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European Union citizenship in the federalist perspective

Summary

The article analyses the importance of the existence and functioning of European Union (EU) citizenship institutions for materialization of federal concepts of European integration. In the first place, the evolution of this institution and legal foundations of its functioning have been analysed. The second part of the article is aimed at answering the question to what extent EU citizenship may be regarded as a federal institution. Then the issue of the importance of this institution for building political identity of Europeans should be considered.

Keywords: European citizenship, European federation, federalism, European Union, European integration, democracy, civil rights

The Lisbon Treaty, which gave the treaties their current wording, provides for a totally “new image of the European Union.”¹ At the very beginning of the Treaty on European Union, immediately following the article defining its objectives, there is a part dedicated to democratic principles. From the analysis of their contents it clearly follows that the authors of the reform decided it was high time for an individual to become an active subject of the functioning of the European Union (EU) instead of a beneficiary of the created law and gained benefits.² The mythical European Union, whose embodiment is “remote bureaucratized Brussels” is to come close to its (*sic!*) citizen. This is a diametrical change in narration and approach, since so far decision were made at the highest level of authorities and political elites. At last, the idea of EU citizenship was to become true. It is in a way the crowning of the long process of evolution from “the citizen of the market” to “the citizen of the European Union” – at least that is what the official EU sources proclaim.

This article is aimed at following through the evolution of the institution of EU citizenship, analysing its formal and legal aspects as well as their meaning. Then those deliberations will be used for reflecting upon the meaning of the institution of EU citizenship for the progressing federalization of the European Union. To those ends the institutional legal, comparative and historical analyses will be used. The author shall try to verify the hypothesis that in its formal and legal aspects EU citizenship constitutes a realization of federal postulates

¹ Poboży (2014): 47.

² *Ibidem*.

thus creating a so far unutilized basis for moulding a political European identity.³

EU citizenship – evolution and legal regulations

The idea to create an institution of EU citizenship regulated by the provisions of primary law surfaced in the 1970s during the debate on extending European integration to include political issues. It should be noted, however, that in a way it had been functioning in the European reality almost from the beginning of the Communities. Referring to the period between the establishment of the Communities and the founding of the European Union authors use the term ‘citizen of the market’.⁴ Since 1957, when the Treaties of Rome were signed, subsequent amendments thereto, secondary law and the community case law of the Court of Justice (CJ) led to the expansion of relations between the citizens of Member States and the Communities. The negative integration process, that is minimization of restrictions for economic activity, the proverbial “elimination of borders” between Member States built the foundations for the positive integration process, which boils down to creating the institution of European citizenship.⁵

In the first founding treaties citizens of the member States if the Communities were treated only as individuals who were elements of the production process on the common

³ The article has been written as a follow-up of a paper delivered at the scientific conference “Federalism an opportunity or threat to the European Union” organized in Warsaw on 21 May 2015 by the Institute of Political Studies of the Polish Academy of Sciences.

⁴ Grzeszczak (2015); Poboży (2014).

⁵ Wiener (2007): 559.

market in the making.⁶ Even the prohibition of discrimination based on nationality was an instruments of its realization – as a supplement to four liberties the then Article 7 of the Treaty founding the European Economic Community introduced – to the extent covered by the Treaty – the prohibition of any discrimination on the basis of nationality by Member States.⁷ The citizens of Member States were treated as subjects of integration processes only with respect to their economic activities.⁸ What is more, it concerned only those citizens of Member States who were involved in cross-border economic activities.

However, this unidimensional functional⁹ approach of the Treaties to the status of the individual was quickly reformulated thanks to the judgments of the Court of Justice. The first and perhaps most important for further development of the idea of citizenship was the *Van Gend en Loos* judgment. In 1963, the Court pronounced that “The objective of the EEC Treaty, which is to establish a Common Market, the functioning of which is of direct concern to interested parties in the Community, implies that this Treaty is more than an agreement which merely creates mutual obligations between the contracting states.” From the above it follows that “the Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only Member States but also their nationals.”, while “Community law therefore not only imposes obligations on individuals but is also intended

⁶ Poboży (2014): 48.

⁷ Skomerska-Muchowska (2010): 3.

⁸ Poboży (2014): 48.

⁹ Gubrynowicz (2008): 7.

to confer upon them rights which become part of their legal heritage.”¹⁰ That judgment offered the grounds for formulating one of the fundamental general principles of the European Communities/European Union – the principle of direct effect which means that the law created at the Community/European level has a direct effect for the citizens of Member States. The four liberties of the common market were thus interpreted as the rights of the individuals, and the Court recognized the citizens of Member States to be subjects of community law.¹¹

Subsequent judgments of the CJ led to further expansion of the substantive meaning of the individual in the integration project. Initially, those rights were enjoyed only by economically active people, but with time, thanks to the judgments, also their families; later on students and tourists.¹² The Court of Justice of the European Communities, later of the European Union, filled the vacuum of the provisions of Community law with material meaning.¹³ In the 1980s, in its judgments the Court focused primarily on protecting the use of the common market liberties by individuals; in the subsequent decades emphasis was laid on introducing new criteria for the protection of individuals.¹⁴ Eventually, the CJEU caused that the status of the citizen of the European Union was recognized as the autonomous basis of their rights.¹⁵

¹⁰ *Judgment of the Court of 5 February 1963. - NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration.*

¹¹ Poboży (2014): 49.

¹² Gubrynowicz (2008): 7.

¹³ Bodnar (2008): 50.

¹⁴ Grzeszczak (2015): 180.

¹⁵ *Ibidem*: 181.

At the same time, the development of the “citizenship of the market” was accompanied by attempts to move integration onto the political level. The idea of bringing citizens closer to the Communities and building a relationship with them emerged already at the beginning of the 1970s. In 1975, the European Commission (EC) published a report entitled “Towards European citizenship” which proposed establishment of this institution with an aim to build European identity and create a catalogue of rights and instruments bringing closer the status of individuals to that of the citizens of the host countries (therefore, it actually concerned the rights of persons migrating between Member States). Similar postulates were suggested by the “Report on European Union” drawn by a working group headed by the Belgian Prime Minister Leo Tindemans.¹⁶ Another event of importance for building modern European citizenship were the first direct elections to the European Parliament (EP) in 1979; along with the successive treaty reforms and as a result of its own practice the EP was gaining growing influence on legislative processes.¹⁷

The definition of European citizenship was first proposed in the so-called Spinelli Project – a draft of the Treaty establishing the European Union, adopted by the European Parliament in 1984. It was a project of the Crocodile Club¹⁸ – a group of MEPs elected in the first free elections having strongly federalist views of European integration. The group was headed by Altiero Spinelli. The group stressed that the European

¹⁶ Skomerska-Muchowska (2010): 4.

¹⁷ Poboży (2014): 49.

¹⁸ The name of the club is derived from the Brussels restaurant “Crocodile”.

Communities faced the challenge of constitutionalization and a serious choice – a federal Europe or an intergovernmental Europe of nation-states. In their opinion, constitutionalization required participation of individuals and the means to attain this was the institution of citizenship.¹⁹ In accordance with the Project, every citizen of Member States was to be a EU citizen, while the granting and loss of EU citizenship would be dependent on having national citizenship.²⁰ What is more, “Citizens of the Union shall take part in the political life of the Union in the forms laid down by this Treaty, enjoy the rights granted to them by the legal system of the Union and be subject to its laws.”²¹ The Spinelli project triggered the initiation of work on a new community treaty.²² The lack of climate favouring the radical change of the treaties and general consent for amendment in the federalist spirit caused that work was based on the Dooge Report which was much less bold in its assumptions.²³

The Single European Act, the amending treaty of 1986, proclaimed the extension of the integration process to include political issues and stressed the need to ensure democracy in the Communities. It was only at the beginning of the 1990s that the Maastricht Treaty negotiations brought about the legal basis for the functioning of EU citizenship.²⁴ It is worth stressing that many solutions concerning citizenship were transferred from the Spinelli Project to the Maastricht Treaty.²⁵

¹⁹ Olsen (2013): 50, 52–53.

²⁰ Skomerska-Muchowska (2010): 5.

²¹ Quoted after: Skomerska-Muchowska (2010): 5.

²² *Ibidem*.

²³ Łukaszewski (1998): 52.

²⁴ Poboży (2014): 49.

²⁵ Yildirim.

The development of the institution of citizenship was a result of the need to close the distance between citizens and community institutions, which was defined in the categories of the increasing deficit of democracy. Given the direction followed by the integration processes which included ever more areas of interest and entered the zones traditionally reserved for national sovereignty (e.g. creation of EU fore.g. policy), indirect or technocratic (functional) legitimacy was no longer sufficient. While the European Communities provided for integration in very specialized areas – on the “micro” scale, the European Union was to deal with “macro” issues (which are specific for a federation).²⁶ Large-scale projects, such as establishment of a common currency or finalization of the setting of the Common Market required gaining of social legitimacy, which was to be built basing on common identity.²⁷ The need for effective collaboration and loyalty on the part of citizens became clear. The authors of the Maastricht Treaty believed that “in the [European – M.R.] political culture the notion of citizenship is so integrally connected with the sense of belonging identification and loyalty that the introduction of the notion of EU citizenship will lessen the existing distance.”²⁸ The institution of citizenship itself carries with it “a huge intellectual baggage regarding content, meaning and symbolism.”²⁹ This manoeuvre, which some authors call straightforwardly a socio-technical or persuasive technique, was only one of two arguments. The other important need follows from the fact that at the level of societies people started to realize how great and real influence

²⁶ Sadurski (2005): 33.

²⁷ Konopacki (1999): 74.

²⁸ Sadurski (2005): 34.

²⁹ Shaw (1997): 2.

on the functioning of individuals was exerted by community institutions, which required a sort of balance to be created, a partnership where the rights of citizens of Member States would be safeguarded against the constantly growing significance of institutions.³⁰ Therefore, another objective was “to strengthen the protection of the rights and interests of the nationals of its Member States.”³¹

Of key importance for the establishment of European citizenship was the report of the Spanish presidency published in September 1990, in which it was stated that individuals moving around the future Union must not be treated as “privileged foreigners” and thus it was necessary to create a new “personal and indivisible status of citizens of Member States, whose membership in the Union means that they have specific rights and duties which arise from the nature of the Union and are realized and protected in a special manner within its borders.”³² In accordance with the report, the rights of individuals were to concern no longer only economically active people, but also – although to a limited degree – all citizens of the EU.³³ The report recognized citizenship to be one of the three pillars of the new union – besides fore.g. policy and common currency.³⁴ At the same time, the presidency postulated that the rights of citizens embraced not only the generation of political rights but also rights from the other generations – social rights, the right to do military service in another Member State, educational

³⁰ Sadurski (2005): 34.

³¹ *Treaty On European Union*, Official Journal of the European Communities No. C 191, 29.7.92.

³² Quoted after: Skomerska-Muchowska (2010): 7.

³³ *Ibidem*: 8.

³⁴ Mik (1994): 66.

rights. However, so far-reaching proposals were not appreciated by other Member States, especially the United Kingdom, which feared excessive federalization of the Communities.³⁵

As it has been said earlier the Maastricht Treaty established the institution of European Union citizenship. At present, its functioning is regulated by Article 20(1) of the Treaty on the Functioning of the European Union (TFEU). This Article provides that every citizen of any EU Member States has the right to this status. In the same section of the Treaty the complementary character of EU citizenship has been reserved with respect to national citizenship, which it does not replace, however.³⁶ In the initial wording of the Maastricht Treaty that article stated only the existence of citizenship, while the reservation as to its complementary character was added in 1997 in the Amsterdam Treaty, when Member States decided that placing this reservation on the declaration appended to the Maastricht Treaty did not constitute a sufficient safeguard of their interest,³⁷ while in the public debate the wording of the Treaty too forcefully suggests the supranational or federal nature of the EU.³⁸ The second section of the Article lays down a catalogue of fundamental rights arising from citizenship, namely:

- the right to move and reside freely within the territory of the Member States;
- the right to vote and to stand as candidates in elections to the European Parliament;

³⁵ Gubrynowicz (2008): 8.

³⁶ *The Treaty on the Functioning of the European Union (consolidated version)*, art. 20(1).

³⁷ Skomerska-Muchowska (2010): 8–9.

³⁸ Olsen (2013): 103.

- the right to vote and to stand as candidates in municipal elections in their Member State of residence, under the same conditions as nationals of that State;
- the right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State;
- the right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language;³⁹
- the right to citizens' initiative.⁴⁰

In accordance with the Treat, citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. The catalogue of EU citizens' right (listed above) is not closed. First, in Article 20 of the TFEU it is clearly stated that citizens "shall have, *inter alia*, the right to [emphasis – M.R.]" and then the above mentioned rights are enumerated, and secondly, other articles of the TFEU and TEU establish other types of rights (e.g. Art. 16 TFEU – the right to protection of personal data).⁴¹ Additionally, Art. 25 TFEU lays down a special legislative procedure to strengthen or to add to the rights listed

³⁹ *The Treaty on the Functioning of the European Union (consolidated version)*, art. 20(2).

⁴⁰ *The Treaty on European Union (consolidated version)*, art. 11(4); Art. 24 first paragraph, *The Treaty on the Functioning of the European Union*, art. 24.

⁴¹ Skomerska-Muchowska (2010): 24.

in Article 20(2).⁴² Neither the chapter on EU citizenship nor other articles of the TFEU and TEU explicitly impose any duties on citizens. Certain authors presume that the catalogue should be expanded to include duties arising from the principle of the rule of law professed by the EU, the prohibition of discrimination concerning not only states or institutions but also individuals, the duty of loyalty, or finally the general imperative to observe human rights.⁴³ It seems, however, that such an extensive interpretation of the treaties cannot be done as this issue is too serious. It should be noted at the same time that while a simplified procedure has been provided for the expansion of the catalogue of rights, in the case of potential imposition of duties it is necessary to go through the full amending procedure.⁴⁴

One of the main assumptions of the latest treaty reform was to strengthen European Union's legitimization and place the citizen in the focus of its interest. Article 1 of the Treaty on European Union proclaimed "a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen."⁴⁵ What is interesting is that the linguistic analysis of the treaties shows that they equally often treat individuals as nationals of Member

⁴² The Council, unanimously, on the basis of a report of the European Commission on the application of citizenship provisions, having obtained authorization of the European Parliament, adopts regulations which are subject to endorsement by Member States in accordance with their constitutional requirements. *The Treaty on the Functioning of the European Union*, art. 25.

⁴³ Cf. Cieleń, Szymański (2004): 89–91.

⁴⁴ Poboży (2014): 60.

⁴⁵ *The Treaty on the Functioning of the European Union*, art. 1, second paragraph.

States and as citizens of the EU (in the first case 33 times and in the second – 31 times). As nationals of Member States individuals appear mostly with respect to technical issues, e.g. the provisions concerning the composition of various institutions, voting, etc. On the other hand, the issues connected with the rights of individuals guaranteed at the EU level are in the majority of cases granted to citizens of the Union.⁴⁶

Article 3(2) of TEU offers its citizens an area of freedom, security and justice (AFSJ) without internal frontiers, in which the free movement of persons is ensured. As Izabela Skomerska-Muchowska rightly put it “The European Union has become co-responsible for ensuring security to its citizens and has been authorized to make laws also in the area of police and judicial cooperation in criminal cases, which means that the EU law will more strongly than ever affect the sphere of the rights and freedoms of individuals.”⁴⁷ However, the conclusion that placing this paragraph before the one which speaks about the establishment of an internal market proves that “the priority of the EU should be to consolidate of significant elements [AFSJ – M.R.]” is a little far-fetched.⁴⁸

The Charter of the Fundamental Rights (CFR) of the European Union is a significant addition to the catalogue of rights of EU citizens. As a result of the last treaty reform, the CFR, proclaimed in 2000 in Nice, acquired the status of a legal act equal to the treaties, that is a source of law of utmost

⁴⁶ Own work on the basis of *The Treaty on European Union* and *The Treaty on the Functioning of the European Union*.

⁴⁷ Skomerska-Muchowska (2010): 12.

⁴⁸ *Ibidem*.

hierarchical importance.⁴⁹ On the strength of the CFR citizens' rights constitute an integral part of fundamental rights and for this reason are protected in the EU legal order.⁵⁰

In the TEU, a separate title is dedicated to 'Provisions on democratic principles'. In the first place, it provides a definition of citizenship, later reiterated in Art. 20 of TFEU. Article 9 of TEU imposed a duty on the Union to observe the principle of the equality of its citizens in all of its activities. In Article 10, it is emphasized that the functioning of the Union shall be founded on representative democracy, while citizens have the right to participate in the democratic life of the Union. It is also stated that "Decisions shall be taken as openly and as closely as possible to the citizen." In Title II, also the representative nature of democracy and the importance of the participation of citizens in the decision-making processes are strongly emphasized:

- direct representation of citizens in the EP,
- indirect legitimization of the decisions of the Council and the European Council as institutions made up of representatives elected in general elections of heads of states and governments,
- the requirement to maintain an open, transparent and regular dialogue with representative associations and civil society,
- the functioning of political parties at the European level,
- participation of national parliaments in the functioning of the EU.

⁴⁹ Ibidem: 10–11.

⁵⁰ Ibidem.

Article 11 also establishes the institution of citizens' initiative which may be taken by at least one million citizens who are nationals of a significant number of Member States.⁵¹

EU citizenship – a step towards European federation?

Having analysed the evolution as well as the formal and legal contents of the treaties, a question should be asked as to the correctness of using the notion of “citizenship” with respect to the institution created in the EU legal order, and then scrutinize its relations with the federal concepts of European integration. According to public international law “citizenship is a special legal tie linking the individual with the state. It is the source of the obligation of faithfulness and loyalty towards the state and the personal supremacy of the state (jurisdiction) over its own citizens.”⁵² At the same time “citizens are obliged to respect the laws of their state, (...)and in consequence may be brought to justice for a violation of the law of their state.”⁵³ At first glance, it should be stated that in almost no respect EU citizenship is typical. It is a fact that we deal here with a legal tie linking the individual with a political community, but it is only subsidiary (since it is a result of holding citizenship of a Member State and not its direct granting).⁵⁴ On the other hand, there is no jurisdiction as well as the obligation of faithfulness and loyalty (here comes the question of developing European identity

⁵¹ *The Treaty on European Union*, art. 10–12. By the way, it is worth noting at the same time that the EC is not obliged to accept the initiative and present it in the form of a legal act.

⁵² Góralczyk, Sawicki (2007): 250.

⁵³ *Ibidem*.

⁵⁴ Skomerska-Muchowska (2010): 15.

which would create such attitudes). A debatable issue is liability for violation of law – under the treaties it is the states that are responsible for the exercise of EU law and they can be held responsible for its violation. A question requiring legal analysis is to what extent we may speak about indirect liability of individuals when EU law is transposed to national legal orders. However, we may get rid of doubts using another three-part definition of citizenship “which is made up of membership in a democratic political community, common interests and law, participation in social, political, economic processes taking place in the community” – here all requirements with respect to EU citizenship are met.⁵⁵

In this juncture, the main assumptions of federalism as a concept of European integration should be presented. In the first place it should be clearly stressed that federalism is not tantamount to a federal state. Such a perception of this issue is characteristic of a legal milieu, very strong in Polish academia, represented primarily by Jan Barcz. He maintains that talking about the EU as a federation is wrong because it neither has its nation, a supreme authority nor an act of the rank of a constitution, which means that it is not a federal state but merely an international organization.⁵⁶ However, as Paweł J. Borkowski notes, federalism is totally irrelevant in this reasoning – the Union cannot be *a* state – it does not satisfy any of the conditions and this is the basic error of this reasoning, which excludes any further discussion about its federalization.⁵⁷ Those who study European integration are unable to detach themselves from state-centred thinking when defining federalism and determining its

⁵⁵ Grzeszczak: 185.

⁵⁶ Barcz (2010): 50–52.

⁵⁷ Borkowski (2013): 402.

relations with European integration.⁵⁸ Robert Grzeszczak may serve as an example: he says that the EU is a special case which requires redefinition of notions, to mention a moment later that it is no longer a classical international organization and not yet a federal state.⁵⁹ The question whether we can at all assume that such a state constitutes a *finalité politique* of the integration process since as it follows for the studies on the federal concepts of integration such an assumption does not actually function and it is rather the creation of a *sui generis* structure that is at stake. In the opinion of the author the statement that the European Union is a political system with federal features.⁶⁰ Federalism may be understood

⁵⁸ By the way, it is worth quoting the words of a representative of the Constitutional Assembly of the Australian Federation: “You, Gentlemen, treat federation as if it were Athena springing out the Jupiter’s head – that is something that is absolutely defined from the very beginning. I think that »federation« is a concept which defines a number of solutions the basic aim of which it to transfer certain problems to the central government, leaving others to state administrations.” Quoted after: Borkowski (2013): 404.

⁵⁹ Cf. Grzeszczak: 3,4.

⁶⁰ A federal political system, the term used e.g. by Robert Grzeszczak (*Federalizacja systemu Unii Europejskiej*, op. cit., p. 6), is somewhat too categorical – it indicates the majority of those elements in the entire system. There are many deferral elements in the European construction – common currency, division of powers based on the principle of subsidiarity, the principle of primacy of EU law before national law and the principle of direct effect, mentioned already on the occasion of the *Van Gend en Loos* judgment, the autonomous order of law of the European Union, Union institutions of a supranational character forming an “upper” federal level, European citizenship, functioning of the system of justice at the EU level and the significance of judgments for the development of integration, EU sectoral policies. More: Borkowski (2007): 63–67, Grzeszczak.

The Author analysed the political system of the European Union from the viewpoint of compliance with the assumptions of federalism also in her doctoral thesis entitled *Aktualność federalistycznych*

as a philosophy, a model of society, a theory of integration and a theory of decentralization.⁶¹ Federalism may be also understood as “[an idea – M.R.] which determines the principles of relations between a centre on a given territory and individuals operating within the same territory.”⁶² For the needs of this article it should be assumed that federalism is a certain theoretical current and a set of postulates concerning future development of the European Union. As a *finalité politique* in the European context federation should be perceived as a form of organization of the political community, where in accordance with the principles of subsidiarity and division of powers there is a division of authority and sovereignty between various levels. What is more, such a community is equipped with legal mechanisms for conflict resolution and a dose of autonomy, and also requires involvement of individuals in its functioning.⁶³

Returning to the question of the need to redefine the notion of federalism it should be stated that the similar situation refers to the understanding of the notion of citizenship. In legal sciences, as it has been noted earlier, citizenship concerns the relationship between the individual and the state, whereas in the case of the European Union we deal with a specific redefinition: the relationship between the individual and the political community.⁶⁴ Christoph Schönberger notes that time has come to “free ourselves from the unitary state-centred

konceptji integracji europejskiej na początku XXI wieku (The relevance of the federal concepts of the European integration at the beginning of the 21st century), defended at University of Warsaw in 2017, confirming the above conclusion.

⁶¹ Kinsky (1999).

⁶² Barcz (2010a): 35. Quoted after: Mizera (2014): 103.

⁶³ Kinsky (1999): 50–58; Bojkało (1998): 140; Sadurski (2006): 88–89.

⁶⁴ Gubrynowicz (2008): 6.

categories and consider the possibility of tiered, nested citizenships in federal systems.”⁶⁵ Looking at the issues of EU citizenship from the perspective of federalism forces one to detach oneself from understanding it as the status of belonging to a particular nation (nationality) and look at it as the status of belonging to a political community (citizenship).⁶⁶

In legal literature, it is quite common to state that in its institutional and legal solutions the European Union is closer to a confederation than federation. The basic argument is the fact that states did not transfer under a treaty (that is not a constitution) full sovereignty onto a higher level but retained it in major fundamental questions putting on guard of such a solution the already mentioned principle of subsidiarity. In the opinion of researchers from the legal community, insomuch as in the case of federation European citizenship should be primary in relation to nationality, in the case of confederation EU citizenship must be dependent and accidental.⁶⁷ However, it is again necessary to invoke the need to redefine the nations known from public law and refer to the practice of European integration in the course of which such notions were repeatedly “remoulded” into a totally new quality.

Antje Wiener indicates three methods for building a tie between the individual and the European Union. The first one is European identity, the second – the scope of rights exercised by citizens, and thirdly – channels of access of individuals to decision-making processes and participation in a broadly conceived community.⁶⁸ In the federal perspective EU citizenship is something more than merely a direct

⁶⁵ Shaw (2010): 4.

⁶⁶ Nicolaidis (2007): 472.

⁶⁷ Mik (1994): 70.

⁶⁸ Wiener (2007): 567..

relationship between citizens and the European Parliament. As a matter of fact, it concerns a broad spectrum of participation understood as objective rights and subjective sense of belonging to the entire project.⁶⁹

European citizenship is functioning at the supranational level and this makes it most valuable as a federal institution. One may encounter in the textual sources claims made by some researchers, who tend to consider it as (potentially) competitive to nationality and regarding this as the ulterior objective of this solution.⁷⁰ It is also feared that Member States' nationality may be ousted by EU citizenship. Undoubtedly, however, such an assumption contains several quite serious errors. In the first place, it should be stated that they represent two totally different organizational principles and carry a totally diverse content. They form a complementary structure – some rights are protected at the national level, while others at the EU level, which directly follows from the function of both.⁷¹ In the wording of the Maastricht Treaty, the non-autonomous character of European citizenship (the is its dependence on nationality of one of Member States) was in agreement with the logic of the principle of subsidiarity underlying the functioning of the European Union. For this reason European citizenship cannot replace nationality, and also it is of an accidental and subordinate nature.⁷²

The integrational function of EU citizenship operates in two dimensions. In the vertical system, the relationship between the individual and EU (institutions) is regulated. The other system, horizontal, forms a specific ties between the individual

⁶⁹ Kelemen, Nicolaidis (2006): 310.

⁷⁰ Trzciński (2002): 67.

⁷¹ Preuß (1996): 548–551.

⁷² Mik (1994): 67–69.

and Member States the individual is not a national of. Such a sense of a relationship can be formed on the basis of recognition of universality of exercising the same rights arising from the application of the same law.⁷³ As a matter of fact, EU citizenship does not interfere in the relations between the individual and his/her political fatherland. The aim is only to ensure effectiveness of citizens' rights in both of those relationships. As Ulrich K. Preuß states that European citizenship is a special type of membership in the Community, which however significantly differs from the status of citizen of a nation-state.⁷⁴ It should be noted at the same time that the horizontal system is much formed much more strongly than the vertical one.⁷⁵ In Paul Magnoste's opinion this testifies to the intention of Member States to build a federation of states at most rather than a European state.⁷⁶

One of the major principles of federalism is the division of powers and the principle of subsidiarity enabling its efficient functioning. In accordance with this principle, actions should be undertaken on the level at which their implementation will ensure greatest effectiveness measured by the accomplishment of the assumed goals. The principle of conferred powers, which is one of the main emanations of the federal principles in the European Union, gives rise to a significant limitation of the operation of EU citizenship on the legal and institutional plane.⁷⁷ From the legal nature of the European Union as a *sui generis* international organization operating under the principle of conferred powers it follows that EU

⁷³ Shaw (2010): 10, Preuß (1996): 548, 551; Schütze (2013): 51.

⁷⁴ Preuß (1996): 549.

⁷⁵ Kelemen, Nicolaidis (2006): 310.

⁷⁶ Shaw (2010): 548, 551.

⁷⁷ Grzeszczak (2015): 185.

law may directly affect individuals only to the extent provided for in the Treaties (i.e. in those areas where the EU is empowered to make it).⁷⁸ In other words, in the material law terms (and this is a greatly narrow definition) only a national of a Member State whose actions put him/her in the area of operation of EU material law shall be entitled to the status of an EU citizen.⁷⁹ However, what is interesting is that according to the interpretation of the CJEU such a situation may take place also in the purely internal relation between a Member State and its citizen.⁸⁰ This judgment of 2011 indicated the evolutionary way of arriving at the full form of EU citizenship, especially when one compares its content with the scope of “citizenship of the market”.⁸¹

The division of powers and the principle of subsidiarity are associated with a characteristic feature or even a fundamental principle of federalism, namely political dualism – since it implicated the existence of at least two levels of authority. Therefore, it is by no means surprising that this principle found its reflection in European citizenship, which forms the upper federal level of belonging.⁸² EU citizenship is considered here as one of the factors of the vertical dimension of federalism – since there is a clear division of powers between separate levels of authority, in this case the European and national.⁸³ This, in turn, leads to the question of dual citizenship, each of which is based on different sources of loyalty and identification.⁸⁴

⁷⁸ Skomerska-Muchowska (2010): 3.

⁷⁹ Grzeszczak (2015): 185.

⁸⁰ Frąckowiak-Adamska (2012): 21.

⁸¹ Grzeszczak (2015): 181.

⁸² Schütze (2013): 66.

⁸³ Bauböck (1999): 43.

⁸⁴ Bellamy, Castiglione (1997): 442.

Against General de Gaulle's words, the creation of a European federation does not need the existence of a European nation. However, it does require citizens, who - in accordance with the EU motto "Unity in diversity" – being faithful to national identification will actively take part in the functioning of the community, which in turn will respect their identity.⁸⁵ As Dusan Sidjanski says "Federalism appears to be an appropriate counterweight to globalization and the most appropriate form of social organization, to assemble Europeans into a union that guarantees national, regional and local identities with the necessary interdependence and the affirmation of a European identity. Under a new heading of »governance on multiple levels« (...), we find the essential traits of the federal method and a new federalism."⁸⁶ In the opinion of certain researchers the classical perception of citizenship from the viewpoint of one of two traditions: liberal and republican,⁸⁷ fails the test even in the face of contemporary problems of nation-state – the enormous degree of pluralization of societies and globalization. The idea of European citizenship in its content carries a much higher level of universalism, which offers a chance for the effectiveness of its functioning⁸⁸ It is an answer not only to the challenges of globalization, problems of nation-state, but also the very crisis of the integration process. "Fining a new formula of integration based on the agenda focusing on strategic challenges and innovative instruments is the only way for the Europeans, although formally devoid of a European *polis*, to wish to believe in European citizenship and treat

⁸⁵ Borkowski (2013): 406, 410.

⁸⁶ Sidjanski (2001): 2.

⁸⁷ Cf. Heater (2006).

⁸⁸ Dell'Olio (2005): 10.

it as one of the dimensions of their individual identity. Only then Member States of the European Union will become a natural context for nurturing national, regional and local identities without a damage to European solidarity.”⁸⁹

In her book “Beyond national law. Europe’s constitutional ideas”, Agnieszka Maria Nogal rightly asks: If European citizenship is totally ancillary to nationality, confers little right and no duties, why has it been established at all?⁹⁰ She shows that insofar as the objective of the Treaty of Rome was “to establish the foundations of an ever closer union among the European peoples”⁹¹ (which indicates their plurality and coexistence), with the Maastricht Treaty began the construction of a “new European people”, which in the opinion of the author was to be the effect of the functioning of federal principles (inter alia the division of powers, the principle of primacy of EU law). Following the model of federal states establishment of a political community should be caused. Further on, the author reminds that by nature people have various layers of identity, which frequently overlap (scientist, woman, citizen) and do not require exclusivity, so European citizenship may become but another layer of the individual’s identity.⁹² By the way, it should be noted that the authors of the TEU and its subsequent amendments did not resign from pluralism on the declarative level – the provision about the association (union) between the nations of Europe is still present in the preamble.

⁸⁹ *Europę stać na więcej. (...):* 3.

⁹⁰ Nogal (2009): 161.

⁹¹ “à établir les fondements d’une union sans cesse plus étroite entre les peuples européen.”

⁹² Nogal (2009): 162–163.

In literature one may encounter a charge that EU citizenship “was a purely bureaucratic manoeuvre, imposed top-down, without real meaning for the citizens of the Union”⁹³ and “the public has been aware of EU citizenship in a very small measure.”⁹⁴ However, if one reaches for public opinion surveys carried out by the EU under the “Eurobarometer” project it seems that this notion is not so empty and absent in public discourse. According to the data published in the autumn of 2014 as many as 63% respondents felt they were citizens of the European Union⁹⁵ and that situation had continued at a similar level for several years.⁹⁶ It should not be forgotten, however, that nearly 40% of the society do not feel themselves subjects of European integration. In 2009, the demosEUROPA research centre drew a report which was a reflection on the prospects and condition of the European Union. The report stated, among other things, that the citizens turned towards national identification as a remedy for the sense of being excluded from European decision-making processes. According to the researchers we may call it “membership without the sense of belonging”, which in turn fits into a more profound crisis of the EU and Europeanism, which began with the failure of a federal project – the Constitution for Europe.⁹⁷

Another instrument, besides dual citizenship understood as layered identity, favouring modern understanding of European citizenship as a federal institution, is provided

⁹³ Sadurski (2005): 35.

⁹⁴ Ibidem: 37.

⁹⁵ *Standard Eurobarometer 82 Autumn 2014*: 27.

⁹⁶ All reports since 1974 are placed on the website of the European Commission: http://ec.europa.eu/public_opinion/archives/eb_arch_en.htm. EU citizenship appeared for the first time in 2004.

⁹⁷ *Europę stać na więcej. (...)*: 25.

by a German philosopher and sociologist Jürgen Habermas. That author is by no means an enthusiast of European federalism, although he admits that there is a possibility of evolution of the European Union in that direction and support several federal assumptions for the concept of integration (leaving aside the fact that his conception of a federal EU is very state-centred, which is, after all, characteristic of the German school of thinking about federalism).⁹⁸ Nonetheless, analysing the question of supranational or rather post-national European citizenship and referring to the republican tradition of this institution, Habermas created the notion of “constitutional patriotism”.⁹⁹ Habermas notes that a constitutional state turns the people who were only members of the society into citizens, who are henceforth also members of a democratic state order.¹⁰⁰ Constitutional patriotism means that citizens of Europe should not waive their national identities, but only ensure of their devotion to the law of the supranational community and build the sense of relationship basing on mutual respect for the rights and freedoms. In accordance with the Enlightenment model, the assessment of actions and the degree to which national traditions will be allowed on the European level should be fully dependent on the interest of the community. The objection against particularism and the turn towards universalism fit into the idea of federalism, but not the creation of a federal European super state.¹⁰¹ It is worth noting that so conceived citizenship of a symbolic

⁹⁸ Cf. Habermas (1993): 19.

⁹⁹ Habermas (1993): 17.

This notion is invoked by many authors deliberating on the relation between EU citizenship and federalism. Cf. Longo (2006): 166; Lehning (1999): 2, et al.

¹⁰⁰ Habermas (2014): 53.

¹⁰¹ Sadurski (2010): 42.

nature significantly contributes to the formation of European identity.¹⁰²

The citizenship of the European Union understood as only a product of necessity arising from the deficit of legitimization will be only an addition to national citizenship. However, basing on the prerequisites of constitutional patriotism and ensuring the relationship between the EU, which in certain areas obtained from Member States a considerable part of the powers arising from sovereignty, and individuals to which the adopted law applies it may be said that *sui generis*, supranational, almost federal citizenship is created.¹⁰³

Referring to the problem of the deficit of democracy which is mentioned as one of the reasons for establishing EU citizenship, A.M. Nogal offers a quite interesting interpretation of this relation. In her opinions the entire venture was aimed primarily at building trust at the European level – in the situation whereby decisions are made by the majority voting it is necessary that the individuals are confident that European solidarity does work and that the deciding majority will consider the interest of the minority – this principle works at the national level and must work at the supranational level. This is the role of new European identity and European citizenship.¹⁰⁴ Anne Peters, Jan Klabbers and Geir Ulfstein elaborated a conception of dual legitimization of the processes of international legislation. International law is legitimized not only at the intra-state level, but also at the level of consent for the functioning of institutions and the decision-making processes taking place at the supranational level.¹⁰⁵

¹⁰² Ibidem: 44.

¹⁰³ Ibidem: 43–44.

¹⁰⁴ Nogal (2009): 164.

¹⁰⁵ Shaw (2010): 4.

Federico Mancini, a former judge of the Court of Justice and advocated for the realization of the idea of federalism, reminded in the context of citizenship that history gives several meaningful examples (also from Europe) of building a nation on the political basis and there are no obstacles for such a civil nation to be built in Europe. There are strong foundations for this such as common European history and tradition (not only cultural, Christian, but, what is most important for the European federation, connected with the respect for human rights, the principles of democracy and the rule of law).¹⁰⁶ Mancini indicates that democracy (or at least constitutionalism) and federalism are inseparably linked since the principles of the division of powers and subsidiarity may operate only in democratic conditions.¹⁰⁷ Then he emphasizes that it is the consolidation of citizenship rather than granting subsequent prerogatives to the European Parliament may contribute to the strengthening of European democracy.¹⁰⁸ In this context it should be noted that even the act of voting in the EP elections once in five years is a trivial gesture, a ritual – it is only the formation of political (civil) identity understood as everyday involvement for the community, certain degree of loyalty based precisely on common cultural heritage and respect for certain rights and freedoms will mean a transition towards materialization of the essence of democracy at the European level.

A separate question is how the citizens themselves fill “European citizenship” with contents and how this affects its federal dimension. Even most “federal” legal solutions will have no sense if they have no application in practice. Mention has

¹⁰⁶ Nogal (2009): 183–185.

¹⁰⁷ Mancini (1998): 29.

¹⁰⁸ *Ibidem*: 32.

already been made about quite poor European identification, while a need appears to analyse the exercise of rights arising from citizenship, e.g. complaints to the European Ombudsman, petitions of the EP, citizens' initiative. However, the study of the practical functioning of citizens go beyond the assumed framework of this article.¹⁰⁹

Conclusions

Summing up, several comments have to be made. Having verified the traits of the European Union with a view to the six principles of the federal system outlined by R.I. Watts¹¹⁰, Michael Longo concluded that although it does not constitute a fully developed federation, it does meet the most important criteria. As he says: The Union "has developed into a political community with comprehensive regulatory powers and a mechanism of territorially defined exclusion and inclusion in the form of Union citizenship."¹¹¹ "From an institution deprived of real legal value EU citizenship has transformed into an institution" which in accordance with the judgment of the Court of Justice "is destined to become a fundamental status for the nationals of Member States."¹¹² Since the coming into effect of the Lisbon Treaty, and especially thanks to the changed status of the Charter of Fundamental Rights, EU citizenship, frequently called rump citizenship, has acquired specific legal and "identity" substance. This emphasizes

¹⁰⁹ More on the subject: Zeszyty OIDE nr 9: 102 et seq. and also M. Rojewska, *The relevance of the federal concepts of the European integration at the beginning of the 21st century*.

¹¹⁰ Taken from the book by Watts (1999), *Comparing federal systems*.

¹¹¹ Longo (2006): 34.

¹¹² Quoted after: Bodnar (2008): 50.

progressing constitutionalization of the EU towards a federation.¹¹³ It should be admitted, however, that – as Aleksander Gubrynowicz rightly notes – although “the potential of EU citizenship really existis it has not been (yet?) utilized.”¹¹⁴

In the face of an “ever closer union” it is not obvious how this institution will develop – the history of European integration shows that this institution may consolidate its importance,¹¹⁵ although it may happen that in unfavourable conditions it will become marginalized. In the history of European integration, development of certain solutions or institutions has always been strongly correlated with the current economic and social situation and political climate. The present solutions are a good “germ” for citizenship to evolve into in an institution attractive for individuals, providing there is a favourable political climate, Europe returns onto the path of economic development and the current structural crisis is overcome.¹¹⁶ It seems, however, that progressing federalization of the character of this institution will not depend on introduction of successive democratizing elements (e.g. regional veto, mandatory referenda in treaty matters, petitions), as suggested by certain authors.¹¹⁷ As a matter of fact, what is needed is an almost positivist work at the grass-roots which will make individuals aware of the existence and importance of European citizenship, which will strengthen European identity. At the same time, it should be noted that according to some authors, as a federal structure the EU will stand a chance to exist only when European identity is formed.¹¹⁸

¹¹³ Grzeszczak: 6, 16.

¹¹⁴ Gubrynowicz (2008): 46.

¹¹⁵ Mik (1994): 70.

¹¹⁶ Gubrynowicz (2008): 47.

¹¹⁷ Cieleń (2008): 170.

¹¹⁸ Mizera (2014): 99.

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