

European Union Citizenship: A new kind of citizenship or the extension of the national citizenship of the Member States?

By
Rahiel Mustafoska

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Supervisor: Professor Uwe Puetter

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ABSTRACT

Since its introduction, EU citizenship has been characterized as a tool for the creation of a European identity. Although EU citizenship as a source of rights and as an identity generating tool has gotten its appraisal in the theory, the issue of the practical enjoyment of those rights has not received much attention. Therefore, relying on a literature review and the partial use of documents analysis as a research method, the paper attempts to answer the question: how does the access and exercise of rights impact the creation of a European identity? The lack of attention to the application of the granted rights and the difficulties the citizens face in their implementation are the core findings of the paper. Furthermore, this drawback is pinpointed as a key reason for the slow development of a European identity. Finally, the paper establishes that the better citizens' access to and exercise of the rights granted to them is, the faster the devolvement of a European identity will be.

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INTRODUCTION

Two main objectives have characterized the process of the development of the European Union Citizenship (EU citizenship) since its beginning: strengthening the European Union (EU) and creating a link between the citizens and the EU. As a precondition for the achievement of the first objective an emphasis is put on the second in the academic literature (Wiener, 1998a, p.13). Therefore we can say that, the strength of that link and the development of a European identity depend on the capability of the EU to satisfy the most important needs of its citizens.

The EU can accomplish this task by granting rights to its citizens and giving them an opportunity to practice these rights. Although the identity generating power of rights is debatable among theoreticians (Jolly, 2005;Hilson,2007), following Habermas' (1992 cited in Lehning, 2001, p.245) claim that citizens develop identity through the application of their rights, we can expect that the direct result of that accomplishment will be the creation of an European identity.

However, the diverse composition of the EU enables two fold observations on the creation of a European identity: the European identity developed by the EU nationals and the possibility for developing and contributing to the development of the European identity by third country nationals (TCNs)¹. As an identity creating tool for EU citizens and as a precondition for the possible development of European identity by TCNs, the essentiality of EU citizenship for the creation of a common identity is undeniable. Therefore, it is crucial to understand the meaning of the EU citizenship, its essence, relation to and power for identity creation.

¹ In this thesis attention will be paid *only* to TCNs who are long term residents in the EU

As a new concept introduced at a higher level than the national one, the definition of EU citizenship is debated by many theoreticians (Meehan, 1993; Shaw, 1998; Jenson, 2007). Nevertheless, the link between the different meanings of the concept and the identity creation through rights deserves attention. Moreover, scholars have also paid attention to the issue of identity and the importance of rights for its creation (Isin & Wood, 1999; Montero, 2001; Gillespie & Laffan, 2006). However, aside from the interrelatedness among citizenship, rights and identity it is important to disclose how does citizenship and rights influence identity creation. Additionally, the process of the EU citizenship development reveals the importance that has been given to granting rights as a device for strengthening the link between citizens and the Union (Wiener, 1998b).

Nonetheless, although granting rights based on citizenship has gotten their appraisal from the scholars, the participants in the process of development of EU citizenship and in the legal documents, the application of those rights have not received much attention. This attention is needed, however, because of the crucial impact of the rights' application on the creation of a sense of belonging. It can not be expected that an individual will develop a sense of belonging to a political entity only because his/her rights are granted on paper. Only the enjoyment of those rights and the benefits gotten through practicing those rights can initiate individuals' feeling of belonging to the EU.

Therefore, the key research question in this paper is: *how does the access to EU citizenship rights and their practical exercise by EU citizens impact the creation of a European identity and sense of belonging?* The main hypothesis is that the better the access to rights and their practical enjoyment, the faster the European identity creation. This also means that the achievement of the rapid development of European identity through the EU citizenship rights necessitates undertaking measures that will narrow down the differences among the MSs in the application of the granted rights.

The European identity is a mixture of identities and the members of those identity groups should consider themselves and foreigners as equal members (Lehning, 2001, p.240; Neumann, 2001 cited in Atikcan, 2006, p.17). These claims and the number of approximately 10 million legally residing (Europa Press Releases Rapid, 2006) TCNs, are the foundation of the other aspect of observing the European identity creation. Thus, it can be expected that TCNs have impact on the common identity creation. Although, the Directive 2003/109, the EC Turkey Association Agreement and the Decisions 2/76, 1/80 and 3/60 grant TCNs with basic rights, the level of exercising those rights remains open. Therefore the other question of this paper is: *how does the access to and exercise of the rights granted to TCNs impact the creation of European identity?*

To answer these questions, I will first present a literature review on the different approaches on the definition of EU citizenship and the importance of rights deriving from citizenship for building identity. After that, aiming to identify the approach in regard of rights and their implementation during the process of the development of EU citizenship, I will assess the stages of EU citizenship development in detail. Furthermore, I will analyze some of the most influential case laws of the European Court of Justice (ECJ), indicating the existing gap between the granted rights with the Maastricht Treaty and their application. Moreover, I will evaluate the legal documents granting rights to TCNs in general and Turks as TCNs in particular. Finally, I will close with the most important conclusions.

CHAPTER 1: EU CITIZENSHIP AND EUROPEAN IDENTITY

The concept of citizenship as an indicator of the civil, political status and the belonging of an individual to a political entity has been a subject discussed by scholars since the Greek polity and the Roman Empire. The elaboration of citizenship has intensified with the introduction of EU citizenship. This concept has been evaluated from different political and sociological aspects, identifying similarities and differences with national citizenship.

The main focus in this chapter will be on the link between the different theoretical aspects on the meaning of EU citizenship and its connection to the creation of a European identity through rights. The importance of this evaluation is based on the fact that EU citizenship was introduced as a tool for identity creation and as a source of rights, which are the main link between the individual and the EU. Therefore, the main issue in this paper is the impact that the exercises of rights have on the European identity creation.

1.1 Definition of EU citizenship

Although the main intention of the founders of EU Citizenship was to build a concept that will neither replace nor be same as national citizenship, the starting point in defining EU citizenship is the concept of national citizenship. In that regard, Jenson (2007, p.55) claims that “... Citizenship involves recognition of rights by public authorities acting within the borders of national states...” and in that sense she introduces citizenship as an indicator of the “full membership in a bordered community”. In addition to this and Jenson’s (2007, p.55) referral to the impact of the EU’s institutional setting on the rights and obligations of EU citizens, we can conclude that she considers EU citizenship similar to national citizenship. Thus, EU citizenship can be seen as a concept that defines, who the “full members”, who have rights and duties within the EU community are. Jenson’s (2007, p.55) claim emphasizes

the recognition of rights and thus it can be said that in order for a person to be or feel as a member of a community, he/she must not only have the rights granted but must also have the opportunity to exercise those rights. Only through the enjoyment of rights will individuals feel that they belong and are members of their community.

Furthermore, Meehan (1993, p.1) uses a comparative approach in explaining EU citizenship as "...neither national nor cosmopolitan...". Meehan's (1993, p.1) starting point is the historical approach on citizenship held by Heater, who claims that

.... The term [citizenship] already contained a cluster of meanings related to a defined legal or social status, a means of political identity, a focus of loyalty, a requirement of duties an expectation of rights and ... good social behavior..." and that [citizenship] can be "... associated with any geographical unit from a small town to the whole globe itself.. (Heater cited in Meehan, 1993, p.4)

Based on this, we can say that the rights and duties, as products of citizenship, are essential in the creation of the status that an individual will have at the national or the EU level. Thus, if the rights are fully exercised and the duties fulfilled, a link between the individual and the political entity can be created. On one hand, through that tie the individuals can develop the feeling that they belong to and identify with the community. On the other hand, the community can count on the individual's contribution to its order and stability.

Moreover, Meehan (1993, p.6) emphasizes the concept of social citizenship. Based on this concept, citizenship is a tool that ensures, on one hand, the well-being of the individual, and on the other, that the individual is the creator and the guardian of the community (Meehan, 1993, p.6). This means that whether an individual will develop a feeling of belonging to the MS or the EU depends on the social rights he/she is granted and the extent to which they are exercised. If through the enjoyment of rights the well-being of a citizen is ensured and thus, he/she identifies himself/herself with the community, it can be expected that that person will contribute to the well being of the community.

The last concept pinpointed by Meehan (1993, p.7) is the nation state concept of citizenship. According to this concept, citizenship is seen as an interlocking point in which social, civil and political rights converge, becoming common standards as devices that keep the transnational order of the EU (Meehan, 1993, p.7). Following this concept we can conclude that the stability and strength of the EU depends on its inhabitants, i.e its citizens. To ensure that stability, the EU grants its citizens political, social and civil rights. However, more important for a person to feel strongly linked to the EU is that those rights must be exercised.

A more legalistic approach of the understanding of EU citizenship is developed by Shaw. Based on the analysis of EU Treaty provisions Shaw (1998) developed several concepts on EU citizenship, all of which in a way confirm the interrelatedness among EU citizenship, rights and identity.

According to the first tendency, “the free movement tendency”, the embodying element of the status that EU citizens will get is the right to free movement and its enjoyment (Shawn, 1998, pp.302-303). Whether a person will be more attached to the territory of a particular MS or if he/she will develop a status of belonging to the EU, depends on the extent to which the right to free movement is accessible and exercised.

Interlinked with the previous is the tendency of the “positive and human rights, generating power” of the EU citizenship (Shaw, 1998, p.303). The very notion of this tendency discloses that the EU citizenship has multiplying effects in regard of rights. Thus, if an EU citizen has and he/she exercises his/her right to move freely in the territory of the EU, based on that right, he/she must be entitled to the other rights, such as education and employment. If this possibility is ensured to a citizen, no matter of his/her place of residence

within the EU, it can be expected that based on the equality of the treatment that person will develop a sense of belonging to the EU and carries a European identity.²

Another tendency pinpointed by Shaw (1998, p.305) is the one highlighting the influential power of the MSs' law. This tendency underlines the national laws as the "...definitional core of Union citizenship..." and the foundation for the creation of European identity and membership (Shaw, 1998, p.305). Also it highlights the supplementary character of the EU citizenship, clearly stated in the Treaty of Amsterdam 1997 (OJ C 325, 2002, p.44).³ Therefore it can be said that the effects of the EU citizenship as an identity creating tool through the rights might be limited as a result of the discretionary power that MSs have in determining who will be an EU citizen. Therefore getting national and thus EU citizenship and the creation of link with the EU is dependant on the MSs' "good will".

Overall, EU citizenship, similarly to national citizenship, can be understood as a main source of rights enabling those to whom the rights are conferred to be classified as members of the EU. Although all of the definitions put emphasis on the importance of rights in the creation of a sense of belonging and European identity, there is a small gap. Namely, none of the approaches touch on the question of how the level of accessibility and practical exercise of rights impact the creation of the European identity.

² The link between citizenship and rights is highlighted with the claim that "...at the core of the status of citizenship, which describes the relationship between the nationals of the MS and the EU are number of rights and duties..." (O'Leary cited in Shaw, 1998, p. 304)

³ (OJ C 325, 2002, p.44) is a short reference for the Official Journal of the EU. It includes the type of document, issue number and date

1.2 Building identity

The above evaluation of the meaning of the EU Citizenship has shown that there is a link between EU citizenship and European identity. This link becomes even more visible if it is borne in mind that the main purpose of the introduction of EU citizenship in a formal framework, was to “...alter the individual identities and belonging in Europe”. (Gillespie & Laffan, 2006, p.144) In addition to that, Surel’s (2000 cited in Gillespie & Laffan, 2006, p.144) claim that the main purpose of the “...normative frame shared by a certain number of actors is effectively to develop the collective consciousness in them... [or] the subjective sense of belonging, producing a specific identity”, confirms the role of EU citizenship as an identity creating tool. Based on the discussion on EU citizenship as a source of rights and the claim that EU citizenship is a device for development of European identity, it is clear that rights have a principal role in the creation of that identity. This interrelatedness is elucidated if the fact that “...identity can be formulated as a various forms of citizenship rights” is taken into account (Fraser, Honneth and Taylor cited in Isin & Wood, 1999, p.15).

Although these claims show the impact of rights on the creation of European identity, the fact that the framework of rights at the EU level still is in progress, divide scholars. For instance, based on the desegregation of the EU rights as those which derive from the Treaties, the ECJ practice or EU citizenship, Hilson (2007, pp.527-543) claims that rights have little identity generating power. The main reason for the little identity generating power of rights deriving from EU citizenship is the lack of “salience” i.e importance (Warleigh cited in Hilson, 2007, p.539). Therefore, it can be said that although Hilson’s (2007) claim that citizens attach different levels of importance to different rights is well taken that does not mean that the identity generating power of rights is low. What can be said is that the identity generating power of rights is directly dependant on their enjoyment and the benefits that

citizens get from the rights important to them. Therefore, this aspect deserves attention and is discussed in this paper.

However, due to the fact that the EU is a conglomerate of different national and other identities, the creation of European identity is a time consuming process. In other words identity creation is "... a process of becoming rather than being: not who we are or where we come from, so much as what we might become...[and]...identities are always in some way relational and incomplete in the process of being formed."(Isin & Wood, 1996, p.16) Although this shows the time consuming characteristics of the creation of identity while speaking about European identity creation through the rights, an important point must be underlined. Based on the mixed structure of the EU, inhabited with EU nationals and TCNs, the length of time for the European identity creation, depending on the access and exercise of rights, might be longer or shorter.

The importance of the rights for the speed of the creation of a sense of belonging is highlighted through the premise that "rights produce identity, identity produce rights" (Montero, 2001, p.366). Moreover, Montero (2001) claims that the rights deriving from EU Citizenship, not only have creative forces but also capability for remodeling and adjusting national identities in a new European identity but not replacing the previous. The conclusion following is that not only granting rights but also their exercise is the base of the creation of a European identity. However, the speed of the identity creation depends both on the EU as a guarantor of rights and on MSs as an implementer of those rights. Furthermore, the EU citizenship power to change the individual's perception about belonging to different identities and merging them to a common one depends on to which extent those EU rights and norms are incorporated at the national level (Montero, 2001, pp.366-369). Thus, we can assume that the greater the accessibility of rights, the more credible is Montero's (2001,p.349) argument on the integrative power of EU citizenship and rights. In such a case, this argument refutes

Jolly's (2005, p.15) claim that based on the level of unhappiness because of the rights granted to the others, instead of integration, EU citizenship produces alienation.

Jolly's (2005, p.15) claim can also be refuted if Fossum's argument (2001, p.375) that the creation of identity is primarily dependant on the recognition of equal rights and dignity to different groups, is emphasized. Additionally, Isin (1999, p.20) underlines that when speaking about identity, the recognition of rights is particularly necessary for those groups excluded from citizenship. Based on these two claims and the fact that most of the TCNs, if treated as "the others" in Jolly's terms (2005,p.15), who do not have citizenship of the MSs and EU citizenship, it can be said that they should be recognized the basic rights for the sake of the swift development of European identity. Therefore, if European identity is built by the conglomerate of identities (Neumann,2001 cited in Atikcan, 2006, p.16) then both the identities of the MSs and other's groups, i.e TCNs identities matters. Moreover, for successful identity creation through EU citizenship, exercising rights and opportunity for obtaining EU citizenship is the base of the inclusion of other identities in the common identity.

Thus, as long as MSs do not recognize TCNs rights, they'll be alienated from the community, restraining them from the acquisition of the national citizenship. The postponement of this process will delay the formation of European identity too. Although TCNs can't influence EU nationals' feelings; but still they can have some impact on the speed of European identity formation. This is based on the assumption that TCNs, who are long tem residents in the EU, most likely will not return to their countries of origin. Thus if they have no access to rights and are deterred from obtaining MSs and EU citizenship they will be excluded within the EU. This will destabilize and counter effect the intention of the European identity creation.

Overall, if identity is understood as a feeling of belonging to a bounded territory such as the EU and it is developed through the level of granted and exercised rights, the conclusion following is that granting and exercising rights by EU citizens and TCNs, matters for the creation of European identity. Therefore, based on the interrelatedness among EU citizenship, rights and identity the main question is: what is the level of access and exercise of the rights deriving from EU citizenship and how does it influences the creation of a European identity?

1.3 Methodology

In order to answer the research questions: I will rely on a literature review on the definition and the development of EU citizenship and I will partially use the method of document analysis (analysis of some case laws of the ECJ, treaties provision and documents granting rights to TCNs). On the one hand, based on the literature review positive inferences about the meaning of EU citizenship, its development and relatedness with rights and identity can be made. Also it can be revealed what were the rights intended to be granted through the EU citizenship and which rights were actually granted?

On the other hand, using the method of document analysis, particularly the analysis of the case law of the ECJ, it can be disclosed what is the relationship between the rights granted and their implementation? Furthermore, through the analysis of documents granting rights to TCNs in general, and Turks as TCNs in particular it can be shown: how do the legal status and the application of rights by TCNs impact the creation of a European identity?

The positive side of the use of the combination of literature review and the method of document analysis is that it enables a comprehensive preview on the theoretical background and the legal framework on which the concept of EU citizenship as an identity creation tool is established. Based on this preview a clear inferences and assumptions on the speed of the creation of a European identity through the rights can be made. However, this combination

has some practical limitations. Those limitations are based on the fact that a feeling of belonging to and identifying with the EU or not, depending on the benefits gotten from the enjoyment of rights is a personal emotional state difficult to be measure. Therefore, the conclusions that will be drawn in this paper will be based on assumptions. Thus, further research based on interviews and questionnaires can support its findings.

CHAPTER 2: EU CITIZENSHIP DEVELOPMENT

As shown in the first chapter the identity generating power of rights is debatable among theoreticians. Apart from the claims on the small or alienation power of the rights (Jolly, 2005, p.15; Hilson, 2007), Montero's (2001, p.366) claim that "rights produce identity and identity produces rights" has its support in the process of the development of EU citizenship. Namely, Wiener (1998b) in her analysis of the development of EU citizenship divides the whole process in several phases.⁴ The process of the development of the EU citizenship through all of those phases, which were identified by Wiener (1998b) as Paris 1970, Fontainebleau 1984, Maastricht 1991 and Amsterdam 1997, have had the same aim: granting and extending rights.

Still, what is missing during the four stages is the debate on how to make those rights more accessible to the individual apart from the pure discussions on their linking power and prescription in legal documents. Therefore, the process of EU citizenship development in this chapter is presented with the aim of identifying the gap between the granted rights and their application in the next chapter. The assumption following is that the exercise of the rights has great importance for the development of the European identity.

⁴ Based on my theoretical assessment, Wiener is the only author presenting the whole process in details and most often is a contributor to the work of other authors on this issue such as Cini (2003), Hanagan and Tilly (1999). Because of that Wiener will be mostly referred in this chapter

2.1 Initial steps in the development of EU citizenship and Paris 1970

The discussion on the roots of EU citizenship and its interrelatedness with rights goes back to the creation of the EU including the founding treaties of the European Coal and Steel Community (ECSC), the European Economic Community (EEC), the community legislation and the ECJ's practice. (Olsen 2008, pp.40-57) According to Olsen (2008), these documents contain the initial elements of EU citizenship although they refer to the individual in an indirect way as a worker.

Based on this, we can say that parallel development of the EU citizenship and the EU itself is a proof of the indivisibility between the individual and the EU. This connection between the EU and the individual is based on the rights granted to him/her with the ECSC and the EEC Treaty. (Olsen, 2008, pp.40-47) The roots of EU citizenship are seen through the provisions of the ECSC Treaty aiming for the inclusion of the individual as a worker, participant and consumer through the right to free movement and the EEC Treaty provisions for the creation of a union of people, who are protected from discrimination based on nationality.⁵ (Olsen, 2008, pp.44-48) Another indirect sign of EU citizenship found by Olsen (2008) is in the case law of the ECJ. Through the principle of "direct effect" of the Community law in the case of Van Gend and Loos, and the principle of "supremacy" of Community law in the case of Costa, the ECJ has contributed to the extension of workers' rights and thus to the shape of EU citizenship. (Olsen, 2008, pp.48-50)

A conclusion following is that although in the beginning of the creation of the EU there was no discussion about EU citizenship, still, according to Olsen's (2008) analysis, the rights granted to the individual as a worker were the core elements resembling citizenship. However, he does not mention the question of the access to and exercise of those rights.

⁵ The EU citizenship developed during this stage is identified in the literature as "embryonic citizenship" or "market citizenship" (Olsen 2008, p.44-48; Wiener in Cini, 2003, p.406)

The following stage, associated with Paris 1970 (Wiener, 1998b, pp.63-123), is featured by an extensive debate on EU citizenship development. The leaders of the EU at that time, searching for a tool to strengthen the EU as a political union placed emphasis on EU citizenship development and the creation of a sense of belonging through rights (Wiener, 1998b, pp.65-73). Although, the debate was based on an idea with many pros and cons it shows that the main attention was paid to granting rights. Even though, the question of accessibility of rights was not raised still their importance was acknowledged.⁶

An important document for the European identity creation adopted during this stage was the Declaration on European identity in 1973 (Declaration). This document is considered by Wiener as a source for expanding citizenship. (Wiener, 2003, p.408) Since the Declaration, emphasizes the MS's good will for the respect of the "principles of representative democracy, rule of law...and human rights"(Declaration in Bulletin of the European Communities,1973,pp.118-122), which are directly related to the individual and its granted status, Wiener's consideration has high credibility.

Defining the European identity as composed of "common heritage, interests and obligations, relation to the rest of the world and the dynamic nature of the European unification" (Declaration in Bulletin of the European Communities, 1973, pp.118-122), the Declaration is linked with the Paris communiqué, which emphasizes the creation of passport union and special rights as main objectives and elements of EU citizenship (Wiener, 1998b, p.74).

Overall, although, Olsen (2008) underlines the importance of granted rights for the person's status and link with the union, he dismisses the importance of the *enjoyment of the*

⁶ A good indicator for the acknowledgment of the importance of rights is the statement of the Belgian foreign minister Van Elslande's that: "...Europe can not be monopolized by its economic and technological achievement, and neglect under penalty of losing essential support, the aspirations of its citizens. (Elslande cited in Wiener, 1998b, p. 68)

rights. Furthermore, although Paris 1970 was somewhat more advanced stage in a sense of the public debate on EU citizenship, highlighting the importance of the rights and the uniform passport for the creation of a European identity, the issue on the application of those rights was still not raised. Therefore we can say, that not only were many positive aspects in the development of EU citizenship achieved during these stages but also a continuous drawback, through the lack of attention to the access and exercise of rights, was built.

2.2 Fontainebleau 1984

Based on the circumstances in the 1980s-1990s the direction of the EU citizenship development was changed. Whereas in the first phase, Paris 1970, the extension of rights and EU citizenship were seen as tools for shaping the political aspect of the EU, at this stage as a result of the economic instability, they were seen as tools for returning the economic stability through the creation of a stable market. (Wiener, 1999, p.207) However, the main figure to whom all of the actions were addressed to during this phase was the citizen. Namely, the main aim of the measures in this phase was to “...make the best use of Europe’s human resources in the creation of European identity.” (Wiener, 1999, p.208)

Therefore, the mission for granting rights to citizens remained the same. (Wiener, 1998b, pp.126-206) A novelty at this stage that is noteworthy because of its contribution to EU citizenship development is the creation of the Committee for People’s Europe (Adonnino Committee-AC) and the Committee on Institutional Affairs (Dooge Committee-DC). Both of them through their reports and the definition of the specific objectives have had a high impact on the EU citizenship development and extension of the rights. (Wiener, 1998b, p.132)

Although the reports of both Committees are valuable, still for widening the rights and bringing people closer to the EU the second report of AC comes into fore. The first Adonnino report, referring to the free movement, border crossing, education and other issues,

elucidates the dependency of the market stability on the existing trust of the people towards the Union. Therefore, striving to present the EU “more credible in the eyes of citizens”, the report recommends market measures to benefit the citizens and entitlements that bring people closer to the EU (Adonnino, 1985, pp. 9-14).

Thus, the report shows that the main intention is to make people feel that they belong to the EU, to feel free to move within its territory and to undertake particular economic actions within the Union. This intention presents the Committee’s members awareness that the benefits people enjoy are the key element making them feel they belong within, trust and respect the Union. Although exhaustive in details, we can say that the first Adonnino report tells in general terms *what should be done* without a reference to the possible difficulties in the application of its recommendations in the MSs.

However, the second report of the AC can be seen as filling up the gaps in the first report. Referring to the basic rights of EU citizens such as the free movement, education, health and so on, the second report of AC stresses that the implementation of granted rights influences the development of the European identity. The conclusion of the report, increasing its value, states that only the realization of the report’s recommendations i.e. implementation of the rights prescribed “would give the individual citizen clear perception of the dimension and the existence of the Community” (Adonnino, 1985, p. 30).

Therefore, we can conclude that the second Adonnino report supports the premise that “rights produce identity and identity produces rights”. (Montero, 2001, p. 366) Juxtaposing this premise and the recommendations of Adonnino report, it is clear that the feeling of belonging to the EU will be greater if the citizen, whichever the MSs he/she resides, enjoys the same rights and benefits as in his/her state of origin.

Furthermore, at this stage steps in regard of the extension of right were undertaken. The most prominent one, important for the social rights was the adoption of the Charter on

Fundamental Social Rights of Workers 1989 (Social Charter). (Maas, 2007, pp.42-43; Wiener, 1998b, pp.176-180) Highlighting the social aspect of the common market, prescription of workers' rights (free movement, retirement, vocational training etc), and the recommended measures by the Commission, the Social Charter (European Council, 1989) represents the Community's appreciation of the worker as an inevitable part of the market creation. Therefore, the only way citizens can contribute to and feel part of the common market is the enjoyment of their rights.

Finally, a characteristic of Fontainebleau is the Schengen Agreement in 1985. This agreement became a cornerstone document for the development of a uniform passport (Wiener, 1998b, pp.184-191) Based on the "psychological effect" of the uniform passport in the creation of European identity (Final communiqué of the 1974 Paris Summit cited in Wiener, 1998b, p.107) and the relation of citizenship to the state borders (Jenson, 2007, p.55), we can say that the Schengen agreement has had important role on the European identity development. However, more comprehensive assessment of its facilitating effects for the free movement can be done through the evaluation of its provisions and the case law of the ECJ.

Therefore, the Fontainebleau period is characterized with a higher sophistication of the EU citizenship than in Paris. The economic aspect of the development of EU citizenship did not affect the main objective: the extension of rights. On the contrary, it strengthened it with the adoption of the Social Charter. However, the development of citizen's rights has been followed with the lack of the attention to the accessibility of those rights. Thus, the assumption is that the lack of attention on the enjoyment and access to rights has resulted in different practices on their implementation in the MSs and has delayed the creation of a European identity.

2.3 Maastricht 1991 and Amsterdam 1997

Although, Fontainebleau 1984 was an important stage for the development of EU Citizenship and widening citizens' rights, its results had not been formalized. The need for the institutionalization of the EU citizenship, including the rights in an official document received attention in this stage.

The whole process of the improvement of the EU Citizenship, during this stage is characterized with discussions and documents that have contributed to its formalization (Wiener, 1998b, p.253). Still, the greatest importance, in the theory, is attached to the Spanish contribution. (Wiener, 1999, p.211; Maas, 2007, p.48) The Spanish contribution is based on its two proposals that initiated and encouraged the accomplishment intended. Although just a letter by the Spanish Minister, Felipe Gonzales, the first proposal is valuable because it raised the discussion on the inclusion of rights in the Treaty. Based on the formal requirements for the inclusion of all political, civil and social rights in the Treaty and the definition of EU citizenship as a "personal and inalienable status of citizens of the MSs", a greater importance is attached to the second Spanish proposal (Wiener, 1998b, pp.254-255, 260-261; Maas, 2007, p.11)

Referring to Jenson's (2007, p.55) and Meehan's (1993, pp.6-7) claim that the existence of citizenship is linked with the rights, which when enjoyed, make citizens full members of a community, we can say that the second Spanish proposal can be treated as a precondition for enabling full membership in the EU. However, the Spanish proposals value has been increased by the successful inclusion of EU citizens' rights in the Maastricht Treaty in 1992.

The Maastricht Treaty 1992, grants EU citizens the most fundamental rights enabling them to enjoy the benefits of those rights and to have access to the matters affecting them. Namely, the rights granted to EU citizens with the Maastricht Treaty are:

- Right to move and reside freely within the territory of the union;
- Right to vote and stand as a candidate in municipal elections in the Member state in which he/she resides;
- Right to vote and stand as a candidate in elections for the European Parliament in the Member states in which he/she resides and
- The right to protection by the diplomatic and consular authorities of any member state on the same conditions as the nationals of that state.(OJ C191,1992, p. 10)

Although the essentiality of the Maastricht Treaty provisions on citizen's rights is undeniable, still EU citizens face difficulties while exercising their rights. These difficulties, visible through the case law of the ECJ, are mainly result of the diverse legislation of the MSs. A consequence of the obstacles for exercising the rights is the inhibition of the European identity creation.

In addition, theoreticians stress the issues of the *inclusion* and *exclusion* effect of the Maastricht Treaty provisions depending on the fact whether the individual is an EU or Non-EU national, and thus is granted rights or not. (D'Oliveira, 1995, pp.60; 77-84) This divisive effect, imposing boundaries between the groups living within the EU can have delaying effect on the creation of European identity.

An attempt for the correction of this effect was made with the proposal for the introduction of a "place oriented citizenship" ⁷ in the Treaty of Amsterdam 1997. (Wiener, 1999, p. 213) Apart from the attachment of the supplementary character of EU citizenship in

⁷ The proposal for a "place –oriented citizenship " has meant request for granting EU citizenship not only to those persons who are holding nationality of the MSs but also to those persons who are residing within the EU (Wiener, 1999 in Hanagan & Tilly, p.213)

its article 17, the Amsterdam Treaty, because of the different practices of the MSs did not introduce citizenship based on residence.⁸ (OJ C325, 2002, p.44)

This chapter has revealed that during the process of the EU citizenship development a great importance has been given and positive results have been achieved in regard of granting rights to the EU citizens. The Social Charter and the Maastricht Treaty are comprehensive proof of this fact. However, in regard of building identity and a sense of belonging through the rights, attention has not been paid to the access and enjoyment of those rights. In order to answer my first research question while strengthening my assumption that access and enjoyment of rights is as important for the European identity creation as their prescription, I will continue with the analysis of some of the case laws of the ECJ.

⁸ The process of the development of EU citizenship after Amsterdam has continued in Nice 2001 (Maas, 2005, p.13) and is still on. However, aiming to present the most important phases for the establishment of EU citizenship as a source of rights in this paper attention is paid only to the four stages Paris, Fontainebleau, Maastricht and Amsterdam

CHAPTER 3: CASE LAW OF THE EUROPEAN COURT OF JUSTICE AND ITS ROLE IN THE EXTENSION OF EU CITIZENS' RIGHTS

The institutionalization of the EU citizenship with the Maastricht Treaty has meant a big leap from the informal debate to the real inclusion of individuals in the EU life. Although with the Maastricht Treaty EU citizens have gotten a formal background document to invoke in regard of their rights, the application of those rights is influenced by the diverse legislation of the MSs. The various approaches of the MSs to the implementation of the rights granted to EU citizens, the existing dilemmas on the scope of the Community law, the conformity or contradiction of national laws with the Community law is disclosed through the case law of the ECJ.

Juxtaposing citizenship practice composed of three elements- rights, access and belonging (Wiener, 1999, pp.196-202) the Treaties' provisions and the ECJ's case law, several conclusions follows. First, EU citizens have formally guaranteed rights by the treaties. Second, based on the number of the cases before the ECJ there is a disparity between the prescription and exercise of the rights. Thus we can say that this disparity has direct impact on the belonging as one element of Wiener's (1999, pp.196-202) desegregation of the citizenship practice.

Therefore, the case law of the ECJ is a direct indicator that the enjoyment of the rights has an impact on the individual's feeling of belonging to the EU or to the MSs. This is elucidated by some of the most prominent case laws of the ECJ, among which are the case of Maria Martinez Shala (Case C-85/96, 1998, ECR I-02691),⁹ Marie Natalie D'Hoop (Case C-

⁹ (Case C-85/96) [1998] E.C.R. I- 02691 is a short reference for the case of Maria Martinez Shala vs. Freist Bayern. The reference includes the case number, year of decision and the number of the official report of the court

224/98,2002,ECR I-06191),¹⁰ Rudy Grzelczyk (Case C-184/99,2001, ECR I-06193),¹¹ Carlos Garcia Avello (Case C-148/02, 2003),¹² Horst Otto Bickel and Ulrich Franz (Case C-274/96,1998, ECR I-07637).¹³ All of these cases reveal the obstacles faced by EU citizens while exercising their rights within the EU. The fact that all of these persons as EU citizens have referred to the ECJ to ensure the exercise of their rights shows that as long as EU citizens do not feel the benefits of granted rights, it is more difficult to expect that they will identify themselves with the EU. Additionally, the case law of the ECJ and its interpretations are the source of the role that the court has had for the development of the EU citizenship. Therefore, the evaluation of these cases will follow in the next sub-chapters.

3.1 Case Law of the ECJ

3.1.1 Maria Martinez Shala vs. Freistaat Bayern

Maria Martinez Shala is an EU citizen originating from Spain but permanently living in the territory of Germany since she was 8 years old. Living habitually in Germany, Martinez Shala has been employed there in different time intervals. Namely, she was working continuously from 1976 till 1986, and after some time of break she was again employed for few months in 1989. During this time, Martinez Shala had regulated residence. At the beginning, she was given a formal document as a proof of her residence, which afterwards was replaced by a “document certifying that she has extended her residence”. During that period, including the year 1993, Martinez Shala had submitted a request to the officials for

¹⁰ (Case C-224/98) [2002] E.C.R I-06191 is a short reference for the case of Marie Natalie D’Hoop vs. Office National de l’emploi. The reference includes the case number, year of decision and the number of the official report of the court

¹¹ (Case C-184/99) [2001] E.C.R I-06193 is a short reference for the case of Rudy Grzelczyk vs. Center Public d’aide sociale d’Ottignies Louvain-la-Neuve. The reference includes the number of the case, year of decision and the number of the official report of the court

¹² (Case C-148/02) [2003] is a short reference for the case of Carlos Garcia Avello vs. Etat Belge. The reference include the number of the case and year of decision

¹³ (Case C-274/96) [1998] E.C.R I-07637 is a short reference for the case of Criminal proceedings against Horst Otto Bickel and Ulrich Franz. The reference includes the case number, year of decision and the number of the official report of the court

the approval of a child-raising allowance. Notwithstanding of the fact that after that year, in 1995, Martinez Shala had an official residence permit, her request for the child-raising allowance was rejected on the ground that she had no residence permit (Case C- 85/96, 1998, E.C.R I-02691). In this case the ECJ ruled¹⁴ that the national law is incompatible with the Community law if the MS puts an additional requirement, in this case residence permit, for nationals of another MS if that is not required from that nationals of that MS.(Case C-85/96, 1998, E.C.R I-02691)

Based on the facts of the case and the ruling of the ECJ, two different things come into fore. First, the contribution of the ECJ to the development of the EU citizenship is disclosed through its interpretative practice. Thus, the ECJ has contributed to the extension of the application of the Treaty provisions, *ratione persone*, on those lawfully residing in another MS (Jacqueson, 2002, p. 279, Jacobs, 2007, p.599). This has meant increasing the number of persons entitled to invoke the Treaty and the secondary legislation of the EU.

The second, more relevant disclosure for my research is that the difficulties in the application of the rights guaranteed by the Treaties have an impact on the development of a sense of belonging and identity. Juxtaposing the claim that EU citizenship means freedom to move within the territory of the EU, that EU citizenship has “...rights generating power...” (Shaw, 1998, p.303) and the claim that rights have the power to adjust individuals on the new European identity (Montero, 2001) some conclusions follows. Namely, the rejection of Martinez Shala’s request for child raising allowance shows that her right to freedom of movement and residence as it is prescribed by the Treaty of Maastricht was interfered. Additionally, the rights generating power of EU citizenship, in this case getting financial benefit, was decreased. In circumstances as in this case, based on the different treatment and

¹⁴ Invoking Regulations 1408/71 and 1612/68 the ECJ has paid attention to the definition of social advantage and the status of employed person as founding elements for the application of the Treaty provisions (Case C-85/96, 1998, E.C.R I-02691). The decision of the ECJ was made based on the interpretation of these two regulations and the Treaty provisions.

the difference in the application of rights between the nationals of the host MS and the nationals of other MS, although both are EU citizens it is less probable that the individual will develop a feeling of belonging to the EU.¹⁵

3.1.2 Marie- Natalie- D’Hoop vs. Office National de l’emploi

Marie Natalie D’Hoop is a Belgian national, who after finishing her secondary education in France, went back to her state of origin, where she finished her higher education degree. During the period of seeking her first employment in Belgium, D’Hoop submitted a request for financial assistance (tideover allowance) to the Belgian officials. However, the Belgian authorities invoking themselves to the national legislation, according to which eligible for tideover allowance are persons who have finished their secondary education in Belgium, rejected D’Hoops application. (Case C-224/98, 2002, E.C.R I-06191)

Highlighting that D’Hoop as a European citizen falls under the *raione persone and ratione materie*¹⁶ of the Treaty provisions, the ECJ ruled that the “Community Law preclude MSs to refuse the tideover allowance to a student ... on the sole ground that the student completed her secondary education in another MS”. (Case C-224/98, 2002, E.C.R I-06191)

According to the facts of the D’Hoop case and the ECJ’s reasoning it can be concluded that this case proves that the level of the creation of identity through the rights depends on the extent to which MSs have incorporated EU norms in their legal system (Montero, 2001, p.365-369). Namely, although Belgium recognized D’Hoop the exercise of the right to free movement the consequence of the enjoyment was the denial of her right to

¹⁵ It has to be taken into account that in this case The ECJ made a decision in favor of Martinez Shala. However, the importance of the case as an example that the lack of attention to the application of rights impacts the creation of a sense of belonging derives from the fact that till the final decision of the court some period of time has passed. Thus, it can be assumed that for that time Shala could not have developed a feeling of belonging and European identity.

¹⁶ According to the ECJ judgment in D’Hoop case (Case C-224/98,2002, ECR I_061-91) *ratione materie* and *ratione persone* means that the situation falls within the scope of Community law if it involves the exercise of the fundamental freedoms guaranteed by the Treaty, in particular those involving the right to move and reside within the territory of the Member state

tideover allowance in national level. The latter could be seen as conditioning EU citizen to make a choice between the rights granted by the EU Treaties or rights granted by the national law. This can mean that a smaller space is given to the creation of European identity in comparison with the preparedness for the preservation of the national identity.

Furthermore, the fact that D'Hoop was treated as ineligible for getting the tideover allowance because she finished her secondary school in other MS shows that instead of the integrating effect and the creation of a sense of belonging in this case, the application of the free movement right had a counter effect. This effect is the division within one state among those who exercised their EU right thus landed in a disadvantaged position in regard of national rights and those who did not use their EU right thus have no consequences. This is linked with the inclusion and exclusion effect of the Maastricht Treaty provisions (D'Oliviera, 1995, pp.60, 77-84) that can have inhibiting effects on the creation of European identity.

Therefore, the ruling of the ECJ that the MS's practice to treat its citizens, who have exercised their right to free movement, is incompatible with the right to free movement itself (Kostakopoulou, 2005, p.254; Arnall, 2006, p.522) can be considered as a measure for the protection of those who after the application of their right have come back to the MS of origin. Thus it can be said that the ECJ in this way contributes to the fostering of the creation of a European identity.

3.1.3 Rudy Grzelczyk vs. Center Public d'aide sociale d'Ottignies-Louvain-la-Neuve

Rudy Grzelczyk is a French national who went to Belgium for the purpose of getting a higher education degree. Most of the time during his stay and studies in Belgium Grzelczyk supported himself financially through his personal work. In the last year of his studies, taking into account the need for deeper devotion to his studies Grzelczyk submitted a request for

financial support from the Belgian authorities called “minimex”. Considering the request as well-founded, the authorities recognized Grzelczyk the right to “minimex”. However, in the time of the reimbursement, the competent body invoking itself on the national legislation that grant the right to minimex to Belgian nationals refused the payment of the grant. (Case C-184/99, 2001, E.C.R I-06193) In this case the ECJ ruled that the MS is prohibited of adding new conditions for the grant of financial benefits when it is required by the nationals of another MS.¹⁷ (Case C-184/99, 2001, E.C.R I-06193)

Like in the previous two cases, this case’s relevance is two-folded. First, it shows the role of the ECJ in the extension of EU citizenship and its contribution for the precise use of Treaty provisions. Second, it reveals that the availability and the exercise of the rights have an impact on whatever the individual will feel as one who belongs to the EU or one who belongs only to its national state.

In regard of the first, particularly important is the emphasis that the ECJ puts on the necessity for the equal treatment of the EU citizens (Arnull, 2006, p.521; Guild, 2004, pp.64-65) Furthermore, the ECJ’s interpretation of EU citizenship as “...destinated to be the fundamental status of the nationals of the MS...” (Case C-184/99, 2001, E.C.R I-06193 in Guild, 2004, p.65) underlines the importance of the equal treatment of EU citizens with regard to their rights to social benefits and their social duties. In conjunction with this, it can be assumed that the exercise of social rights, like in this case, has an impact on the creation of a feeling of belonging and identity.

Combining Jenson’s (2007, p.55), view on citizenship as a representation of the “full membership in bordered community”, Meehan’s (1993, p.6) assumption that citizenship is the base of the well being of both the individual and the community, and Montero’s (2001, p.366) view on the reciprocal development power of rights and identity, a conclusion follows.

¹⁷ The decision of the ECJ in this case is based on the interpretation of the most relevant Treaty provisions, articles 12, 17 and 18 and Regulation 1612/68. (Case C- 184/99, 2001, E.C.R I-06193)

Grzelczyk's case discloses that he as an EU citizen has been denied the enjoyment of his right of getting the minimex. Based on this and Grzelczyk's lawful residence in Belgium, it is less likely to be expected that Grzelczyk or any other EU citizen will develop a feeling of being a full member of the EU, enjoying its own rights and contributing to the well being of the community. Overall it can be said that there is greater possibility that the EU citizens will feel more European if they have unrestricted access to the rights and their enjoyment.

3.1.4 Case of Horst Otto Bickel and Ulrich Franz

Another case in which the different treatment of nationals of another MS is presented, which inhibits the creation of European identity, is the case of the German nationals Bickel and Franz. Namely, both Bickel and Franz German nationals were criminally accused in Italy. The first because of driving under the influence of alcohol and the second because of the possession of denied type of knife. The main subject of the case that led to the ECJ was the refusal of the requests of both accused that the criminal proceeding be held in the German language. Noteworthy is the fact that the use of the German language was a common practice used for German speaking habitual residents in Italy. Based on the fact that Bickel and Franz were not residents but more like passengers in Italy, they were not recognized the requested right. (Case C-274/9, 1998, E.C.R I-07637)

. Emphasizing the importance of language, the equality in treatment of EU citizens and the right of receiving services the ECJ made a decision in favor of the applicants (Case C-274/9, 1998, E.C.R I-07637) Based on the decision, it can be said that ECJ has underlined that wherever they are within the EU, EU citizens can not be treated differently that they are in their MS. Thus as a result of the uniform treatment it can be expected that individuals will develop the European identity.

The contribution of the ECJ to the widening of the EU citizenship is disclosed through the judgment. Precisely, with it the ECJ emphasized that based on the freedom of movement EU citizens have the right to visit another MSs, to receive services there and to use their language. (Case C-274/96, 1998, E.C.R I-07637; Bulvinaite, 2003, p.6; Kostakopoulou, 2005 p.248; Jacobs 2007, p.599)

Although the judgment and scholars evaluations on it confirms the role of the ECJ in the extension of the EU citizenship rights, the question why this is important and how it can be related to the identity generating power of rights remains open. However, the fact that the applicants as EU citizens, were denied to use their language, which would have not be a case if they were nationals of that MS, shows that the exercise of the EU rights influences the creation of a sense of belonging. Moreover, it is clear that in circumstances, as in this case, the probability that an individual will feel more linked to his/her own national state than to the EU is greater. In such cases Hilsons's (2007, pp.523-547) claim on the little identity generating power of rights, based on the dominant power of MS in certain domains, such as here in the criminal procedure, is supported. Thus, if the MSs decides whether EU citizenship rights will be applied in their territory, the European identity building will be slowed down.

Notwithstanding, of the clarification on the situation in this case made by ECJ's decision, the case can be taken as a good example that the feeling of being more distanced or close to the EU, depends on the practical application of the rights provided.

3.1.5 Carlos Garcia Avello vs. Etat Belge

The case of Carlos Garcia Avello is one among the previous mentioned that proves the assumption that the more the implementation of the rights granted by the EU legislation, the greater the probability for creating European identity.

Garcia Avello is a Spanish national married to Weber, a Belgian national. The couple has two children, who according to the practice and national law in Belgium, were registered under the surname of their father. However, since one of the parents is a Spanish national, the children were registered in the Spanish embassy under the surname of both parents. At some point, the couple submitted a request to the Belgian authorities for the change of the children's surname, requiring that to the surname of the father the surname of the mother be added. Invoking themselves to the national rules and practices the Belgian authorities refused the request. (Case C-148/02, 2003)

Considering the fact that the children of the Spanish-Belgian couple have EU citizenship and that the Belgian tradition of assigning surnames following the paternal line might pose the children difficulties, the ECJ has made a decision in favor of the applicants. It has ruled that based on the treaty provisions MSs are prohibited to reject the surname change on the ground of holding a double nationality (Case C-148/02, 2003)

With its reasoning and decision the ECJ gave MSs' nationality equal value. Based on the same value attached to the nationality of both MSs, the ECJ has widened the application of the principle of non-discrimination and it extended the application of EU citizenship rights. This is highlighted through the following claim

... the effects of the nationality attributed by one Member State may not be restricted by another member of the Union that imposes additional conditions on the recognition of such a nationality for the purposes of exercising the fundamental rights provided by the EC Treaty ... (Carrera, 2005, pp. 704-705)

According to the above mentioned and the different approaches on EU citizenship, mentioned in chapter1, a conclusion in favor of the identity generating power of the rights follows. Taking into account the claim that citizenship is representing the “...legal, social status and political identity ...” of the individual (Heater in Meehan, 1993, p.4), that the purpose of the “... normative frame...is to develop subjective sense of belonging”(Surel 2000 in Gillespie & Laffan,2006,p.144) and Montero’s (2001, p.366) claim on the identity creative force of rights, we can strengthen our assumption that the exercise of rights is decisive for the European identity creation.

Furthermore, based on the facts of the case and the above mentioned argument, the kind of status and identity that can be developed by Garcia Avello-Weber and their children is a question that can be raised. This is important because before the intervention of the ECJ Garcia Avello-Weber couple was denied of a basic right deriving from the right to free movement. The logical reasoning to the question is that the applicants have the option to choose between two national identities and can feel as Spanish or as Belgian but not European.

This chapter has shown that although EU citizens have the rights granted they encounter difficulties in their application. Invoking the theoretical assessment on the meaning of the EU citizenship and its interrelatedness with the rights it has been revealed that as long as EU citizens do not feel the benefits from the rights the probability for the creation of European identity is small. Moreover, it has been disclosed that although the ECJ with its judgments removed the existing obstacles for the application of rights because of the time spent for the court procedure and the different practices of the MSs the European identity creation is delayed.

CHAPTER 4: THIRD COUNTRY NATIONALS - ACCESS TO RIGHTS AND EUROPEAN IDENTITY CREATION

The adoption of the Maastricht Treaty in 1992, and the formalization of EU citizenship was a big step in the creation of a closer relationship between EU citizens and the EU. Although, the Maastricht Treaty has granted EU citizens important rights, it has some deficiencies. The corrections of those drawbacks need much time and have an influence¹⁸ in the creation of a sense of belonging and European identity.

The most cited shortcoming of the Maastricht Treaty, in theory is the lack of its attention to TCNs. Although TCNs do not have EU citizenship, based on their long-term residence in Europe they have built particular links with it. (Hansen, 1998, p.1; Becker, 2004, p.132) A consequence of this loophole in the Maastricht Treaty is the inclusion and exclusion effect of EU citizenship, putting "... a line of partition separating citizens and non citizens ... "(Balibar cited in Jun, n.d).

This distinction is visible through the rights granted and exercised by EU citizens and TCNs. Article 8 of the Maastricht Treaty, states that: "Every person holding the nationality of a MS shall be a citizen of the Union", thus "...enjoys the rights conferred by this Treaty" (OJ C 191, 1992). According to this provision TCNs are not granted the same rights as EU citizens. An exception from this is the right to petition the European Parliament and the Ombudsman to which TCNs are also entitled. (Shaw, 2000, p.70) This is an indicator that the differentiation between TCNs and EU nationals in terms of rights can be alleviated. However, what can be said is that after Maastricht, TCNs were restricted of the most substantial rights

¹⁸ Chapter 2 of this paper shows that the whole process of the development of the EU citizenship has been directed to granting rights without attention on their accessibility and exercise. Furthermore, Chapter 3 makes it clear that the difficulties in the application of rights were fixed by the ECJ. However, it can be said that based on the length of the procedure before the court, until the correction is made, the creation of a European identity based on the benefits of rights is delayed.

such as free movement. Two consequences are the possible result from this restriction. First, the lack of granted rights means impossibility for their exercise. Second, the limitation of rights means that the creation of a link between TCNs and the MS is less probable thus the acquisition of the MSs and EU citizenship is smaller. These consequences can delay the creation of a European identity.

Still, after the unsuccessful attempt for improving the situation of TCNs in Amsterdam 1997 (Wiener & Kostakopoulou cited in Follesdal, 1998) the Directive 2003/ 109 on the status of TCNs, who are long term residents is significant for their rights. The Directive contains comprehensive provisions on the status and rights of TCNs. However, it has some fine elements that highlight the impact that granted and implemented rights can have on the creation of a sense of belonging and identity. Therefore, the Directive will be discussed below.

In the same vein, Turks as TCNs deserves attention. The worth mentioning of Turks is the fact that the EC Turkey Association Agreement (TAA) from 1963 and the Association Council Decisions comprehensively cover the question on their status and the rights. (Rogers, 2000, pp.1-46) These documents facilitate the integration of Turks and the creation of a relationship between Turks, the MSs and the EU. However, we can say that based on the distinct laws and practices of the MSs, Turks encounter difficulties in the application of their rights.

The difference in the availability and exercise of rights by EU citizens and TCNs is important for the creation of identity. Namely, if “rights produce identity and identity produce rights” (Montero, 2001, p.366), if the European identity is built through the plurality of identities that interferes with each others (Neumann, 2001 cited in Atikcan, 2006, p.17) and if the recognition of the rights for the others is the foundation of identity building (Fossum, 2001, p.375) than a conclusion follows. To avoid clashes among the different

identities and to increase the number of naturalized people with EU citizenship, access to rights should be ensure to TCNs. However, the MSs' rules for the application of rights granted to TCNs shows their restrain on the full acceptance of TCNs. In this way MSs might preserve their national identities based on culture, language and heritage. In the mean time, this attitude of the MSs will have counter effects on EU citizenship which is conceptualized to create a common identity based on mutual acceptance and respect of other identities. Thus the creation of European identity will be slowed down. The assumption following is that the better granted and exercised rights by TCNs, the more positive the impact on the creation of the European identity.

4.1 Directive 2003/109 and the rights of TCNs who have long term residence

The previous sub-chapter reveled that the rights granted to TCNs might impact the creation of a European identity. Because of the EU's diversity in terms of language, culture, nationality, legal status and the rights, the importance of the entitlement and exercise of the rights receives particular value. So, that a common identity is built it is necessary that the groups living within the EU, including TCNs, should be satisfied with their treatment. This can be accomplished through the rights enjoyed, which form the status of an individual as part of the community.

However, it can be said that with the Maastricht Treaty, TCNs were marginalized no matter of their long term residence. This was a consequence of the "deprivation of TCNs of the fundamental rights". (Becker, 2004, p.132) Thus, if a TCN, who is a long term resident in the EU, and he/she is paying taxes and contributes to the economy of the MS and the EU (O'Keefe, 1994 cited in Atikcan, 2006, p.20), is restricted of the basic rights, he/she will develop a feeling of alienation from the community. This can result in a small number of applications for citizenship of the MS and EU citizenship. Therefore, we can say that the

restriction of TCNs of rights thus the limited naturalization of TCNs might delay the European identity creation.

However, this shortcoming of Maastricht was mostly fulfilled with the Council Directive 2003/109. Based on Tampere's 1999 conclusions that "...the legal status of TCNs should be approximated to that of MSs' nationals..." (OJ L016, 2004) the Directive 2003/109 covers the status and the basic rights of TCNs (OJ L 016, 2004). Additionally, the Directive 2003/109 prescribes the areas in which TCNs are equally treated with EU nationals. In that regard its article 11 provides equal treatment of TCNs in the fields of employment and self-employment, education, social security and benefits, movement in the territory of the MS, association. (OJ L 016, 2004)

The first impression from these provisions of the Directive 2003/109 is that they promise improvement of the position of TCNs in the respective fields. However, the content of the Directive 2003/ 109 shows that MSs have a high discretion for the application of those rights. Thus, although TCNs are granted the rights, the access to them and their application depends on the national rules. In that regard Peers emphasizes that ".....the practical impact of the Directive clearly depend upon which approach to interpretation is adopted by national administrations, legislation and courts..." (Peers, 2004, p.442).

Overall, for the creation of a European identity through the access to rights, an assumption follows. Directive 2003/109 to some extent enables TCNs to exit the marginalized situation they were put in after Maastricht. This exit, can narrow the distance between TCNs and the MSs, increase the number of applications for national thus EU citizenship, and contribute to the European identity creation. However, the achievement of the previous effects highly depends on the will of the MSs. Thus, if the MSs use their discretionary power in favor of TCNs, than positive effects can be expected. However, it can not be expected that TCNs will create a sense of European identity, unless they do not have

the EU citizenship. Nevertheless, exercising the granted rights by TCNs can be a crucial start in the creation of a formal link i.e getting MSs and EU Citizenship, as a foundation for the European identity development.

4.2 The position of Turks as TCNs in the EU

Continuing the discussion on TCNs, the question of Turks and their position deserves attention. The importance of mentioning the issue of Turks is related to the existing TAA from 1963. Although the aim of the agreement was fostering the accession process of Turkey in the EU, still it has contributed in conferring particular rights to Turks, as TCNs. In regard of the rights granted to Turks based on the TAA, noteworthy are the Decisions 2/76, 1/80 and 3/80 adopted by the Association Council, body formed under the TAA (Rogers,2000,pp.1-46)

The main subject of Decisions 2/76 and 1/80 is the regulation of the free movement of Turks, as TCNs based on their economic activity. Additionally, Decision 1/80 also confers the right to education to children of Turkish nationals, legally residing in the MS and the EU (Rogers, 2000, pp.12-13) Based on the granted rights we can say that, Turks have an opportunity to integrate themselves within the MSs and the EU. According to the claim that European identity is built through the plurality of identities that interfere with each other (Neumann, 2001 cited in Atikcan, 2006, p.17) a conclusion follows. The creation of the European identity requires flexibility and uniformity by the MSs in the treatment of the others i.e TCNs. Therefore, if the identity building depends on the recognition of rights and dignity of the groups excluded from citizenship (Isin 1992, p.20; Fossum, 2001,p.375) exercising rights by TCNs can have an impact on the European identity creation.

Although these rights are granted their application by Turks is questionable. According to Art .6 paragraph 3 from Decision 1/80, qualified as granting the most important rights to Turks (Cicekli, 1999, p.325), the implementation of the rights will be regulated by

national rules. (Rogers, 2000,p.14). Furthermore, in the Kadiman case, interpreting Decision 1/80 the ECJ has ruled that the MS is entitle to ask the fulfillment of additional conditions, in this case, cohabitation with a family member who has legal residence in the MS, for extending the residence and continuing the employment. (Case C- 351/95, [1997] ECR I-02133).¹⁹

Therefore, we can say that similarly to Directive 2003/109, national laws of the MSs have significant impact for the application of the rights by Turks as TCNs. This influences the creation of a European identity in two ways. First, with the discretion to decide on the extent of the rights exercised by Turks, MSs will attempt to preserve their national identity. Second, if Turks as TCNs are prohibited, by the national rules to exercise their rights their integration and consequently naturalization in the host MSs will decrease. As a result of this the creation of a common identity can be undermined and delayed.

Furthermore, Decision 3/80, whose aim is the “....coordination of MSs’ social security schemes...” (Rogers, 2000, pp.14-15), entitles Turks to the same social benefits²⁰ like the EU nationals (Decision 3/80 in Rogers, 2000, pp.63-79).Based on this it can be expected that Turks will not feel excluded from the particular MSs and the EU. However, the application of Decision 3/80 is debatable. According to the ECJ’s decision in the case Teflan-Met and other, Decision 3/80 is not applicable yet because of the lack of measures for implementation. (Rogers, 2000, p.15; see also Case C- 277/94, [1996], ECR I-04085)²¹

Overall, although Turks as TCNs have been granted rights by Decision 3/80 they can’t invoke those rights let alone, to practically exercise them. Since, Turks as TCNs

¹⁹ (Case C-351/95, [1997] ECR I-02133 is a short reference for the case of Selma Kadiman v Freistaat Bayern. The reference includes the case number, year of decision and the number of the official report of the court

²⁰ The social benefits conferred to Turks with Decision 3/80 include: sickness and maternity, invalidity, old age, unemployment, family benefits, benefits in cases of accident at work and occupational deceases and death grants (Decision 3/80 in Rogers N, 2000, p.63-79)

²¹(Case C-277/94, [1996], ECR I-04085) is a short reference for the case of Z. Taflan-Met, S. Altun-Baser, E. Andal-Bugdayci v Bestuur van de Sociale Verzekeringsbank and O. Akol v Bestuur van de Nieuwe Algemene Bedrijfsvereniging. The reference includes the case number, year of decision and the number of the official report of the court

contribute to the economy and the social system of the MSs and the EU (O'Keefe, 1994 cited in Atikcan, 2006, p.20) their unfavorable treatment will produce alienation from rather than connection with the community. Consequently this will inhibit the acquisition of national and the EU citizenship, leading to a slow progress of the European identity

This chapter has explained the status of TCNs in general and Turks in particular, based on the rights they are granted within the EU. The possible influence of the level of the enjoyment of the rights on the creation of European identity was the other aspect evaluated. The main assumption established has been that the difficulties in the application of the rights faced by TCNs, as a result of the discretionary power of the MSs, can be the main reason that decreases TCNs incentives for the acquisition of national and EU citizenship which can delay the creation of a European identity.

CONCLUSION

The theoretical assessment of the meaning of EU citizenship has revealed that EU citizenship has similar core elements to national citizenship. Namely, EU citizenship can be understood as a source of rights assigned to citizens, enabling them to get the status of members in the EU. Furthermore, the evaluation of the debate on the relation among citizenship, rights and identity, has disclosed that although by some theoreticians disputed (Jolly, 2005; Hilson, 2007) rights have crucial identity generating power (Montero's 2001). The conclusion drawn is that the identity generating power of rights is effective only if the rights granted are exercised.

Furthermore, the second chapter has shown that the concept of EU citizenship was developed by granting and extending rights. However, the conclusion drawn is that although during the whole process the main emphasis was on the rights, the attention to their accessibility and exercise was missing. The importance of the application of rights for the European identity creation has been shown in the third chapter, through the analysis of the case law of the ECJ.²² The analysis has shown that because of the difficulties faced in the application of the rights the creation of the European identity is delayed. The conclusion drawn is that for the faster development of European identity the prescription of rights must be followed by their uninterrupted application.

Moreover, invoking the claims of Neumann (2001 cited in Atikcan, 2006) and Fossum (2001) in the fourth chapter, it has been underlined that theoretically the recognition of the rights of others²³ and the mutual acceptance of different identities influence the

²² See Chapter 3. For more details see also *Maria Martinez Shala vs. Freist Bayern* (Case C-85/96) [1998] E.C.R I- 02691; *Marie Natalie D'Hoop vs. Office National de l'emploi* (Case C- 224/98) [2002] E.C.R I-06191; *Criminal proceedings against Horst Otto Bickel and Ulrich Franz* (Case C- 274/96) [1998] E.C.R I- 07637; *Carlos Garcia Avello vs. Etat Belge* (Case C-148/02) [2003]; *Rudy Grzelczyk vs. Center Public d'aide sociale d'Ottignies Louvain-la-Neuve* (Case C-184/99) [2001] E.C.R I-0619

²³ The term "others" refers to TCNs with long -term residents

European identity creation. However, the analysis of the documents granting rights to TCNs, including Turks as TCNs has shown that the level of exercise of those rights depend on the discretionary power of the MSs. In that regard the assumption that has been established is that if TCNs have the possibility for a better application of the rights granted to them, they can be more inclined to acquire the citizenship of the MSs and the EU. Consequently, that will speed up the development of the European identity. However, only if we understood European identity in liberal terms, whose core is that building European identity should be based on the respect of rights, democracy and the rule of law, freed from cultural and religious interference (EurActive, 2006) then we can say that based on the enjoyed rights TCNs can be transformed into Europeans.

Finally, the answer to the first research question is that the access to rights and the level of their exercise influence the speed of the creation of European identity. The lack of attention to the application of granted rights that results in the constant intervention of the ECJ shows that EU citizens often feel the benefits of their rights only after a court procedure. While the procedure is pending before the court instead of bringing citizens closer to the EU, EU citizenship can distance them from the union. The result of this is slowing down the creation of a European identity.

In regard to the second question and TCNs, it can be said that as long as MSs have high discretion in regard of the application of their rights, they will have no contribution to the development of the European identity. Consequently, the lack of this contribution will slow down the common identity development. Thus the accomplishment of the EU citizenship task to strengthen the link between citizens and the union depends on the application of the rights. Therefore, actions for paying more attention to the implementation of rights in the European level are needed. These measures should empower the EU with higher discretionary power in the implementation of its documents regarding EU citizens'

and TCNs' rights. Otherwise, the MSs will keep their high discretionary power for the application of the rights of EU citizens and TCNs, thus the EU citizenship can be seen only as the extension of the national citizenship and the European identity creation will be slowed down.

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