# DIMINISHING NATIONAL SOVEREIGNTY AFFECTING EU MEMBER STATES' CITIZENSHIP?

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*Abstract: Modern society is changing; traditional values of nation-states are being supplemented and gradually replaced by new values brought in by the emergence of the global market economy. However, globalization has surpassed economic aspects and now it manifests in multiple areas: social, political, legislative and military. We are particularly interested in changes undergone by the concept of sovereignty and the perspectives of national citizenship. We are witnessing a process of de-nationalization, and the decline of national citizenship as well as European law harmonization seem to be the main instruments in this matter. The concept of sovereignty, traditionally considered indivisible and discrete, should either be abandoned or redefined in order to make sense of the new international constellations, because its meaning has been altered as a consequence of economic and political globalization. In our modern society, sovereignty is divided and shared among Member States and international organizations such as the European Union. The primacy of national citizenship is no longer evident since the emergence of European citizenship. The question arises: if sovereignty is diminished, what functions does national citizenship have left? Can the European citizenship legitimate the attenuation of Member States' national sovereignty?*
*The research method employed in this paper is the study of documents, beginning with a short historical retrospective on the evolution of European integration; next, we present the sources of recently formulated European human/citizenship rights, which are, in fact, the traditional values of democratic societies. The author focuses on the remaining roles of national citizenship and attempts to answer the question of whether it should be reconfigured during the processes related to globalization.*

*Keywords: European citizenship, globalization, integration, national citizenship, sovereignty.*

Modern society is changing; traditional values of nation-states are being supplemented and gradually replaced by new values brought in by the emergence of the global market economy. However, globalization has surpassed economic aspects and now manifests in multiple areas: social, political, legislative and military. Globalization lacks a universally accepted definition (Michaels 2013); however "an epochal change is underway in which aspects of state sovereignty are being dismantled chip by chip" (Benhabib 2007, p. 28). Michaels (2013) speaks about globalization as a generally accepted new paradigm of society and about a globalized "law of our time" (p. 1). In this paper, we intend to study this phenomenon by exploring scholarly literature and relevant legal documents. In this introductory section, we attempt to ascertain three guiding concepts: globalization, state sovereignty and citizenship, as well as the link between the three.

The globalization processes brings interconnectedness: distant communities can be influenced as a consequence of events from other regions. "The main problem posed by globalization is less that transnational business can only preserve its autonomy by limiting state power by means of the rule of law than that the democratic nation-state can only hope to maintain its independence in relation to global business by counteracting the virtually universal competitive rush to provide transnational firms with special rights and privileges" (Scheuerman 2004, p. 169). Global law enables transnational transactions by „generating self-binding and self-regulating norms" (Benhabib 2007, p. 26).

We have to look at the definition of sovereignty to notice the influence of globalization. Sovereignty is the people's fundamental right of communitarian self-determination. Exercising sovereignty also includes freedom and human rights; it assumes jurisdiction over territories and populations. There is an overlap in the interests of the individuals related to the interests of communities (Araujo 2000). Araujo (2000) points to an existing dependency of exercising sovereignty simultaneously with other states or supranational authorities emerging from sources of international law; this observation leads us to conclude that sovereignty is not an absolute concept. An additional

argument in this sense would be that the United Nations (UN) Charter confers only the "principle of the sovereign equality of all its Members"[1] and not an absolute one, which could also be considered a limitation of sovereignty brought on by the globalization of human rights. The European Union (EU) also has a major impact on the sovereignty of its Member States, as we shall see in the following paragraphs, especially in the second section.

Other inherent aspects of globalization, such as increased migration and the access to global communications reinforce tendencies towards accentuated cultural and ethnic diversity (Stoker et al. 2011). Migration is currently on the scale of the mass migrations from the early twentieth century (Chiswick & Hatton, 2003, p. 74). Migration also means a separation between territoriality, sovereignty and citizenship. "Contemporary migratory movements give rise to overlapping jurisdictions which are often protected by international norms" (Benhabib 2007, p. 23). "Political space is mutating in ways that the traditional distinctions between state and society, domestic and international, citizen and alien, can no longer do justice" (Nyers 2004, p. 204).

Sovereignty is a relational interface between law and politics "which both separates these domains *and* binds them together" (Bartelson 2006, p. 469). State sovereignty is also imminently tied to territorial integrity protection (Benhabib 2007), which was blurred at the one side by opening frontiers and by the other side by the phenomenon of mass migration.

As scholarly literature suggests (Bartelson 2006, Benhabib 2007, Chiswick & Hatton 2003, Stoker et al. 2011, Nyers 2004), national sovereignty is diminishing. If we accept this thesis, does this phenomenon influence national citizenship?

To answer this question, we have to look at the classic liberal definition of citizenship given by the British sociologist T.H. Marshall (1950). In his opinion, citizenship is a legal status provided to citizens of a nation-state "associated with the concept of full membership of a community" (p. 8). Marshall identifies three elements of citizenship: civil (individual freedom, rights), political (participating in the exercise of political power) and social (a set of rights to economic welfare, security and social heritage). According to Marshall, "the institutions most directly associated with civil rights are the courts of justice", the political element is most appropriated to "parliament and councils of local government" and "most closely connected with [the social element] are the educational system and the social services" (p.11-12).

Firstly, civil rights are no longer the exclusive competence of national states since the emergence of universal human rights and international jurisdictions (Benhabib 2007).

Secondly, political rights are no longer the exclusive competence of states since the emergence of supranational political decision-making entities such as the European Union. It is increasingly common that states share power with supra-state authorities on a global scale, which contributes to a process of denationalization: social, political and economic activities are surpassing the national level (Stoker et al. 2011). National parliament and councils of local government may act only in accordance with international and European law.

Finally, social rights have also ceased to be the exclusive domain of national states; we only mention here the increasingly comprehensive social policy of the European Union, international labor treaties, rights, standards and organizations. The sovereignty of national governments pertaining to social policy is increasingly being diminished by supranational institutions of the EU (Kaufmann 2012).

We conclude that if all three elements of citizenship established by Marshall (1950) are connected to sovereignty and seen as a legal status provided to citizens of a nation-state, there is no longer any doubt about citizenship also being affected by globalization. Authors like Benhabib (2007, p. 19) "have documented the disaggregation of citizenships rights, the emergence of an international human rights regime and the spread of cosmopolitan norms." The erosion of national citizenship is a result of globalized economic activities and mobility (Ivic 2012).

We are witnessing a process of de-nationalization, and the decline of national citizenship along with the harmonization of European law seem to be the main instruments in this process. Many authors say that globalization is the key culprit in the diminishing of national citizenship (Stoker et. al. 2011, Nyers 2004). States have suffered weakened territoriality, and the traditional link between states and individuals has been also reduced (Nyers 2004, p. 204).

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[1] http://www.un.org/en/documents/charter/chapter1.shtml

The concept of sovereignty, traditionally considered to be indivisible and discrete, "should either be abandoned or redefined" in order to make sense of the new international constellations, because its meaning has been altered as a consequence of economic and political globalization (Bartelson 2006, p. 464).

**Milestones and historical backgrounds of "globalized law"**

In the introduction, we have adumbrated that the process of globalization coincides with the weakening of state sovereignty, and, as a result of de-nationalization, the institution of national citizenship has also entered into decline. Both concepts (state sovereignty and citizenship) are strictly connected to national, international and European forms of law. We deem these sources of law to be new, globalized and correlated values. As Michaels (2013) says, "globalization and law mutually shape each other – today's globalization is as much a product of a law as it influences the law" (p. 2). Many areas of law are "fundamentally impacted by globalization" (Michaels 2013, p. 1).

Given the present context of globalization, and as much as this paper focuses on the remaining roles of national citizenship in the EU Member States, we do have to mention that the main determining factor is not only the supranational entity of the EU. International cooperation within the United Nations (UN), which comprises most of the countries of the world, is also a major contributing factor to diminishing national sovereignty. It seems that globalization is creating its own form of law without a state (Teubner 1997) and individual rights are now defined at a globalized level (Ivic 2012).

Law transnationalization exists not only within the EU, but within Member States of the UN, especially considering fundamental human rights. Since the emergence of the Universal Declaration of Human Rights, which is a UN document, law is "directed at binding national sovereignty under international law following transnational principles" (Kaufman 2012, p. 107). These fundamental rights are shared by both the EU and UN. However, human rights had initially not been included in the Community treaties; the first references can be found in the Single European Act (1986), but as a result of the integration process, the EU has recognized the relevance of human rights principles, and is now obligated to respect them in exercising its competences (Ahmed & Butler 2006). The same authors argue that "although the EU has not become party to a human rights treaty itself, the obligations incurred by its Member States by virtue of their membership of such treaties might impose obligations on the EU per se" (p. 788) and now "the EU is bound to respect human rights by virtue of its internal rules" (p. 776). In other words, the EU has acceded to the human rights requirements of its Member States and might be considered "subject to international human rights law" (Ahmed & Butler 2006, p. 800).

We have insisted on human rights aspects in international and European law because they are constituting elements conferred by national citizenship, and these rights have now become transnational and globalized values protected on all three levels of legislation (national, European and international). It is very plausible that even now, transnational law is being formulated in the spirit of protecting common human rights.

Speaking about milestones, we cannot forgo taking into account the evolving law of the European Union: The European Economic Community (EEC) Treaty signed in Rome (1957) by Germany, France, Italy and the Benelux countries created an economic community based on four fundamental founding principles: the free movement of goods, services, capital and people across the Member States' borders. The Single European Act (SEA) signed in Luxembourg (1986) was the first major amendment to the Treaty, establishing the EEC in order to complete European integration and the internal market. It amended the operation of European institutions and expanded Community powers in areas of research, development, the environment and common foreign policy.[2] After the Treaty on European Union (Maastricht, signed in 1992), the EEC became the European Community, which showed the determination of the Member States to expand the Community's powers to non-economic areas, and also introduced European citizenship.[3] From 1993 on, the single market becomes

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[2] http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_singleact_en.htm
[3] http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_eec_en.htm

a reality[4], but the economic, political and social integration doesn't end here. Another major achievement of this Treaty was the introduction of European citizenship. The Amsterdam Treaty (1997) strengthened and consolidated European identity and made a series of amendments to previous treaties[5]. The Treaty of Nice (2001) has opened the way for institutional reform regarding the enlargement of the EU with the accession of countries from eastern and southern Europe[6]. The Lisbon Treaty (coming into force in 2009) amended the Treaties on based on which the Communities and the European Union had been founded[7], provided the EU with modern institutions and optimized, more efficient working methods. The institutional structure of the EU had been altered, resulting in reinforced democracy within the EU[8]. The Charter of Fundamental Rights of the EU, proclaimed in 2000, also bears mention, but this document did not have any legally binding effect at that time. The Charter brings together the fundamental rights in the EU in a single document by including six categories of rights, such as dignity, freedoms, equality, solidarity, citizens' rights and justice. With the Lisbon Treaty's entry into force in 2009, the Charter received a legally binding effect[9]. The rights contained in the Charter are derived from the "constitutional traditions of the Member States" (Sarmiento 2013, p. 1269). The Treaty of Lisbon also broadened the institution of European citizenship.

Despite these results, scholarly literature reports Eurosceptic views: "as integration deepens, EU institutions unduly interfere in matters where not only strongly held collective and societal preferences, but more fundamentally value systems are at stake" (Leconte 2014, p. 85). Tambakaki (2011) even reports a "distrust of processes of EU democracy" (p. 567).

European law has primacy over national law, and the legitimacy lies inherently in the constitution of its founders (Sarmiento 2013); yet, this argument should not conceal the weakening sovereignty of Member States. Their governments are coming under increased scrutiny on the part of the EU, which could exercise a pressure on national public policy related to human rights, citizenship, nationality, ethnicity and religion, learning, socialization and so on (Leconte 2014). The present status of EU law is a result of a long period of interstate negotiations in which more and more areas have come under the auspices of EU decision-making by delegating Member State sovereignty to a common European decision-making institution.


**Perspectives of EU Member States' citizenship**


In the last section, we have presented the globalized expansion of human rights on an international level – as a determining element of national citizenship.  In the EU, continuously growing competences delegated by Member States are causing a reduction in sovereignty, which has generated Eurosceptic voices. Since the emergence of European citizenship, the primacy of national citizenship has been put into doubt. European citizenship, based on traditional or constitutional values of democratic societies, is becoming a stronger legal institution since the Charter of Fundamental Rights of the EU had gained a legally binding effect. EU citizenship, as we have already mentioned, was established by the Maastricht Treaty, and provides to citizens of Member States the right to move and reside freely within the EU, to vote and to stand as a candidate at municipal elections in the Member State in which they reside under the same conditions as nationals of that state. It also ensures the right to extended diplomatic or consular protection ensured by any Member State of the EU in a third country in which the state of origin is not represented. This new form of citizenship grants every individual the right to petition the European Parliament and to submit a complaint to the Ombudsman. The Maastricht Treaty has reserved the right to adopt provisions concerning European citizenship or to strengthen them. "The citizenship being created was supposed to reflect the idea of Union" (Bradshaw 2013, p. 197), but this was only a set of minimal rights. The explanation resides in the fact that

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[4] http://ec.europa.eu/internal_market/top_layer/historical_overview/index_en.htm
[5] http://europa.eu/legislation_summaries/institutional_affairs/treaties/amsterdam_treaty/a12000_en.htm
[6] http://europa.eu/legislation_summaries/glossary/nice_treaty_en.htm
[7] http://www.consilium.europa.eu/documents/treaty-of-lisbon?lang=en
[8] http://ec.europa.eu/archives/lisbon_treaty/index_en.htm
[9] http://ec.europa.eu/justice/fundamental-rights/charter/index_en.htm

European citizenship was originally intended to advance the idea of the single market (Tambakaki 2011).

As we can see, EU citizenship has achieved a direct connection between the inward population (now European citizens) and the Union, interfering with the Member States' elective, diplomatic and consular authorities by blurring territorial borders. However, this rudimentary form of European citizenship did not directly affect other fundamental human rights and "did not bring rights significantly different to the ones Europeans already enjoyed in their respective countries" (Lobeira 2012, p. 506).

The Lisbon Treaty broadened this institution by granting "access to EU fundamental rights through the legal effect that has been given through the Lisbon Treaty to the EU Charter of Fundamental Rights" (Guild 2010, nn.). In consequence, Member States must respect the scale of rights provided by The Charter, which clearly is a sign of diminished sovereignty of Member States over their own citizens.

Modern citizenship has three dimensions: the legal dimension denotes entitlement to rights and duties, the civic one offers the possibility to participate in polity and social life, and the affiliate dimension provides citizens with an identity and a legal status of being members of the community (Lobeira 2012). Based on these dimensions, European citizenship is not just a virtual concept, but it is an operational and legal institution with a tactile content: by offering not only a European identity, but fundamental rights as well (with reference to the Charter), it creates, in our point of view, a direct connection between each individual resident and the supranational institutions of the EU. This link could legitimize the attenuation of Member States' national sovereignty and could point at a slowly forming European Federation. However, European citizenship is not a perfect institution: investing people with transnational rights and protection is undoubtedly a benefit, but there are also critiques. Bradshaw (2013) suggests that this form of European citizenship has a major limitation due to its nation-centric focus: it marginalizes third country residents and "completely overlooks stateless individuals"; furthermore, „a more expansive and inclusive construct" (p. 197) is needed. European citizenship has several shortcomings: it is an inclusive model based on Member States' national affiliation that raises questions concerning the commitment of the EU to human rights in relation to third country or stateless people (Bradshaw 2013). "Removing the commitment to nationality and substituting societal interaction would produce a fleshed out and reciprocal iteration of citizenship that promotes the Union, its objectives and opportunities, and that could fight the overall apathy exhibited by current citizens towards Union affairs treating all resident actors as though they had an equal interest in the running of the Union" (Bradshaw 2013, p. 213).

So what is the nature of European citizenship? Just a conglomerate of Member States? A dual citizenship maintaining allegiance to two polities? A multinational model of citizenship or a post-national one that is not tied to territoriality and identity? The nature of EU citizenship is still unclear because it is constantly undergoing change (Ivic 2012). EU citizenship politics still represent those of identity, since it ties citizenship to nationality and borders (Ivic 2012, p. 430).

We believe that because of this ambiguous nature of European citizenship as well as its changing and developing content of rights and duties, Member State citizenship is still necessary and supplementary. At this time, national citizenship of a Member State is a prerequisite for European citizenship: only a Member State may determine which person can acquire the status of citizen (Brasoveanu & Lisievici 2012). We also emphasize the imminent changes affecting the concept of national citizenship, and which will, in the near future, probably lead to significant changes to this institution. We agree that national citizenship must be carefully reconfigured because of the present expansive process of globalization. This must be done very delicately because of ideological and identity issues. There is a dispute about the future of national citizenship which is "often turned into a debate about identity" (Ivic 2012, p. 424) and the shortcomings of European citizenship are not helpful in alleviating the situation. European cultural identity as a positive increment of globalized economics still has a long way to go, and diversified national traditions do not facilitate this process.

**Conclusions**

In the Westphalian Model of the state, national law „is the law within one state, whereas in international law, the only actors are states, and the supranational institutions that states have set up"

(Michaels 2013, p.5); thus, the former is no longer prevalent. There is a clear sign of diminishing national sovereignty, and "we are living in dangerous times for citizenship" (Nyers 2004, p. 211), but "globalization has not yet led to a true paradigm shift" (Michaels 2003, p.1)

The concept of sovereignty needs to be reconfigured in our time (Benhabib 2007), and the institution of citizenship – which is related to national sovereignty – has undergone serious changes (Ivic 2012). Citizenship seen as national membership no longer represents such strong identification with and political affiliation to a state as in the past because of weakened territoriality and increased migration. However, national citizenship has preserved most of its traditional attributes, even while the emergence and recent developments of European citizenship have taken over its protective and integrative functions. We are, without a doubt, witnessing the erosion of the institution of national citizenship in a European context and on a global level as well. The future development of European citizenship is not yet clear enough, because its nature is hard to determine. Identity and affiliation have been disconnected from a traditional sense of belonging to a nation and are "rooted in a particular cultural community" (Benhabib 2007, p. 30). An optimistic expectation in our present era would be the rise of local communities that preserve all traditional values and cultural diversity by reaping the benefits of European integration and globalization. In our opinion, the expectations stated above should be explicitly included in a future model of European citizenship, so as to bring this potent institution closer to individuals.

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