. Ed. Neil Mac Cormick. Kluwer Academic Publishers. The Netherlands: 1997, p.1

discussions since it was first introduced in 1992. Not only what it was or how it was implemented but also the question why it was implemented as a part of the Treaty Establishing European Union have been a point of discussion.<sup>46</sup>

## 2.1 Evolution of European Citizenship

“Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union.”

In 1992 this article (Article 17 EC; ex-Art. 8) was patched to the Treaty Establishing the European Community. It is rumored that it was a last minute decision taken as a result of dissatisfaction of Felipe Gonzales who claimed that no real progress in this field was achieved in Maastricht. Obviously the constitutional adventure of European citizenship took start with the mentioned Article. But could it be claimed that it was the first time the issue was dealt with? Here the short history of the concept from the Common Market to the European Union will be followed as a path and the traces of its constitutional design will be pursued.

Firstly, in the beginning of the integration, there was the Common Market and the *homo economicus* as the actor of the market. Then the very ideas of integration started to sprout and the need for a European identity was revealed. It was the 70s and the creation of a European identity was stark lusted. The story of citizenship may be said to have three climaxes or turning points which are Paris Summit in 1973 and 1974, Fontainebleau Summit in 1984 and the Maastricht Summit in 1991.<sup>47</sup>

To have a deeper look in the issue here the evolutionary progress will be looked into as Theodora Kostakopoulou puts it.<sup>48</sup> She divides the EC policy on citizenship into temporal phases as following:

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<sup>46</sup> For details see Ercüment Tezcan op. cit., pp. 24-5

<sup>47</sup> Anje Wiener, op. cit., pp. 50-51

<sup>48</sup> Theodora Kostakopoulou, *Citizenship, Identity and Immigration in the European Union*. Manchester University Press. UK: 2001, pp. 41-55

i. 1947-1972: This may be called a pre-formation period for citizenship. The basis it stands on, namely the freedoms of movement<sup>49</sup> were implemented along with the removal of customs duties (with the customs union implemented in 1968) and the common market was strengthened. In this period the nationals of Member States were seen as economic figures with the exception of Court of Justice's extensive, rights based decisions on free movement of people<sup>50</sup>

ii. 1972-1984: The turning point is the Paris Summit in 1974 which took place two years after 1972 summit, where the economic union was attempted to turn into a political union and when the importance of Europeans as a part of this metamorphosis were realized.<sup>51</sup> In 1973 Copenhagen summit a 'Declaration on European Identity' was adopted by nine Member States. The European Identity was defined with respect to rule of law, social justice, social justice, human rights and democracy. In 1974, this abstract notion of identity was concreted and Leo Tindemans was given a duty to draft a report on necessary measures for the creation of a Europe of citizens. His report was taken into consideration in 1976<sup>52</sup>, The Hague Summit but there was no positive outcome. As another important point during this period, a uniform passport was introduced and it was regarded as a symbolical part of European identity.

To sum it up, this phase was the period when citizenship was taken seriously as an issue of integration. There had been several attempts to realize every requirement about this issue but the attempts only fruited later in the progress.

iii. 1984-1991: When the European Council met in 1984 in Fontainebleau, two committees were set up for completion of Internal Economic Area and to bring the Community closer to its citizens. The second committee was chaired by Adonnino and was named after him. The Adonnino Committee made several proposals including a uniform election of European Parliament, right to petition, and establishment of

<sup>49</sup> Regulations 15/61, 38/64, 1612/68 and Directive 68/360,1251/70

<sup>50</sup> Theodora Kostakopoulou, op. cit., p. 42. Also, Ercüment Tezcan, op. cit., p. 32

<sup>51</sup> Antje Wiener, op. cit. pp. 72-3

<sup>52</sup> Bull. EC, Supplement 1,1976

an ombudsman.<sup>53</sup> This Committee's report may be considered as a basis for the introduction of European citizenship in 1992 for it arouse a public interest.<sup>54</sup> After Spinelli's non adopted draft treaty and Schengen Agreement on gradual abolition of border controls, Single European Act entered into force in 1987. It foresaw the completion of a single market and by excluding third country nationals gave new impetus to European citizenship.<sup>55</sup>

## 2.2 Faces in the Mirror: Different Aspects of European Citizenship

European identity has two different aspects: The definition of self (what is European) with respect to "the other" ( what is excluded- this may change according to the perspective chosen; the Eastern, the Islamic; the non-rational and so forth ... ) and inclusion of the foreign starting with the Arabic versions of the works of Aristotle.<sup>56</sup> The synthesis the Roman Empire managed to take as its basis still might be read as the European way. In accordance, 'European' in this Article's title, clearly referring to the European Union, which is not simply an interstate cooperation, employs citizenship both as an exclusion and inclusion for its identity. Because, it could be the fact that 'Europe' we use today is not very different from its holy ancestor by definition.

European citizenship, as it was formulated in the Treaty Establishing European community in 1992 gives us clues about the elements of the concept.

<sup>53</sup> Carlos Closa, *The Concept of Citizenship in the Treaty on European Union*. CMLR 29: 1992, 1142-52

<sup>54</sup> Antje Wiener, *op. cit.*, pp.128-133

<sup>55</sup> Theodora Kostakopoulou, *op. cit.*, pp. 48-50

<sup>56</sup> For a further discussion on European identity and the circumstances that builds up 'Europe' see Rémi Brague, *Avrupa: Roma Yolu*. Trans: Betül Çotuksöken, Kabalcı Yayınevi. İstanbul: 1995

### 2.2.1. The Post-National Nature

It was the French Revolution that coupled nationality with citizenship.<sup>57</sup> Since then, the territory of nation state is regarded as the sole habitat of citizenship. But the European version of the concept has far different aspects from the nation state model. The Union is a juridical construction and it emphasizes the importance of legal and socio-cultural meanings of citizenship<sup>58</sup> -that is *belonging*- instead of *originality* which is an element of nation.

There is no full theory of European citizenship<sup>59</sup> as a form of post-national construction. But even in its absence, the difference of it from the static understanding reveals itself in basic notions. As stated above, as the territorial occupation by the state became ever clearer, so became the tendency to identify states with nations.<sup>60</sup> Therefore when I talk about a post-national concept what I mean is a Post-nation-state concept. Post nationalism is an 'effort to conceptualize a viable political identity beyond the nation-state'<sup>61</sup>.

The European Union is transnational polity-in-the making with Jo Shaw's words<sup>62</sup>, that means it has an ever changing-or ever closer?-nature. The first outcome of this nature is that it lacks a territory. With the accession of new Member States, the Union extends its borders.

Then comes the question of belonging. The citizens of European Union are not state citizens. The 'hereby established' citizenship requires a belonging to a polity that is beyond a mere market but not at the point of a federal state. The attempts to define this Union with its principles of priority, direct affect and applicability and subsidiarity, result with the adjective "*sui generis*". Whether it is read as a challenge to globalizing

<sup>57</sup> see p.14

<sup>58</sup> Jan Broekman, op. cit., p. 280

<sup>59</sup> Jo Shaw op. cit., p. 4

<sup>60</sup> Christopher Pierson, *The Modern State*, Routledge. London: 1996

<sup>61</sup> Curtin, D. *Postnational Democracy. the European Union in Search of a Political Philosophy*, Kluwer Law International, 1997. Cited by Amaryllis Verhoeven, op. cit., p. 94

<sup>62</sup> Jo Shaw op. cit., p. 5

markets<sup>63</sup> or a securer of world peace<sup>64</sup> the Union is some construction posterior to nation-state and therefore citizenship relation it regulates is a form of a post-national citizenship.

The most important point about this issue finds its wording in the concerned Article. ‘Every person holding the nationality of a Member State’ is the citizen of the Union. We see that the Union is composed of citizens who *by definition* do not share the same nationality.<sup>65</sup> Here we come face to face with the total decoupling of nationality and citizenship. For some scholars this is the weakest link. Citizenship requires language, culture and constructive eligibility<sup>66</sup> and no heterogeneous polity could replace a nation in this point. But from the perspective of Habermas and the other Union supporters, things are different:

“... a nation of citizens must not be confused with a community of fate shaped by common descent, language and history. This confusion fails to capture the voluntaristic character of a civic nation.”<sup>67</sup>

“ At an intra-group level nationalism is an expression of cultural (political and/or other) specificity underscoring commonality, the “sharedness” of the group vis á vis itself calling for loyalty and justifying elimination of intragroup boundaries.”<sup>68</sup>

No matter which position is taken, European citizenship as a post-national form can not be read by the old nation-state terminology as we use it.

<sup>63</sup> See Jürgen Habermas, *The Post-national Constellation*, Polity Press. UK: 2001

<sup>64</sup> See Schuman Declaration, 1950

<sup>65</sup> J. H. H. Weiler. *Demos, Telos and the German Maastricht Decision*, Paper 6/95, retrieved 3.3.2008, <http://www.law.harvard.edu/programs/JeanMonnet>, 1995), p.22

<sup>66</sup> Ayşe Füsün Arsava, *Avrupa Birliği Hukukunda Yurttaşlık Kavramı*, Kocaeli Üniversitesi Hukuk Fakültesi Dergisi, 1998-1999 year:2, no:2, p. 295

<sup>67</sup> Habermas, Jürgen, “Why Europe Needs a Constitution”, *New Left Review*, retrieved 11.12.2008, <http://www.newleftreview.net/NLR24501.shtml>

<sup>68</sup> J. H. H. Weiler, *Eros and Civilization*. In: J. H. H. Weiler, *The Constitution of Europe*. UK: Cambridge University Press, 1999, p.342

### 2.2.2. Double Loyalty

When it comes to loyalty, European citizenship is close to Roman understanding than the Greek one. Roman Empire recognized dual citizenship which proved loyalty to both local community and the Empire.<sup>69</sup> Europeans, indeed have always lived in two different historical places and two different polities: “one the loose tied but larger Europe and two, the small area of each nation” says Ortega y Gasset.<sup>70</sup>

According to the formulation of Article 17 EC, every Member State national is a citizen of European Union. This resembles federal state practice but as far as different nations are concerned, it is actually far beyond it. The important point is, not that the two concepts stand together but that nationality here, conditions citizenship. To be a European citizen, you *have to* be a Member state national.<sup>71</sup> You can not acquire citizenship even if you reside in a Member State all your life as a foreigner. This condition also means that accent of citizenship is on Membership<sup>72</sup>

On the other hand it reminds us of the international law principle that says nationality is a reserve of state sovereignty. The Final Act to the Maastricht Treaty confirms that the concept of nationality is determined by Member States.<sup>73</sup>

However, this reserved domain is also restricted by Community law and *Micheletti* case is important with this regard.<sup>74</sup> Below is a brief of the Case and its outcome:

Orthodontist Micheletti was an Argentine and resided in Argentina. But because he was the son of two Italians, he also had a right to Italian nationality. And according to an agreement between Italy and Argentina

<sup>69</sup> Andreas Føllesdal, Citizenship: European and Global. In: Global Citizenship A Critical Introduction. Ed. Nigel Dower&John Williams, Routledge, New York: 2002, pp.71-83

<sup>70</sup> Ortega y Gasset, Tarihsel Bunalım ve İnsan, Metis yay., İstanbul:1992, p.126

<sup>71</sup> Stefan Kadelbach, op. cit., p. 13

<sup>72</sup> Jan Broekman, op. cit., p. 291

<sup>73</sup> Final Act to the Maastricht Treaty, Part III, 2nd declaration.

<sup>74</sup> M. V. Micheletti and Others v. Delegacion del Gobierno en Cantabria (1992) -369/90 E. C. R, I-4239

his rights as being an Italian were suspended as long as he stayed in Argentina. Under these conditions, Micheletti decided to establish himself in Spain. But the Spanish authorities denied giving him the permission. They considered him an Argentine national because according to Articles (9) and (10) of the Spanish Civil Code, dual nationals were deemed to be nationals of the country in which they had habitually resided prior to their arrival in Spain. Although Spain did not deny, Micheletti's Italian nationality, the implications of this denial caused him not to use his Community rights and freedoms. The Court put the issue as:

“Under international law, it is for each Member State, having due regard to Community law, to lay down the conditions for the acquisition and loss of nationality. However, it is not possible for the legislation of a Member State to restrict the effects of the grant of the nationality of another Member State by imposing an additional condition for recognition of that nationality with a view to the exercise of the fundamental freedoms provided for in the Treaty.”<sup>75</sup>

With this decision the Court ruled about two aspects of the issue. Firstly that the Member States have to mutually recognize nationality decisions of other Member States and secondly that the states' freedom to decide on nationality must be consistent with European Union law as well as international conventions or customary international law<sup>76</sup>

Finally, the States have the duty of loyalty to the Community by the Article 10 EC, which prohibits Member States from obstructing a common immigration policy (Article 63 EC). And these Articles construct the 'due regard to Community Law' part of the above decision above<sup>77</sup>.

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<sup>75</sup> Paragraph 10

<sup>76</sup> Kostakopoulou op. cit., pp. 67-8

<sup>77</sup> Stefan Kadelbach, op. cit., p.14

### 2.2.3. Multiple Identity

The direct result of double loyalty is multiple identity<sup>78</sup> and its effects as a component of *demos*. Being a product of an age that is said to be 'obsessed' with identity and despite the tendency to decouple citizenship from national identity forever, European form of citizenship has multiple identity as an issue.

The importance of this issue for a legal studies, finds its root in public sovereignty. The people, if they are not only subjected to law but are the authors of it, should feel themselves as a part of the polity they live in. And this belonging is maintained –albeit stark criticized- mainly through identity policies.

As for the European Union, a European citizen certainly has two identities: one her association with her nation and two her belongingness to European Union. The expression: 'You can not fall in love with the Common Market', generally attributed to Delors, may reveal what a sole economic community might mean to its actors when it comes to identification. Therefore the construction of citizenship means a lot. The *demos* that sustains the European integration project can be seen as multiple identity in that it is produced through the operation of Union Constitution, yet that production takes place on a base of gradually transforming national identity.<sup>79</sup>

Multiple identities seem problematic at first sight. But this point of view perceives identity as an indivisible whole and takes unity and indivisibility of a nation as a starting point.<sup>80</sup> The cultural and lingual concerns are tried to be overcome by the principle of subsidiarity. Linguistic variety is considered as a part of *acquis culturel* of the Union whereas

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<sup>78</sup> Here identity is used to express the self-perception and portrayal of a human being which results from the awareness of belonging to certain groups or having different characteristics.

<sup>79</sup> Amaryllis Verhoeven, op. cit., p.170

<sup>80</sup> Theodora Kostakopoulou, op. cit., p.25

cultural diversity “might be in constant conflict with nationality but it is constitutive for citizenship”.<sup>81</sup>

Although it looks like a merely cultural issue, many scholars of law take it for a constitutional problem. In addition to Stephan Kadelbach’s view above, Weiler does not believe that any of the European organic cultural identities is so weak or fragile to be risked by a civic loyalty to Europe.<sup>82</sup> He also shares the idea of Broekman who, taking Adorno as the basis for his argument, claims fractured self is sharpening and deepening for culture and identity whereas a non-fractured self is endangered to be linked to an authoritarian personality. Broekman puts the issue as :

“Law’s reasoning in this matter is on the anthropological pre-supposition that a person’s self can not be fractured and can not possess a multiple nature without being endangered to become schizophrenic or decadent. However a confrontation between legal thought formation (particularly doctrinal patterns) and psychology or psychopathology shows how human reality demonstrates the inverse of law’s presuppositions.”<sup>83</sup>

Weiler claims that if the Union is to keep its supranational values as an answer to statism, :

“It would be more than ironic if a polity set up as a means to counter the excesses of statism ended up coming round full circle and transforming itself into a super-state.”

On the contrary Amaryllis Verhoeven doubts whether a genuine co-existence of a European Citizenship and national identity is attainable. She thinks that national identity is more than just a cultural affair and in fact many *states* like Belgium are multicultural in this sense.<sup>84</sup> She fears that the post-national project would end up with a different type of exclusion: “Rather than achieving a coexistence of national identity and

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<sup>81</sup> Stefan Kadelbach, *op. cit.*, p. 49

<sup>82</sup> J. H. H. Weiler. *Demos, Telos and the German Maastricht Decision*, Paper6/95, retrieved 3.3.2004, <http://www.law.harvard.edu/programs/JeanMonnet>, 1995), p. 22

<sup>83</sup> Jan Broekman, *op. cit.*, p. 289-90

<sup>84</sup> Amaryllis Verhoeven, *op. cit.*, p. 94-99

European citizenship, it risks effectively replacing the national identity by a new European one.”<sup>85</sup>

A new conception of citizenship as recognition and communication with others through rights could possibly help to solve this problem<sup>86</sup>, on condition that it is kept in mind that there’s not one single factor that creates the problem you can’t solve it by one solution.

### 3. Citizenship After Maastricht

European citizenship became a constitutional subject with the entry into force of Maastricht Treaty. And as soon as the Treaty entered into force a debate on the nature of European *demos* started. The fear that the Union was evolving into a federal structure struck euroskeptics so hard that not only scholars but also institutions like the German Constitutional Court raised their voices against the Treaty.<sup>87</sup> On the contrary the federalist side was not satisfied with the newly introduced concept for many reasons including the conditioning of citizenship with nationality.<sup>88</sup>

Amsterdam Treaty was the next step taken by which an answer to concerns could be given. Below, I will review how citizenship was regulated in Maastricht, have a look at the expectations from Amsterdam as a new treaty, and finally discuss the contributions of Amsterdam to the nature and elements of European citizenship.

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<sup>85</sup> Ibid, p. 95

<sup>86</sup> Fiorella Dell’olio, *The Europeanization of Citizenship. Between the Ideology of Nationality, Immigration and European Identity*, Ashgate, London, 2005, pp.111-113

<sup>87</sup> 2 BvR L 134/92 and 2159/92

<sup>88</sup> See J. H. H. Weiler, *Eros and Civilisation* In: J. H. H. Weiler, *The Constitution of Europe*. UK: Cambridge University Press, 1999 and Jo Shaw, *Constitutional Settlements and Citizen after Amsterdam* (Harvard Jean Monnet Working Paper 7/98, retrieved: 2.3.2004, <http://www.law.harvard.edu/programs/JeanMonnet>, 1998)

### 3.1. Citizenship as a regulation in Maastricht

Other than the concept introduced by Article 17 EC (ex Art. 8), Maastricht Treaty also regulated the rights and freedoms for the citizens. The articles following the definition, as well as the Article 12 EC (ex Art. 6), which is about non-discrimination principle, impose rights to the citizens. Article 18-21 EC (ex articles 8a-8d) not only codify rights already recognized by community law such as right to move and reside or right of petition, but also create rights of considerable political importance<sup>89</sup>. These rights are the freedom to move and reside freely in Member States (Article 18 EC), right to vote and stand for in municipal elections in the Member States they reside (Article 19/1 EC), right to vote and stand as a candidate in European Parliament elections in the Member State they reside (Article 19/2), right to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State (Article 20 EC), right to petition the European Parliament in accordance with Article 194 EC (Article 21/1), right to apply to the Ombudsman established in accordance with Article 195 EC (Article 21/2), write to any of the institutions or bodies in one's own language and receive an answer in the same language (Article 21/3 EC).

The Treaty of Maastricht derives its importance from the fact that it introduced European Citizenship as a new concept. It was indeed Amsterdam where the framework was filled out and the scope was determined.

### 3.2. Expectations and Amsterdam Treaty

The first and the main concern of the Intergovernmental Conference before the Amsterdam Treaty was to take concreter and clearer measures about citizenship.<sup>90</sup> There were also demands to enhance the rights of citizens from the aspect of participation and communication although it could not be stated how.<sup>91</sup> These were indeed connected to the demand

<sup>89</sup> Koen Lenaerts and Piet van Nuffel, *Constitutional Law of the European Union*, Sweet & Maxwell, UK :1999, p. 405

<sup>90</sup> Ercüment Tezcan op. cit., p. 88

<sup>91</sup> Ibid, p.88

of strengthening the position of the Parliament vis á vis the Council, Parliament seen as the representatives of European citizens.<sup>92</sup> And finally were there suggestions about fundamental rights and freedoms as a third group of expectations. The Treaty was expected to introduce a means protection in this context which failed before.

Although Union citizenship did construct a constitutional structure, when examined deeply, it could not introduce a package of rights beside those stemming from the freedom of movement of European Community. Even the political rights were designed not to activate the citizens by simplifying the codes or accession but from the perspective of freedom of movement. As for the decision making process, the decisive entitlement for individuals' decisions on the Union was not citizenship but nationality<sup>93</sup>. That was not only because citizenship was conditioned by nationality but also there stood the lack of European public sphere to support the new concept.

Many NGOs including the Migrant's Forum, European Anti-Poverty Network and European Women's Lobby insisted on an enhanced and homogeneous citizenship rights far from the exclusive understanding.<sup>94</sup>

Amsterdam Treaty, signed on 2 October 1997, came into force on 1 May 1999, was expected to satisfy many expectations. Coming with a series of 'weak' innovations, it proved to disappoint them one by one.

### **3.3.Aspects of Rights in the New Treaty**

Amsterdam Treaty introduced a number of clauses about the citizenship issue. Most of these clauses were about political participation and reducing imparities between citizens who are 'to be treated not the objects but the subjects of law'<sup>95</sup>. Being a constitutional step forward,

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<sup>92</sup> Ayşe Füsün Arsava, *op. cit.*, pp. 300-4

<sup>93</sup> Carlos Closa, *op. cit.*, p. 1169

<sup>94</sup> Theodora Kostakopoulou, *op. cit.*, p. 75

<sup>95</sup> Jan Broekman, *op. cit.*, p. 309

there are many different aspects of Amsterdam regulation. Below, I will try to group these issues and clarify them briefly.

### **3.3.1. Classification of Innovations and Contributions Introduced in Amsterdam.**

We can classify the new regulations about citizenship made by the Amsterdam Treaty into three different titles. These are the innovations about social rights which is a move towards a more social Europe, the regulations about participation and accession of citizens in Union politics as a part of active citizenship and finally measures about fundamental rights protection and anti-discrimination.

#### **i. Provisions about Social Policy**

Because there has always been a liberal approach within the Community that is inherent from the Common Market, the social regulations has always been too weak.<sup>96</sup>By the entry into force of Maastricht Treaty, although not specific and protective, some provisions had been implemented if not to establish a social citizenship, to strengthen social policy.

The most important of these regulations was the Social Agreement, annexed to the Treaty. In Amsterdam, this Agreement, which was said to compensate the absence of social citizenship,<sup>97</sup> was incorporated into the Treaty. In an additional paragraph to Article 119 EC, equal treatment for men and women was ensured. Also, a new provision about social exclusion included the competence of the Community on the subject (Article 137 EC). With another new provision concerning employment, the Member States decided to cooperate. High employment was put as a target. But the vital issues such as social security, strikes and worker rep-

<sup>96</sup> For a further discussion on this subject and about nation state values see David Miller, *The Left, The Nation State and European Citizenship*, In: *Global Citizenship A Critical Introduction*. Ed. Nigel Dower&John Williams, Routledge, New York: 2002, pp.84-90

<sup>97</sup> Theodora Kostakopoulou, *op. cit.*, p.76

resentation still required unanimity which is rumored to have been a demand from Britain.<sup>98</sup> Also, the common social policy needed regulations about minimum wage, right to association and protection for elderly and children which failed to be mentioned in the Treaty.

## **ii. Participation and Access.**

There are two aspects of this issue. After the Maastricht Treaty, Amsterdam Treaty simplified and extended the practice of equalizing the Parliament and Council in the decision making process.<sup>99</sup> This gains its importance from the demand for active citizenship. With the help of this procedure, the citizens would have the feeling of being a part of legislative process. The procedure of co-decision was also simplified. In addition, the Treaty established closer ties with the National parliaments with an annexed protocol. The National Parliaments would have a six-week period to scrutinize and debate on legislative proposals before they came in the agenda of the Council.

Amsterdam Treaty also introduced a specific right of access to Council, Parliament and Commission documents with Article 255 EC. Amsterdam, here seems to make a little improvement, taking openness as an ultimate aim.<sup>100</sup> Putting the emphasis on the right of accession in the beginning of European Union Treaty (Article 1) proved the direct link between democracy and accession. With a paragraph added to Article 207 EC (ex 151) the Council had the competence of accession to regulate the accession to its documents.<sup>101</sup>

This aspect of the Treaty, as stated above seems to be more realistic and improving taking into account that it is more directly provisioned for the citizens of Europe who need to be the authors of law. These provisions introduce a genuine supranational citizenship with respect to the ones about free movement of people, taking its actors solely as economic figures.

<sup>98</sup> Ercüment Tezcan, *op. cit.*, p.118

<sup>99</sup> Theodora Kostakopoulou, *op. cit.*, p. 76

<sup>100</sup> Jo Shaw, *op. cit.*, p.10

<sup>101</sup> Ercüment Tezcan, *op. cit.*, p.105

### **iii. Fundamental Rights and Freedoms and Anti-discrimination**

The Treaty of Amsterdam gave emphasis to the issue of fundamental rights and freedoms. The provisions of the European convention of Human Rights and Fundamental Freedoms could be brought before the Court of Justice with an amendment in the Article 6 of the Treaty Establishing European Union.<sup>102</sup> Also with an amendment to Article 46, the first paragraph of Article 6 “The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.” was excluded from the scope of Court of Justice. But this again will not be harmful so long as paragraph 2 is in the scope.

As for the anti-discrimination provisions, Article 13 was added to the Treaty Establishing European Community forbidding discrimination on grounds of sex, race, ethnical origin, religion, belief, handicap, age or sexual preference. It could be said that the mostly strengthened part was the sexual anti-discrimination field which was ‘already highly developed’<sup>103</sup> Also, an Article about positive discrimination on the grounds of sex was implemented ( Article 141 EC(4)).

### **iv. Complementary Nature of European Citizenship**

As the above mentioned practical regulations took place, a sentence added to the Article 17 EC (ex Art.8) revealed a point of view so strong that the nature of European citizenship was determined.

“ Citizenship of the Union shall complement and not replace national citizenships.”

The sentence could be read as a mere clarification for it was mentioned before that European citizenship is conditioned by nationhood. But there certainly is more to it. Amsterdam, being a mile stone for an ever-closer Union, fixed a perception of national citizenship and replaced

<sup>102</sup> Jo Shaw, op. cit., p. 10

<sup>103</sup> Ibid, p. 11

the post-national understanding with a 'statal vision'<sup>104</sup>, That is, in any case, a forward step for an intergovernmental point of view. It could be seen that European citizenship, being conditioned upon nationality which is in the sole determination of Nation States did not compose a real supranational belonging, but implementing a sentence like the one above means to constitutionalize the very understanding. Stefan Kadelbach therefore suggests that this sentence has nothing new in it, but reminds of the famous '*staatenverbund*' :

“ According to these Treaty provisions therefore, the Union represents not only a supranational organization but also a compound unit consisting of Member States”<sup>105</sup>

Furthermore it is not clear what it means to complement national citizenship. Jo Shaw asks her question:

“ If European Citizenship is complementing national citizenships then what job is it precisely doing?”<sup>106</sup>

### 3.4. Nice Treaty

The Treaty of Nice was not fruitful and it did not respond to many of the expectations about citizenship. Firstly the Article 11 of the EC Treaty was amended and the enhanced co operation between Member States has to be granted, in compliance with Articles 43 to 45 of the Treaty on European Union, here the non discrimination among the citizens was replaced with the necessity to obey *acquis communautaire*.

Second, a new paragraph was added to the Article 13 EC that states to support non discrimination measures of Member States co-decision procedure shall be employed<sup>107</sup>, which, as shall be seen later is the most

<sup>104</sup> See J. H. H. Weiler, Eros and Civilisation In: J. H. H. Weiler, The Constitution of Europe. UK: Cambridge University Press, 1999, p. 344

<sup>105</sup> Stefan Kadelbach, op. cit., p.15

<sup>106</sup> Jo Shaw, op. cit., p.10

<sup>107</sup> Jo Shaw, “ The Treaty of Nice: Legal and Constitutional Implications”, European Public Law, vol: 7, is: 2, June 2001, p. 202

democratic decision making procedure of all. But as long as the paragraph 1 still foresees consultation, there seems to be no real improvement.<sup>108</sup>

There are two new paragraphs added to Article 18 EC about free movement of citizens, too. The first paragraph states that the Council shall take any measures to give way to the exercise of the right. These measures are to be taken with co-decision. Second, it is stated that this does not apply to “provisions on passports, identity cards, residence permits or any other such document or to provisions on social security or social protection.” Here again we come face to face with a limitation on the extensive measure implemented.<sup>109</sup>

So this was how the concept was evolved and perceived in the Treaties, in other words the constitutionalization of citizenship.

### 3.5.Lisbon Treaty

Lisbon Treaty has a rather significant meaning for European citizens. Following a long and tiring process of creating a constitution for Europe, the Member States ended up with another Treaty covering political needs and demands of a closer Union.<sup>110</sup> This Treaty has been

<sup>108</sup> Ercüment Tezcan, op. cit., p.142

<sup>109</sup> loc. cit.

<sup>110</sup> I will not discuss about the Draft Treaty Establishing a Constitution for Europe, for that issue requires another study covering the historical progress, contents and possible outcomes, along with the reasons of failure. For that issue see Bertil Emrah Oder, *AB'de Anayasa ve Anayasacılık*, İstanbul: Anahtar Kitaplar Yayınevi, 2004; Aykut Çelebi; (2002). *Avrupa: Halkların Siyasal Birliği*. İstanbul: Metis Yayınları; J. H. H. Weiler, (1999) *The Constitution of Europe*. UK: Cambridge University Press; Christoph Dorau,- Phillip Jacobi, (2000). *The Debate over a European Constitution: Is it Solely a German Concern?*, *European Public Law*. Vol: 6, is: 3 (September 2000); Jürgen Habermas, (2001) *Why Europe Needs a Constitution*, *New Left Review*. <http://www.newleftreview.net/NLR24501.shtml>; Ingolf Pernice, (2002). *Multilevel Constitutionalism in the European Union*, *European Law Review*. Vol: 27, no: 5 (October 2002); Ulrich K. Preuss, (1999) *Auf der Suche Nach Europas Verfassung*. *Transit Europäische Revue*. <http://www.iwm.at/t-17txt6.htm>; Jo Shaw, (1998). *Constitutional Settlements and Citizen after Amsterdam*, *Harvard Jean Monnet Working Paper 7/98*. <http://www.law.harvard.edu/programs/jeanmonnet2001>; Jo Shaw, *The Treaty of Nice: Legal and Constitutional Implications*, *European Public Law*, vol: 7, is: 2 -(2004) J. H. H. Weiler, *Federalizm ve Anayasacılık: Avrupa'nın Sonderweg'i*, *Cogito*, no: 39. (Spring 2004)

thought of as a remedy for the wound the Draft Constitution opened. It was prepared under the German Presidency of the Council and was signed in Lisbon in 2007 and was expected to enter into force by 2009 until it faced the rejection of Irish people. The Treaty is still progress of ratification throughout Europe.

Lisbon Treaty amends the European Union Treaty and introduces closer ties of citizenship. Chapter II, Article 8 is formulated as follows:

“In all its activities, the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship and shall not replace it.”

This statement can be read as an answer to Jo Shaw’s question above. It now complements nationality with a new shield that promises equal treatment for all the citizens by the Union. In other words, the Union shall contact European citizens directly and equally. In contrast to the intention behind it, the wording of the article resembles that of a Constitution.

In addition to this, in Article 8A, the citizens are pointed as the subjects of European democracy through the election of European Parliament. Having suffered enough from the “democratic deficit” discussions, paragraphs 3 and 4 of the said article promises that the Union Institutions will be as close to the citizens and possible and take their views into account. European parties are stated as the address of a Europe-wide political awareness raising institutions.

Article 8 B institutionalizes the European public sphere, where political and social needs and wishes of citizens come to the fore. In the first paragraph of the said article, it is promised that the Institutions will provide the requirements of a public sphere, whereas in the second paragraph, “open, transparent and regular dialogue” with the citizens and their representatives is undertaken. In the third paragraph there is a concrete

address. The Commission is held in charge of the broad consultations that are foreseen about the Union's actions.

But the real innovation is brought by the paragraph 4, the wording of which is as follows:

“less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.”

This article foresees a citizen's initiative in its real sense and encourages the citizens to participate in the government of the “polis”.

The following measures about the Parliament (Article 9A) imply a Parliament of the citizens instead of the peoples of Europe. This is a gate to the “European People” in the strictest sense and is a giant step towards a closer Union.

The Constitutional Draft had embedded the Charter of Fundamental Rights in its text. In Lisbon Treaty a more refined way is followed: article 6 provides that the Charter will have the same legal value as EU treaties and this statement makes it legally binding, and applicable to each citizen.

It is too early to comment of the probable consequences of the Lisbon regulations concerning citizenship but one remark should be noted: With all its attempt to democratize the Union, it looks like a lighter form of a Constitution for Europe, therefore the Irish outcome<sup>111</sup> is of no surprise.

Although 23 out of 27 countries have already ratified the Treaty<sup>112</sup>, the future seems blurry. Lately the German *Bundesverfassungsgericht*

<sup>111</sup> Irish voters have voted against the Treaty in June 2008 and the second Referandum will be held on 2nd October 2009.

<sup>112</sup> The Treaty still in the progress of ratification in Poland and Hungary, it has recently granted positive approach of German *Bundesverfassungsgericht* and has not been ratified in Ireland. For further information and updates about the process, see [http://europa.eu/lisbon\\_treaty/faq/index\\_en.htm#21](http://europa.eu/lisbon_treaty/faq/index_en.htm#21) retrieved: 31.8. 2009

found the “Act Approving the Treaty of Lisbon” compatible with the *Grundgesetz* but the accompanying law unconstitutional to the extent that legislative bodies have not been accorded sufficient rights of participation.<sup>113</sup> The details of this decision could be discussed on many grounds, but taking into account its former positions vis á vis European integration<sup>114</sup>, it could be seen that the High Court still has concerns about rights and participation.

## Conclusion

European Union Citizenship was not implemented by the Maastricht Treaty, the Treaty was just an initiator of a progress to create and baptize the new citizens of European Union. The concept has been discussed on many grounds since then. The main issue was the so called “democratic deficit” which was thought to be a burden on creating a political relationship between the Member State nationals and the European Union. The Constitutional Treaty was seen as a remedy for the problem but with its failure, the Union steered into the same old inter-governmental political atmosphere which left the citizen solely as a national of any member state. The Treaty of Lisbon, however, took some steps, stated above, and granted the citizens extended political rights to provide for the climate a real sense of belonging might sprout.

Although there has been an undeniable progress to constitute the concrete basis of the legal fiction of European Union citizenship that this article tried to summarize, there is still a gap between the political life and the legal status of the “citizens”. For the transfer of power to the state by the individuals which is an element of constitutional law can only be managed when the citizens are ceased to be seen as the customers of a market whose rules are put down by an economic approach. Despite the

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<sup>113</sup> [http://www.bundesverfassungsgericht.de/entscheidungen/es20090630\\_2bve000208en.html](http://www.bundesverfassungsgericht.de/entscheidungen/es20090630_2bve000208en.html) retrieved: 31.8. 2009. The decision was taken on 30th July, 2009, No: 2 BvE 2/08, 2 BvE 5/08, 2 BvR 1010/08, 2 BvR 1022/08, 2 BvR 1259/08 und 2 BvR 182/09

<sup>114</sup> Remember the famous decisions of Solange I and II and Brunner vs. European Union Decision of 12 October 1993, 2 BvR L 134/92 and 2159/92. English version can be found in : CMLRep ( 1994) 1

good intention of Lisbon Treaty, the individuals living in the Union will not wake up one day like Gregor Samsa and become citizens just because the concerned legislation is changed. Taking necessary measures shall only be meaningful if the legal area is totally designed so as to give way to a new understanding of a citizenship.

It is true that legislation and decision making is a technical process in the nation-states. But the circumstances are different in the European Union which has been trying to legitimate its legal existence with the claim of bringing itself closer to citizens. The Union is in a weird position: it denies the necessity of eliminating one's national belonging and offers a "complementary" citizenship. But what this citizenship complements is a matter of question, especially for the more developed member states like Germany or France.

Then, there is the issue of European identity. Danish and Irish resistances to a closer Union show that there is no homogeneous understanding of European Union. And there is no way to measure this sense of belonging other than some questionnaires in the web page of the Union and Parliamentary elections, the turnout of which was only 43% in 2009. Even the fact that a new Treaty introducing fundamental right to its citizens is being ratified by states and a Europe-wide referendum is avoided, proves that there is no political- public sphere to be support the legal fiction. When it comes to constitutional patriotism or tolerance as formulas for a new sense of supra-national public sphere and citizenship, they unfortunately seem to be nothing more than mere philosophical brainstormings if the large masses of European people are either unaware or ignorant to their being the citizens of the Union.

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