

SOME ASPECTS CONCERNING THE DIPLOMATIC PROTECTION OFFERED BY THE EUROPEAN UNION FOR THE CITIZENS IN THE PRESENT ECONOMIC SITUATION

Timofte Claudia Simona Cleopatra

Universitatea din Oradea Facultatea de Științe Juridice

Mirișan Ligia-Valentina

Universitatea din Oradea Facultatea de Științe Juridice

Based on the particular meaning that is specific to European citizenship and that is involved in the practice of citizenship, it causes modern concepts of citizenship which are derived from the universal norms of citizenship.

It's important to underline that the European citizenship is a concept which does not replace the National citizenship, but it is a new modern concept which has a real connection with the national citizenship and why not connected with the Romanian citizenship.

From this point of view, emphasize in this paper that the diplomatic and consular authorities from member states of the Union have to guarantee the protection of the European citizens in third countries in which their state is not represented.

The cooperation of the diplomatic representatives is an important point for the Foreign Politic of the European Union.

Keywords: citizenship, European citizenship, diplomatic/consular protection, European Union

Cod JEL:K33

I. Introduction

The introduction of citizenship of the Union constitutes one of the best-known innovations made by the Treaty signed at Maastricht on 17 February 1992¹. Significantly, Part two of the EC Treaty, which is expressly devoted to (and entitled) "Citizenship of the Union", is located immediately after "Principles"² and before "Community policies"³, which marks out its general importance within the system of the Treaty. Whereas the most direct and immediate precedent for the provisions at present set out in Arts 17-22 EC may be found in a proposal put forward by the Spanish Government during the Intergovernmental Conference which resulted in the adoption of the Maastricht Treaty⁴, the idea of identifying a status for individuals benefiting from the process of European integration and its correlative label of "citizen" of the Community or of the Union goes back to the early 1970s. Following an initial initiative at the Paris Summit in 1972, the subsequent summit in 1974 gave rise to a plan for a standard passport for all nationals of the Member States, which was to be followed by a passport union and a core of special rights characterizing the position of the Community citizen. In pursuance of the mandate conferred upon it by the summit, the relevant working party presented in 1975 the so-called Tindemans Report, which contained a chapter on the creation of a "Citizen's Europe".

Those initiatives of the national governments were followed by initiatives from the Commission⁵ and the European Parliament. The latter adopted a resolution on 12 December 1977⁶ and most significantly the *Draft Treaty establishing the European Union* of February 1984, Art. 3 proposed introducing citizenship of the Union⁷. The Single European Act of 17-18 February 1986 ("SEA"), which entered into force on 1 July 1987, did not make any contribution towards translating the numerous projects for Community citizenship into law, with the result that the expression itself did not appear in the Treaty despite the preparatory papers which had given rise to the presentation of the report of the Adonnino Committee on a people's Europe. Nevertheless, as a result of the Maastricht Treaty, the progress made by European integration and the

diminished importance of economic factors as the determinant for Community legislation, together with the emergence of a higher level of democracy in the Community's institutional life, led to formal recognition of the notion of citizenship of the Union⁸ identifying a special status governed by Community rules for Community citizens.

European citizenship is often regarded by skeptics as a threat to national citizenship which has always been considered „the fortress of state sovereignty and of the national identity. According to Deloye, these fears are well grounded as the „European citizenship is the cause of the reorganization of identities.”¹⁰ Despite its complementary and dispersed nature, European citizenship is a challenge to the structure of the European identity or identities established by the nation-states¹¹. This is because most people assume that the acquisition of European citizenship involves creating a new European identity. The most appropriate example of this fact is Denmark's rejection of the Maastricht Treaty, because of concerns expressed in this regard. Denmark's negative response to the concept of European citizenship was followed by a statement of the Council of Europe underlining the fact that none of the provisions of the Maastricht Treaty would replace national citizenship¹². But not even the founding Treaties of the Communities - which stated that this should be “based on the substantiation of a union, as close as possible among the peoples of Europe”¹³ and not to create a new nation¹⁴ – represented satisfactory guarantees in this respect. As Deloye pointed out, any attempt to impose a new configuration of norms and identities by means of European citizenship will come up against the opposition of many social actors¹⁵.

The possibility of combining various levels of identity is confirmed in great part by the results of the Eurobarometer survey on European and national identity of 2002. Thus, 59% of the Europeans, unlike in 1999¹⁶ - when the figure was 52% - admit certain European components in their national identity¹⁷. In early 2004, after including the 10 candidate states, the figure fell by 3%¹⁸.

In the studies dedicated to this subject, an author considered that the appreciation of European citizenship is determined from the angle of the pre-existing factors of the social nature that creates identity¹⁹. According to another point of view expressed in these studies, European citizenship can be structured by law, and the continual progress - influenced by the gradual enhancement in the legal status - can provide the essential condition for an active European citizenship²⁰.

Therefore, several questions come up:

What is the right to consular protection for EU citizens?

Every citizen of the European Union who is in a country outside the EU, in which the Member State of which he/she is a national is not represented, is entitled to protection by the diplomatic or consular authorities of any Member State represented there. EU citizens are entitled to protection on the same conditions as the nationals of that State.

In 1995, Decision 95/553/EC was adopted by the representatives of the governments of the Member States to implement this entitlement.

What kind of assistance is provided?

When an EU citizen seeks such help, he or she must produce a passport or identity card as ***proof of nationality***. If these documents have been stolen or lost, the embassy may accept any other proof.

Diplomatic and consular representations giving protection have to treat a person seeking help as if he/she were a national of the Member State they represent.

The protection offered by embassies/consulates of other EU States comprises:

- Assistance in cases of *death*,
- Assistance in cases of serious *accident* or *illness*,
- Assistance in cases of *arrest* or *detention*,
- Assistance to victims of violent *crime*,
- The relief and *repatriation* of distressed Union citizens.

What is the European Commission doing in this area?

In November 2006, the Commission adopted a *Green Paper* on diplomatic and consular protection of EU citizens in third countries (COM(2006)712), which set out ideas to be considered for strengthening this right of EU citizens.

Following a public consultation, in December 2007 the Commission presented an **Action Plan** (COM(2007)767) entailing the proposed measures for 2007-2009. The plan focuses on enhancing consular protection and increasing awareness of this right among citizens. The Action Plan will be evaluated in the context of a Commission's Communication in March 2011²¹.

II. Definition of concept.

The history of the transformation of the individual in the community legal order begins with the artificial creation of the „market citizen“²², i.e. the person having economic freedoms, quality which confers him the judicial enforcement to play his role in the process of creating the single European Union market. The Economic European Community (EEC) Treaty contains provisions to that effect, and in 1962, even before the Court of Justice of the European Communities had acknowledged the direct effect of fundamental freedoms, the Commission adopted the point of view according to which the individuals in the Community legal order did not exercise their fundamental rights as simple factors of production, but as holders of civil rights. Illustrative in this respect is the Stauder case (1969) which dealt with the personal right of the petitioner who wished to purchase products subsidized by the European Community at a reduced price without having to reveal his identity.

We remind you that the European citizen is a person who has the nationality of a state included in the European Union, but, by contrast, holders of fundamental freedoms are all those upon whom the Community legal order has conferred such rights.

III. Analyses concerning the exercise of diplomatic protection by the Community for the benefit of citizens of the Union

According to the art. 20 EC the citizens of the Union, in the territory of a third country in which the Member State of which he or she is a national is not represented, have the right to “protection by the diplomatic or consular authorities” of any Member State on the same conditions as the nationals of that State.

This article calls to mind the classic institution of the diplomatic protection of citizens, by virtue of which, provided that certain conditions are satisfied, there is a right to protection from the State for its own nationals who have been harmed by the conduct of another State in breach of international law²³.

Among the requirements which a State must satisfy in order lawfully to exercise diplomatic protection is that the individual in whose interest the State intervenes must be a national, although there are exceptional cases in which a State may exercise diplomatic protection in respect of non-nationals²⁴. The exercise of diplomatic protection by an international organization is, in contrast, somewhat controversial, it being accepted instead in the form of the so-called functional protection of the organization, where, as a result of the internationally unlawful conduct of a State to the detriment of one of the organization's officials, the international organization suffers damage to its own institutional interests²⁵.

It is considered that the Community may act by way of diplomatic protection to safeguard its own interests, as, for instance, in the case of conduct of third countries resulting in injury to Community officials²⁶.

However, it cannot be inferred from the present state of development of general international law that the Community has the right to act to afford diplomatic protection *vis-à-vis* third countries which have damaged the interests of Member State nationals not connected with the Community

by a relationship of service, but in a broad sense. The approach taken in the Community case-law does not appear at all consistent with the aforementioned rule of customary law.

In *Adams*²⁷ the Court of Justice did not deny that the Commission was under a duty to act to defend the applicant (who was not a national of a Member State) before the Swiss courts, where he had had criminal proceedings brought against him for having unlawfully disclosed to the Commission practices of a Swiss company which constituted an abuse of a dominant position; it merely rejected the accusation that the Commission had not so acted because it did not square with the facts. In a more recent judgment, the Court of First Instance dismissed a claim for damages for non-contractual liability based, *inter alia*, on an alleged infringement by the Commission of its duty to intervene actively with the authorities of Guinea-Bissau to obtain the immediate revocation of an unlawful seizure of a vessel flying the Greek flag and its immediate release. In rejecting this plea, the Court of First Instance observed that, from the purely factual point of view, there was no reason to doubt that the Commission Delegation in Guinea-Bissau had “fulfilled ... its duty to provide diplomatic protection to the master [of the seized vessel] and the applicant”²⁸. The Court of First Instance therefore seemed to presuppose that there was a power/duty on the part of the Commission to act to afford diplomatic protection in the face of internationally unlawful conduct on the part of a third country *vis-à-vis* a citizen of the Union, which consisted in the case in question of violation of an international treaty concluded with the Community.

The judgment, which lacks any reasoning with regard to the legal presupposition underlying it, was welcomed by those who accept that the possibility to act to provide diplomatic protection stems from the fact that the Community has international legal personality under Art. 281 EC²⁹.

The introduction of citizenship of the Union, with the resulting strengthening of the legal/political link between the citizen and the Union – even though it is not yet sufficiently capable of evaluation in terms of its content – could afford arguments in support of the case-law which has just been discussed, which, as has been pointed out, seems to go beyond the rules which may be identified in the present state of development of general international law.

Thus, we may ask ourselves whether the European citizenship is a merely legal construction or whether it also exists in social reality. Different scientific disciplines answer differently to this question, varying with methodology. This is why it is possible to distinguish two main positions: the “multi-national” view and the “universal” view³⁰.

A multinational picture of Europe – which a traditional perspective, based on public international law – is drawn by an overview of the Union member states. The constitutional role of citizenship can be developed from the reserve of multi-leveled identities alone. Three results are worth to be mentioned:

- The view of the necessarily exclusive nature of the position of the individual in terms of citizenship does not do justice to the empirical facts; normative conclusions based thereon are problematic.
- One cannot presume that Union citizenship is lacking any kind of social basis.
- Such studies have shown that identities are particularly influenced by political discourses expressed in the media³¹.

In the last twelve years no other bindings acts have been adopted on Consular protection and only recently, after 2006, under the pressure of the European Council and of the Commission the member states have agreed on some complementary and non-binding Guidelines on consular protection of EU citizens in third countries as well as on non-binding measures to counter crisis outside the territory of the EU (such as the notion of the “Lead State Concept” according to which a member state will on voluntary basis coordinate the consular protection in a specific third country and prepare if needed evacuation plans in case of disasters or of terrorists attacks)³².

What about Lisbon Treaty, here is another good question looking for an answer. Well, member states remain jealously attached to the former functions and even after the Lisbon Treaty they avoided a legislative role of the EU institutions by stating that “*Member States shall establish the*

necessary rules among themselves and start the international negotiations required to secure this protection". Moreover, a positive evolution could come out from the strengthened cooperation between the MS diplomatic missions with the new European Union External Action Service as defined by the Article 35 TEU (ex Article 20 TEU) which states that : *"The diplomatic and consular missions of the Member States and the Union delegations in third countries and international conferences, and their representations to international organizations, shall cooperate in ensuring that decisions defining Union positions and actions adopted pursuant to this Chapter are complied with and implemented. They shall step up cooperation by exchanging information and carrying out joint assessments. They shall contribute to the implementation of the right of citizens of the Union to protection in the territory of third countries as referred to in Article 20(2)(c) of the Treaty on the Functioning of the European Union and of the measures adopted pursuant to Article 23 of that Treaty"*³³.

IV. Conclusion

Latest developments in this area show that The Commission published on 23 March 2011 a Communication on consular protection which takes stock of the Action Plan 2007-2009 and presents the future measures for the next years. The Commission also launched a *website on consular protection* for the citizen which will contain, among other useful information, the contact details of Member States consulates/embassies in all countries outside the EU.

Following the entry into force of the Lisbon Treaty, this protection is conferred directly on every EU citizen by Article 23 Treaty on the Functioning of the European Union. This right is also enshrined in Article 46 of the Charter of Fundamental Rights of the European Union.

These fragmentations of the rights of citizens along the national borders and the European policy have created a new understanding of citizenship, which challenges the modern concept of it. Based on the particular meaning that is specific to European citizenship and that is involved in the practice of citizenship, it causes modern concepts of citizenship which are derived from the universal norms of citizenship.

V. Note

- 1)The Maastricht Treaty gave rise to the European Union. It entered into force on 1 November 1993 (OJ C 191, 29/7/1992);
- 2)Part one, Arts 1-16;
- 3)Part three, Arts 23-181a;
- 4) *Agence Europe*, 2 October 1990, No 1653;
- 5) Report in COM(75) 321 final of June 1975;
- 6)OJ C 299, 12/12/1977;
- 7) F. Capotorti, *Article 3 – Citoyenneté de l'Union*, in F. Capotorti, M. Hilf, F.Jacobs, J.-P. Jacqué, *Le traité d'Union européenne* (Éditions de l'Université de Bruxelles, Bruxelles, 1985) 33 ff;
- 8)For the *travaux préparatoires* leading up to the Maastricht Treaty as regards the introduction of citizenship of the European Union, see C. Closa, *The Concept of Citizenship in the Treaty on European Union*, *C.M.L. Rev.* (1992) 1137;
- 9)Vink, M., *Limits of European citizenship*, *European Integration. Policies in Netherlands*, (Universal Press, 2003), p. 4;
- 10) Deloye, Y., 'Exploring the Concept of European Citizenship', in Harmsen, R.,Wilson, T.M.(ed), *Europeanisation: Institution, Identities and Citizenship*, (Rodopi, 2000), p. 211;
- 11) Deloye, Y., op. cit. p. 211-215;
- 12) Shaw, J., 'Citizenship of the Union - Towards Post National Membership?' Harvard Jean Monnet Working Paper 6/97, (accesat în 2 februarie 2009) <http://www.jeanmonnetprogram.org/papers/97/97-06-.html>;
- 13) Idem;

- 14) Weiler, J.H.H., 'To be a European citizen – Eros and Civilization', (1997), *Journal of European Public Policy* 495.p. 509-11;
- 15) Deloye, Y., op.cit. 'Exploring the Concept of European Citizenship', in Harmsen, R., Wilson, T.M.(ed), *Europeanisation: Institution, Identities and Citizenship*, (Rodopi, 2000),p. 211-215;
- 16) 'How Europeans see themselves. Looking through the mirror with public opinion surveys' Eurobarometer, October/November 1999, http://ec.europa.eu/comm/publications/booklets/eu_documentation/05/txt_en.pdf;
- 17) Vink, M., op.cit. *Limits of European citizenship, European Integration. Policies in Netherlands*, (Universal Press, 2003), p. 5;
- 18) 'Comparative Highlight Report', Eurobarometer, February/March 2004, accesat în 15 ianuarie 2009, http://ec.europa.eu/public_opinion/archives/cceb/2004/cceb_2004.1_highlights.pdf;
- 19) D. Grimm, Braucht Europa eine Verfassung?, *JZ* 1995, 581 (587 et seq.), Stefan Kadelbach în lucrarea Jean Monnet Working Paper 9/03 „Union Citizenship” - Max Planck Institute for Comparative Public Law and International Law, Heidelberg, 24-27 February 2003, pp. 4;
- 20) C. Tomuschat/S. Kadelbach, Staatsbürgerschaft - Unionsbürgerschaft - Weltbürgerschaft, in: J. Drexel et al (ed.), *Europäische Demokratie*, 1999, 73 (84 et seq.) and 89 (104 et seq.), Stefan Kadelbach în lucrarea Jean Monnet Working Paper 9/03 „Union Citizenship” - Max Planck Institute for Comparative Public Law and International Law, Heidelberg, 24-27 February 2003, pp. 4-5;
- 21) accesat în martie 2009
http://ec.europa.eu/justice/policies/citizenship/diplomatic/policies_citizenship_diplomatic_en.htm ;
- 22) H.P. Ipsen/G. Nicolaysen, Haager Kongresß für Europarecht und Bericht über die aktuelle Entwicklung des Gemeinschaftsrechts, *NJW* 1964, 339 (340 at note 2); H.P. Ipsen, *Europäisches Gemeinschaftsrecht*, 1972, 187, 250 et seq., 742; Stefan Kadelbach în lucrarea Jean Monnet Working Paper 9/03 „Union Citizenship” - Max Planck Institute for Comparative Public Law and International Law, Heidelberg, 24-27 February 2003, pp. 5;
- 23) Note among the best-known international precedents, the judgment of the Permanent International Court of Justice in the *Mavrommatis Case CPJI Reports* (1924) Series A/B, No 2, 12, and the subsequent judgment in *The Panevezys-Saldutiskis Railway Case* (1939) CPJ, Series A/B, 1939, No 76. As far as learned articles, apart from textbooks, are concerned, see recently L. Condorelli, *La protection diplomatique et l'évolution de son domaine d'application actuelle*, *Rivista di diritto internazionale* (2003);
- 24) I. Brownlie, *Principles of Public International Law* (Oxford University Press, Oxford, 6th ed., 2003) 459; S. Bariatti, *L'azione internazionale dello Stato a tutela dei non cittadini* (Giuffrè, Milano, 1996) 38 ff., at 158 ff;
- 25) See the Advisory Opinion of the International Court of Justice of 14 April 1949, *Reparation for Injuries Suffered in the Service of the United Nations* (the *Bernadotte Case*) in *ICJ Reports* (1949) 174. For a commentary, see B. Conforti, *Le Nazioni Unite* (Cedam, Padova, 7th ed., 2005);
- 26) P. Pescatore, Les relations extérieures des Communautés européennes: Contribution à la doctrine de la personnalité des organisations internationales, *RC* (1961)II 218;
- 27) Case 53/84 *Adams* [1985] ECR 3595;
- 28) Case T-572/93 *Odigitria* [1995] ECR II-2025, at para. 77;
- 29) C. Vedder, H.-P. Folz, A Survey of Principal Decisions of the European Court of Justice Pertaining to International Law in 1995, *European Journal of International Law* (1997) 519;
- 30) E. Balibar, Kann es ein europäisches Staatsbürgertum geben?, in: *Das Argument. Zeitschrift für Philosophie und Sozialwissenschaften* 36 (1994), 621 (623), French original in: B. Théret (ed.), *L'Etat, la finance et le social. Souveraineté nationale et construction européenne*, 1995; M.

Kaufmann, Europäische Integration und Demokratieprinzip, 1997, 110; P.A. Kraus, Von Westfalen nach Kosmopolis?, Berl. J. Soziol. 2000, 203 (204 et seq.). Ibidem, pp. 43;

31) O. Angelucci, Europäische Identitätsbildung aus sozialpsychologischer Sicht, in: Elm, note 174, 111 et seq. Ibidem, pp. 51;

32) Council of the European Union, Guidelines on consular protection of EU citizens in third countries, Council Doc. 10109/06, 2.6.2006(a), as adopted by the General Affairs Council during its 2736th Council meeting in Luxembourg, 12.6.2006. See Council of the European Union, Reinforcing the European Union's emergency and crisis response capacities, Council Doc. 10551/06, Brussels, 15.6.2006(b); see also M. Barnier, For a European civil protection force: Europe aid, European Commission, Brussels, May 2006;

33) Dragomi Eduard, Niță Dan, Tratatul de la Lisabona, Editura Nomina Lex, , 2009, p. 59;

VI. Bibliography:

Cărți

Blanc, Didier, L'Union européenne. Aspects institutionnels et politiques, Ellipses, Paris, 2006

Clapie, Michel, Institutions européennes, Champs Université, Flammarion, Paris, 2003

Closa, C, Citizenship of the Union and Nationality of Member States, CML Rev. 32 (1995)

Condinanzi M., Lang Al., Nascimbene B., Citizenship of the Union and Freedom of Movement of Persons, Martinus Nijhoff Publishers, Leiden Boston, 2008

Dahl, R., Democrația și criticile ei, Editura Institutului European, Iași, 2007

Gerbet, Pierre, La Construction de l' Europe, Imprimerie Nationale F. 1994

Ivan, A.L., Statele Unite ale Europei, Ed. Institutului European, 2007

Simon, D, Le système juridique communautaire, Paris, PUF, 1999