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THE DEVELOPMENT OF EUROPEAN CITIZENSHIP AND ITS RELEVANCE TO THE INTEGRATION OF REFUGEES

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ABOUT THE CEPS-SITRA NETWORK

CEPS, with financial assistance of the Finnish SITRA Foundation, embarked at the end of 2000 on a programme to examine the impact of Justice and Home Affairs *acquis* on an enlarged European Union, the implications for the candidate countries and for the states with which they share borders.

The candidate states are adopting or are preparing to adopt EU systems such as Europol, Schengen (the totality of the *acquis* have to be accepted according to Art. 8 of the Schengen Protocol to the Treaty on European Union), the European Police College, measures to combat organised and financial crime, Eurojust, mutual recognition of judgements, uniform sentences for fraud against the EU budget, etc. In this process the candidate members can be represented as passive recipients of EU arrangements – no modification of matters such as the Schengen *acquis* is available to them. But the arrival of the new members in the EU will modify the character of JHA cooperation by increasing the numbers of actors involved in the framing and the implementation of policies, changing the pattern of the problems confronted and shifting the location of the external frontier.

The basic aim of this project is to produce policy recommendations that will promote these qualities in EU JHA cooperation and for institutional developments for the medium- to long-term in areas such as a European Public Prosecutors Office, re-shaping Europol and a developed system of policing the external frontier (Euro Border Guard). These must be made within a balanced framework. The CEPS programme will propose policy directions adapted to an enlarged Union that would avoid:

- conflict with other objectives of policy;
- the inevitable public disillusionment if few practical results flow from general declarations of policy;
- erroneous policies based on some widely believed but grossly exaggerated external threat (e.g. ‘floods’ of immigrants ‘international’ terrorism) to the internal security of the EU;
- a rigid distinction between a ‘safe’ region inside the EU (freedom through effective law enforcement) and an ‘unsafe’ outside (the source of criminal threats, terrorism, corrupt law enforcement and political disorder).

The CEPS-SITRA programme brings together a multi-disciplinary network of 20 experts drawn from EU member states, applicant countries as well as neighbouring states: the European University Institute in Florence, the Stefan Batory Foundation (Warsaw), European Academy of Law (ERA Trier), Academy of Sciences (Moscow), London School of Economics, International Office of Migration (Helsinki), Fondation Nationale des Sciences Politiques (CERI) in France, Universities of Budapest, Université Catholique de Louvain-la-Neuve, University of Lisbon (Autonoma), University of Nijmegen, University of Pau, University of Burgos, CEIFO in Stockholm, University of Tilberg and University of Vilnius, as well as members with practical judicial and legislative backgrounds

A Note about SITRA (Suomen itsenäisyyden juhlarahasto

Sitra is the Finnish National Fund for Research and Development. It is an independent public foundation under the supervision of the Finnish Parliament. The Fund aims to promote Finland's economic prosperity by encouraging research, backing innovative projects, organising training programmes and providing venture capital.

The Development of European Citizenship & Its Relevance to the Integration of Refugees

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Abstract

Achieving an integrated Europe involves political and social unity as much as economic integration. Thus, the issue of European citizenship is central to the debate about European integration. Union citizenship needs to be distinguished from national citizenship. Every citizen of the Union enjoys a first circle of nationality rights within a member state and a second circle of new rights enjoyed in any member state of the EU. The presence of immigrants in Europe also raises wider questions for government policy in the field of citizenship. There are various issues that arise in the European context with respect to the boundaries of citizenship. One of the main questions in this regard is the extent to which the division between European Union citizens and third country nationals will continue to prevail.

This paper aims to analyse:

- Who are the different groups of third country nationals residing in the EU?
- Which criteria are used to grant refugee status?
- What rights are entailed in such a status?
- How does refugee status compare to European citizenship?
- Would the extension of European citizenship rights guarantee a true integration of these groups of persons.

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The Development of European Citizenship and Its Relevance to the Integration of Refugees

Joanna Apap

1. Introduction

The legal framework of European citizenship, bridging the gap between the citizens and EU institutions and the implications of enlargement has been much debated. However, very little has been written about “what” is European citizenship and “how” can it be implemented in a more inclusive way. Also, so far there has been insufficient dialogue between policy-makers, NGOs and the research community.

In an Opinion on the Maastricht Treaty in 1993, the European Commission observed that the Treaty makes citizenship an evolutionary concept and recommended “developing it to the full.... (T)he task of building Europe is centred on democracy and human rights”.

Achieving an integrated Europe involves a political and social unity as much as an economic one. Thus, the issue of European citizenship is central to the debate about European integration. However, citizenship policy has not received due attention as a “practice”. Much literature has focused on legal assessments of Union citizenship, which highlights the limitations of the current understanding of what is meant by EU citizenship. In identifying limitations and restrictions in Union citizenship, legal approaches have often adopted a minimalist perspective on citizenship. Elizabeth Meehan (1993, p. 1) states that:

a new kind of citizenship is emerging that is neither national nor cosmopolitan but that is multiple in the sense that the identities, rights and obligations associated [...] with citizenship, are expressed through an increasingly complex configuration of common Community institutions, states, national and transnational voluntary associations, regions and alliances of regions.

There are various issues that arise in the European context with respect to the boundaries of citizenship. “Union citizenship needs to be distinguished from national citizenship. Every citizen of the Union enjoys a first circle of nationality rights within a member state and a second circle of new rights enjoyed in any member state of the EU” (Wiener, 1996).

The presence of immigrants in Europe also raise wider questions for government policy in the field of citizenship – as Zolberg (1987) puts it, “immigrants pose a challenge to traditional conceptions of states as self-contained population entities”. For example, with the arrival of immigrants, the traditional definition of membership in a community is no longer so self-evident, and one cannot directly relate such membership to formal citizenship. In an important sense, anybody inside a national territory, including illegal immigrants, is in some way a member of that particular community because he/she takes part in the life of the receiving society by, for instance, participating in the labour market (both formal and informal), sending children to school, being a neighbour and/or paying taxes.

Nonetheless, citizenship does mean more than simple presence in, or even membership of a community. Garcia (1993) for example provides the following definition of citizenship:

Citizenship in the modern world constitutes legal, economic, political and social practices which define social membership and which counteract social cleavages. In this sense the practice of citizenship becomes a method of social inclusion which gives people who differ in age, sex, beliefs or colour of skin the same basic entitlements. It is this aspect of citizenship that has contributed to the legitimacy of the modern state. Citizenship has become also an element of legitimisation for the new Europe. To what extent is citizenship going to be universalised in Europe, and to what extent are people going to be excluded?

There are various issues that arise in the European context with respect to the boundaries of citizenship. One of the main questions that arises in this regard is the extent to which the division between European Union citizens and third country nationals will continue to prevail.

For the purpose of comparison, I will first of all explain which third country nationals are the targets of the EU Commission’s proposals on the extension of EU citizenship rights.

They are long-term third country nationals resident legally on the territory of an EU member state for at least five years and who have, until now, enjoyed no privileged status under Community law. This distinguishes them from those third country nationals with family links with EU nationals or with mixed agreements or service contracts with an EU company. This group includes persons who have come to the EU to seek international protection. The Commission proposals centre on extending free

movement rights and integration¹ to those refugees who have settled or who are entitled to settle in a member state. In this context, refugees are those persons who have been granted refugee status according to Article 1 A of the Geneva Convention.

This distinction between refugees receiving their status according to the Article 1 of Geneva and those asylum-seekers who are granted a more short-term status complementary to the one of Geneva, according to Article 3 of the European Convention of Human Rights, is problematic. It cause concerns in associations working with refugees as it has implications for their integration in the host country. Various NGOs argue that the complementary status risks watering down the standard of protection Europe normally offers under the Geneva Convention. With respect to the potential uniformity of rights of those persons granted a temporary/subsidiary form of protection other types of proposals are being prepared.

Migration and refugee flows were for many years regarded as separate phenomena, the former involving people who moved for economic or other reasons, the latter were persons who fled their country in fear of persecution. That distinction has become blurred in recent times for two distinct reasons. Firstly the line between political persecution and economic repression is a fine one. On the other hand, war and violence may be provoked or aggravated by poverty and population pressures. People then leave their country prompted by a mixture of fears, hopes and aspirations.

Secondly, migratory pressures have grown but have not been paralleled with possibilities. The globalisation of capital and entrepreneurship has not been matched by the globalisation of labour. Border controls continue to restrict movement of labour, encouraging many economic migrants to abuse the asylum channel as the way to enter their desired country.

Nowhere has the inter-relationship between migrants and refugees posed such a challenge to the work of associations working with refugees. Although European countries continue to host a significant number of refugees and asylum seekers, the institution of asylum has come under increasing threat since the late 1980s with the progressive introduction of a wide range of control and deterrence measures. The erosion of public support for asylum and the apparent rise of xenophobia and nationalistic politics have paralleled such restrictive measures. Xenophobia is one of the most

¹ Integration here is the integration of the individual rather than a state-oriented integration such as European Integration. See next section for definition of integration.

dangerous trends in modern society and is being fuelled by the sense of insecurity which global changes have brought to the more vulnerable sections of affluent societies.

Migrants and refugees have become scapegoats, making their integration even more difficult as well as their economic, social and cultural marginalisation more evident.

2. Defining integration

Various methods for social integration of immigrants have been implemented in different EU member states and these were very much based on the type of relationship the host state envisaged with respect to the third country nationals it received on its territory. Broadly speaking, the main approaches can be divided into two groups: the French model of “assimilation” which Solè (1988) describes as “the melting pot idea”. This implies the cultural, social and political subordination of one group to the other, and the partial or total loss of immigrants' identity as they merge with the majority group; it can be contrasted with “integration”, in which the indigenous population and a minority group gradually move towards equality on the socio-economic, cultural and political levels becoming a single population unit while also maintaining aspects of their own identity of origin.²

In the 1990s we saw the integration concept by and large being replaced by concepts such as equal rights, freedom of choice and cultural diversity. Integration concerns *mutuality* and places demands on both minority and majority groups. It is a two-way process. It is not only the immigrants who have to adapt to the society's majority culture, but the majority society must also accommodate new ways of thinking and behaving. It is difficult to measure integration, but one benchmark is certainly the success achieved in establishing mutuality and equal rights between the minority and the majority. It is on this basis that integration policy is about providing a suitable background that is conducive to this mutuality.

The Tampere Presidency Conclusions stated, in paragraph 21:

The legal status of third country nationals should be approximated to that of Member States nationals. A person, who has resided legally in a Member State for a period of

² When one states the term "integration" one assumes that it is meant to be a process through which the indigenous population and the minority settled in the same place gradually intermingling and moving towards equality on the socio-economic, cultural and political levels, becoming a single population unit (with its own cultural traits, of which language is a fundamental component) that shares the same identity but differs from other population, units or groups (see Solè, 1981 and 1988).

time to be determined and who holds a long-term residence permit, should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by EU citizens; ...

The European Council endorses the objective that long-term legally resident third country nationals be offered the opportunity to obtain the nationality of the Member State in which they are resident.

It is not clear what is meant by a uniform set of rights. Does this imply, a set of rights as close as possible to those enjoyed by the nationals of the host state, or more, as implied in Article 63.4 of the Amsterdam Treaty? Article 63.4 can be interpreted as aiming is to set up a special regime of uniform rights throughout Europe, which could institutionalise further differences in the status between third country nationals and EU citizens.

If one assumes that the wording of paragraph 21 of the Tampere Conclusions is a clarification of Article 63.4, European citizenship is the benchmark to be used. This will be used to evaluate how the status of third country nationals, amongst whom are refugees, using as a benchmark the rights inherent in European citizenship. This will provide an estimate of the rise in “mutuality” in European society and thus the success of integration policy.

The undertaking in the Geneva Convention, signed by all EU member states, should not be forgotten. This asserts that the contracting states shall accord to refugees lawfully staying in their territory the most favourable treatment possible. This was further reified in Tampere, when in Paragraph 4, it was declared that:

the aim is an open and secure European Union, fully committed to the obligations of the Geneva Refugee Convention and other human rights instruments, and able to respond to humanitarian needs on the basis of solidarity. A common approach must be developed to ensure the integration into our societies of those third country nationals who are lawfully resident in the Union.

3. EU citizenship and the position of long-term resident third country nationals

The Spanish government proposed to introduce European citizenship in the Treaties. Article 8 (Article 17 of ToA) of the Maastricht Treaty states:

Every person holding the nationality of a Member State shall be citizen of the Union.

Until now, European citizenship was reserved to nationals of member states. In this manner, Union citizenship is granted indirectly, through reference to the respective nationality law of the member state. The rights inherent to Union Citizenship were listed in Articles 8a-8d of the Maastricht Treaty (now Articles 18-21) which state that every citizen of the Union will have the right to:

- move and reside freely within the territory of the member states, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect. (i.e. one needs to prove sufficient means of subsistence);
- vote and stand in municipal and European elections;
- benefit from diplomatic protection outside the Union;
- apply to the European ombudsman; and
- petition the European Parliament.

One of the most important areas of Community law relates to free movement, particularly for reasons of employment, between member states. The basic provisions on the free movement of persons are laid down in Article 39 (ex 48) of the Treaty which provides that freedom of movement of workers shall be secured within the Community. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the member state as regards employment, remuneration and other conditions of work and employment.

It shall entail the right, subject to limitations on grounds of public policy, public security, or public health:

- to accept offers of employment actually made;
- to move freely within the territory of member states for this purpose;
- to stay in a member state for the purpose of employment in accordance with the provisions governing the employment of nationals of that state laid down by law, regulation or administrative action; and

- to remain in the territory of a member state having been employed in that state, subject to conditions which shall be embodied in the implementing regulations to be drawn up by the Commission.

The provisions of this Article shall not apply to employment in the public service.

Third country nationals, even if legally resident in the Community for a long time, had no chance of directly acquiring Union citizenship until now. They must first acquire nationality of a member state.

It may be noted that resident third country nationals may also enjoy some rights enjoyed by Union citizens. This is the case of the right to address a petition to the European Parliament and the right to make complaints to the European Ombudsman. However, these are procedural rights and not substantive rights.

The substantive rights listed in Articles 8a-8c (now (Articles 18-20), i.e. the right to move and reside in another EU member state; political rights at municipal and European elections as well as diplomatic protection in a third country, have not till now been extended to third country nationals.

For third country nationals there is a clear contrast between the rights they enjoy in the way of free movement of persons and the other types of freedom of movement that they enjoy.

As far as free movement of goods and capital is concerned, third country nationals are in a legal position similar to that of nationals of a member state. However, when it comes to the free movement of persons, third country nationals residing in member states have no independent rights. Only some “*privileged*” groups of third country nationals could benefit to some extent of the right to free movement of persons and the protection of Community law indirectly. These persons include:

- members of the family of an EU national;
- nationals of states connected to the EU by an association or co-operation agreement; and
- workers of a company on whose behalf they carry out services in another member state (according to the Vander Elst principles).

There is one main legal reason for the lack of independent rights of freedom of movement of persons for third country nationals. This relies on the interpretation made by the European Court of Justice of Article 48 (now 39) of the EC Treaty, which guarantees freedom of movement of workers within the Community including the abolition of some types of discrimination based on nationality between

workers of member states. The Court of Justice has interpreted this provision as applying only to nationals of member states in the Meade case.

4. Supranational and national competencies and the status of third country nationals post Amsterdam

With the entry into force of the Treaty of Amsterdam, 1 May 1999, non-privileged third country nationals have finally found their place in Community law in the new Title IV. The provisions of Community law did not cover other third country nationals until the entry into force of the Amsterdam Treaty. The Tampere Summit of 15 and 16 October 1999 was one of the most important milestones in the debate about rights of third country nationals as well as highlighting the specific need of refugee integration. At Tampere, European political leaders agreed to develop what they had signed in the Amsterdam Treaty, that is, the development of a common EU asylum and migration policy, consisting of partnership with countries of origin, a common asylum system, fair treatment of third country nationals by extending to them European citizenship rights as well as the common management of migration flows.

To this end the Commission set up a scoreboard to monitor progress and a debate was launched within the Community institutions and in civil society in order to create a momentum to implement these ideas.

Since the entry into force of the Amsterdam Treaty and the Tampere scoreboard, with deadlines till 2004, various questions arise about how the extension of EU citizenship rights to long-term resident third country nationals will be implemented?

In the first place, it involves a new European competence. To what extent can European citizenship rights be conferred directly on long-term third country nationals without these individuals requesting the nationality of the host state? Otherwise, how can one facilitate the eventual process of acquisition of nationality of the EU member states?

The Commission has proposed several pieces of legislation intended to encourage a greater integration of third country nationals including refugees, as follows:

- Council Directive to prevent discrimination on the basis of racism (adopted in June 2000)
- Council Directive to prevent discrimination in employment (adopted in November 2000)

- Proposal of Directive on the right to family reunification (Commission proposal COM (2000) 624 final) of October 2000.
- Proposal of Directive concerning long-term resident third country nationals to extend their free movement rights, on the basis of Article 63 (4) (Com 2001 127 final) of March 2001.
- Proposal of Directive for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection (COM 2001/510 final) of September 2001.

The latter three proposals have not yet been adopted by the Council and may be amended prior to adoption.

The rights so far envisaged vis-à-vis the status of long-term third country nationals and refugees include:

- Access to employment;
- Access to education;
- Access to health services;
- Access to appropriate accommodation;
- Freedom of movement within the member state;
- Family reunification rights; and the
- Possibility to move to another member state for the purpose of study or employment after the granting of a long-term status;.

Moreover, consideration is being given to granting access to integration facilities such as:

- a plan of action to prepare for access to employment and education;
- language courses;
- basic and advanced training;
- measures at promoting self-maintenance;
- events organised to introduce to the history and culture of the member state; and
- events arranged jointly with citizens of the member state to promote mutual understanding.

These programmes are potentially eligible for financing under the European Refugee Fund.

To enjoy full EU citizenship rights, until now, the only method was the acquisition of the nationality of the host member state. The conditions and procedures for obtaining rights in EU member states vary

as this is still an area of policy very much in the heart of national sovereignty. However, five general criteria can be cited:

- *jus sanguinis*, i.e. by having a parent who is a national of that state, including by adoption;
- *jus soli*, but this is sometimes restricted to a situation in which the parents of a child found in the host state are unknown;
- *by decree*, to a foreigner whose father or mother was a citizen of the host State by birth; to an adult foreigner adopted by a national of that state; to a foreigner who has served for at least five years as an employee of the host state, or to a foreigner who engages in military service in that state;
- *by marriage* to an EU citizen, after residing legally in EU member state for a minimum period of time (defined by each state); and,
- *by naturalisation*: on some conditions, as service rendered to the host state for a minimum period of years as defined by the relevant state (average 5 years), even if abroad, or through residence in that state (usually for ten years). In the case of persons granted a refugee status, the waiting period is normally shorter than for other groups of third country nationals.

5. By way of conclusion...

Despite the difficulties of getting legislation through the Council, remarkable progress was made in the position of Community nationals between the proclamation of the free movement of workers by the Treaty of Rome in 1957 and the introduction of European citizenship by the Maastricht Treaty in 1992. This progress was based on broadly defined objectives – freedom of movement of workers, free movement of services and the prohibition of the discrimination on the basis of nationality. General provisions with a direct effect, resulting in substantial case law of the Court of Justice, have resulted even when states were reluctant to implement the treaty, when it was expressed in regulations and directives. However, further progress for third country nationals may be problematic in that the jurisdiction of the Court of Justice is somewhat more limited by Article 68 of the treaty than for EU citizens.

Three factors may result in less favourable treatment for third country nationals than initially hoped. First, free movement rights are not yet extended to less privileged (in the sense used in Section 3 of this paper) third country nationals. However the Commission's proposal for a directive on the status of long-term third country nationals resident in the Union may rectify this. Second, the provisions in the Treaty of Amsterdam, concerning the third country nationals, were formulated carefully so as to avoid direct effect. Third, the principle of equal treatment stated by Article 12 of the EC Treaty

(Article 6 in Maastricht) does not apply to the nationals of third countries. The non-discrimination clause included in the treaty of Amsterdam by the new Article 13 (ex-Article 6a) of the EC Treaty even does not condemn the principle of different treatment of European citizens and third country nationals (on grounds of nationality, but only on grounds of racism).

The dynamics of establishing a European legal status for third country nationals are different from those for Community nationals. Although the status of EU nationals who move from one member state to another varies, with some exceptions, according to the legislation of the host state, it remains very similar to that of the nationals of that state because of the principle of equal treatment. This does not yet apply to third country nationals although they will probably eventually have a uniform status throughout the Union. Amsterdam may also one day be considered as the treaty that laid down the bases of a differential treatment between third country nationals and EU citizens. One example is political rights, as third country nationals remain excluded from these unless they acquire the citizenship of the host EU member state. The Treaty of Amsterdam, even if it is far from being a general rule, establishes inequality of treatment between the European citizens and non-privileged third country nationals, as a fundamental characteristic of Community law.

The Presidency Conclusions of the Tampere Council, the developments on the basis of Article 13 to combat racism and other forms of discrimination, and the European charter of fundamental rights as well as previously mentioned proposals, when adopted, will possibly lead in due course to diminishing the distinction in status between resident third country nationals and European citizens.

An essential element of European migration policy must be integration of migrants as well as refugees, so that they can participate fully in society. The important contribution that migrants and refugees make to their new communities must be recognised. UNHCR's poster "Einstein was a refugee" is a telling message; in fact, where would the world be if it turned its back on him?

Better integration policies, public information and education can help both to enhance the lives of refugees and migrants, as well as to improve social harmony and race relations. The starting point must not be repressive border controls, but a real "protection" of victims and democratic values.

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