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European Citizenship as a New Concept for European Identity

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Abstract. In the Lisbon Treaty the European symbols are no longer expressing European identity. Because of this, the 'making' of a European identity after the model of a national identity can be called unsuccessful. In this paper, it will be argued that neither other cultural-historical ideas offer a fruitful approach to set up a European identity. Instead of a top-down approach, we will argue for the reversed approach that is able to anchor the European identity in the architecture of the Union, namely the linking of European identity to the concept taking a central position in Union law after Lisbon, the so-called European citizenship.

Keywords: national identity, European identity, European civil society, European citizenship

1 On European identity

From the new 'Treaty text' that was formulated by the European Commission in Lisbon in December 2007 the European symbols, the flag and the hymn were dropped. The European symbols, the characteristic deep blue flag with the twelve yellow stars and Beethoven's hymn "Alle Menschen werden Brüder" that is known from the introduction of Eurovision broadcasting have been banned on the initiative of the Netherlands from judicial practice. The use of these symbols is not strictly forbidden after Lisbon but due to their marginalization they will not be able to function as an additional binding force as they were originally intended. Symbols are out of favour to serve as the identity markers of the new Europe. The abolition of these external identity markers

that stood for a number of other, vaguely formulated markers necessarily will lead to the redrafting of the problem of European identity.

Anthony Smith has been right after all. (Smith 1999) The British researcher of 'national identity' has frequently argued that the so-called transposition of markers of national identity to fill the content of European identity is impossible. The problem with the markers of national identity is that, although these markers can be captured in a matrix, these markers are less constant within space and time, i.e. they are fluctuating. (Leerssen 2006) According to Smith, (1991:14) there are five fundamental markers of national identity that identify a nation: "A named human population sharing a historic territory, or homeland, common myths and historical memories, a mass, public culture, a common economy and common legal rights and duties for all members."

What seems to be right for national identity does not seem to work for European identity. Note that the "named population" is already problematic. In the case of Europe, we should speak of 'Europeans' but the question arises who are Europeans in fact? In the case of nations we refer to Dutch, German, English, French, Hungarian, Polish, and so on. Clear identity markers identify the members of these nations. In any case, there is a marked national language and there is a connection to a native country where the national identity is autochthonous. 'Europeans' do not have a common language, nor do they possess a fixed historic territory. The European *lingua franca* of the Middle Ages, Latin cannot be revitalised anymore. Other possible European *lingua franca*, like one of the three big languages English, French and German are indeed dominant in certain areas of Europe and in some walks of life. English in the commercial field and sciences or German in Central Europe come to mind. However, these languages will have no chance to be accepted as the European *lingua franca* for political reasons. Moreover, the diverse linguistic landscape of Europe is an obstacle for the development of an unambiguous European identity. European multilingualism has caused in the past and is causing in the present a number of ethnic and national tensions and conflicts.

Michael Wintle and other researchers of European identity have convincingly demonstrated that the borders of Europe, especially the Eastern borders of this continent have changed throughout history. In some periods of history, Eastern Europe and Russia did belong to Europe; in some periods they were not a part of the civilised Europe. (Wintle 2007) Language and territory are visual markers that can be tested rather simply in the case of national identities but in the case of European identity this is not possible. This is also true for the other markers that Smith refers to concerning national identity. If we try to get to the heart of the legal system of different member states we will observe

a number of important differences as well.

In December 2007 the results of research into the legal conditions of civil organisations in the Union were presented at an Amsterdam conference by a research team consisting of researchers affiliated to the University of Amsterdam and the Free University of Amsterdam assisted by country specialists from the Union member states, including the Netherlands, Belgium, Germany, Italy, Spain, Sweden, Greece, Hungary, Poland, the Czech Republic and Great Britain.[1] The results were collected in a matrix. In the matrix the above countries were set off against legal features of civil organisations, like the legal restriction of their activities; rules and procedures to establish NGOs; external supervision and sanctions; the public function of NGOs; and the position of persons with a foreign nationality in NGOs and the position of international NGOs in the member states of the Union. The matrix displayed a rather inconsistent, diffuse picture of pluses and minuses. The conclusion of the symposium was that the legal conditions governing the establishment of a civil society are rather different from European to European country. For example, in all the countries there is an obligation to register civil organisations but in each country the procedure is different. It is safe to consider the aspects of the legal system as expressions of national identity. In the near future it is not possible – and this is a somewhat disappointing conclusion – to elaborate an overall European legal system for the organisations participating in the civil society. From this it follows that there are no real cross-border legal guarantees for a European civil society.

Next to the attempt to transpose the identity markers of national identity to a European 'super-state in the making' it has also been argued to represent European identity in a more conceptual framework. These concepts are often based on cultural-historical notions like 'a common European heritage'. In order to make the model work, European cultural-historical developments are being reviewed. From this review a set of 'European' identity markers is composed. After checking whether a specific country or region shares those features, the European identity of the country or region is determined. This so-called conceptual approach of European identity actually poses more ques-

[1]The objectives of this research were presented in 2005. See Marácz, László, Tymen van der Ploeg, Wino van Veen and Lia Versteegh, Civil society and the legal approach of voluntary organisations in Europe. First European Conference: *International Society for Third-Sector Research* (*ISTR*) *and the EMES European Network's*: *Concepts of the third-sector*; *The European Debate*, *Civil Society*, *Voluntary Organizations, Social and Solidarity-Based Economy*, April 27-29, 2005, Paris, France, 20 pp. See conference web page: www.crida-fr.org (accessed February 26, 2011).

tions than it is able to solve. Has Christianity, which has been an indispensable building block of the identity of the Western part of Europe, been that important for the identity of the Western Balkans, a region that will be included in the Union in the next decade or so? As is well-known, the Western Balkans did belong for ages to the sphere of influence of the Islamitic Ottoman Empire, although it is true Christians were rather free to practise their religion.

Because of its expansion the Union will cover large parts of Europe that have experienced more or less the same cultural-historical developments but still the intensity of these developments is very different. The ideals of Enlightenment were implemented in most of the countries of Europe but the modus of implementation and its effects were very different. Some nations received the principles of Enlightenment with a delay, sometimes Enlightenment was brought to European countries by guns, sometimes by the activities of enlightened aristocrat or despot and sometimes Enlightenment only reached the upper echelons of society. Smith characterizes this European state of affairs as a "family of cultures". It is obvious that the new European identity in the modern age can not be founded on the 'family of European cultures'. It is all too diffuse, too incomparable, inherent categories are being excluded and other not-wanted categories are being included, but the biggest anomaly of this approach in terms of "common heritages", "family of cultures" and so on is that these concepts have no place in the architecture of the Union.

Another problem that makes the confusion even bigger but should be taken seriously if we want to solve the issue of European identity is that there are in fact two European traditions of national identity. Because of the expansion of the Union these two traditions will clearly come to the surface. Western Europe acknowledges a tradition of civil identity that has shaped national identity with the means of legal-civil concepts. In the other part of Europe, in Central and Eastern Europe an ethnic concept of national identity has been dominating. This is strikingly illustrated by the fact that Central and Eastern European nations have no problems assigning a national citizenship to ethnic co-nationals living outside of their kin-state. The most important features of ethnic identity include language, culture and folklore. Next to this, the introduction of a civil concept in Central and Eastern Europe might be possible, vice versa will however lead to insurmountable problems. Hence, the starting point for the formulation of a common European identity can only be found within the civil approach of identity. As a consequence, the only way to anchor European identity in the Union not depending on informally defined cultural-historical concepts is to reverse the present top-down attempts and to start on the base, i.e. to link the concept of European identity to European citizenship.

2 Towards a new European identity concept

The European Union is a treaty organisation that was founded in 1957 as an economic community. When the Union was established, the European citizen was clearly non-existent. The concept of European citizenship was not even formulated at that time. The becoming of conscious European citizens has contributed to the development of the notion of 'European citizen'. There are two important factors that played a decisive role in this. Firstly, the objective of the Founding Treaty was to promote the European integration of participating countries by means of economic freedoms, including the free movements of goods, persons, services and capital. The Court of Justice reviews hindrances of these free movements. When the Dutch company Van Gend & Loos was confronted with an unfair tax measurement of the Dutch authorities for the import of products from Germany, the company decided to turn to the law, without knowing whether a citizen or company was entitled to go to Court directly. The positive sentence of the Court in this case created a precedent for all European citizens and companies to appeal to the Court in case of economic discrimination by national authorities.[2]

In the course of time, European law making and Brussels bureaucracy expanded tremendously yielding doubt about the European institutional structure. The lack of transparency and the enormous distance between the citizens and the political European community was being criticized. With the accession of new member states the critical voices increased. The citizens felt that 'Brussels' was governing every aspect of daily life without allowing democratic involvement in the political and legal processes. This state of affairs made the European Council get officially interested in the 'Europe of the citizens'. This resulted finally in the inclusion of European citizenship into the Maastricht Treaty, the Union's treaty adopted in 1992. This was an important fact of a new European policy.[3]

The most important aspect of Article 17 of the Lisbon Treaty, which regulates citizenship within the Union, covers the relation between European citizenship and national citizenship.[4] The status of EU-citizenship is exclusively depending on the status of one's nationality. EU-citizenship is not an inde-

[2]Van Gend & Loos against the Dutch Tax Administration, Court of Justice case 26/62, 1963, ECR 1; in the case of Costa Enel the European Court decided that European law enjoys priority over national law.

[3]This was proposed already at the summit of the European Council of Fontainebleau in 1984.

[4]This article corresponds with Article 8 of the Maastricht Treaty.

pendent citizenship. It is in fact an addition to the status of the nationality. Henceforth, it is better to speak of a dual citizenship. The 'European addition' to this national citizenship consists of a set of rights and duties, including the free movement and the freedom of establishment within the Union (compare with Article 39), the right to vote and the right to candidate for the European Parliament (see Article 19), the right to receive protection from diplomatic or consular representatives from any member state in third countries (see Article 20) and the right to hand in a request to the European Parliament and the Ombudsman of the Union (see Article 21). The most important article of the EU-Treaty is Article 6.[5] This Article emphasizes that the Union is based on the principles of freedom, democracy, respect for human rights, the fundamental rights and the rule of law. According to the protocols of this article the general principles of Union law, like the Convention for the Protection of Human Rights and Fundamental Freedoms are guaranteed. Implicitly this article provides the basis for the duties of citizens with respect to each other. Furthermore, this article is crucial in respecting the common rights of EU-citizens against their national authorities. The third protocol of Article 6 also acknowledges the respect of the national identity of the member states.

The legitimacy of the concept of European citizenship is being questioned, however, because 'citizenship' is traditionally linked to the nation state. The Union is, however, not a state, although the participating members have given partial power to the institutions of the Union. Moreover, until the Maastricht Treaty the direct relation between the EU and its citizens did not even exist. In case of controversies, the proponents of the notion of European citizenship are referring to the advancement of European integration. The opponents of the notion – who are at the same time proponents of the Europe of the nation states – regard European citizenship as an artificial concept that does not offer any advantage to the citizens and may endanger national identities and traditions. (Monar 1998: 168) The reality of Union law is, however, relentless. It is clear that European citizenship is no longer the same as market-citizenship and includes next to economic rights, political, social and cultural rights as well. Sometimes these rights are not very clear because they have been elaborated on the national level. In the case of Bickel and Franz, the question arose whether Union law offers a provision for undertaking legal action in the field of criminal law in one's own mother tongue, without being discriminated compared to the inhabitants of a host country. In reaction to this, the Court defined that "Union citizenship is destined to be the fundamental status of nationals of

[5]This article is based on protocol F of Article 2 of the Maastricht Treaty.

the Member States, enabling those who find themselves in the same position to enjoy the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for." With this the Court became the driving force in order to promote European citizenship adopting the principle of non-discrimination as the key principle: "Within the jurisdiction of the Treaty and in the special clauses of the Treaty as well, discrimination on the basis of nationality is prohibited."

In all sorts of cases where EU-citizenship plays a role, the Court of Justice makes its own decisions. The concept of 'fundamental rights' is accentuated by referring to human rights in the EU Treaty. The protection of these rights was triggered by the well-known Stauder case in 1969. The Court stated in this case that "fundamental rights are included in the general principles of Union law and protected by the Court." In other cases the Court claimed that the protection of human rights is a source of inspiration for the common constitutional traditions of the member states of the European Union.[6] The Court places fundamental rights on an equal footing with fundamental freedoms which include economic rights. This clearly emphasizes that the Union has developed from an economic community into a community of values, facilitating the rights and duties of the European citizens.

The duties include behaving oneself as a good market-citizen, which is regulated in the Treaty under the prohibition of unfair competition. The political duties lie in the field of human rights as far as citizens are affected, like in the field of activity. These duties involve the duty to provide the right to family life or the duty to provide leisure time. One can imagine that in the future other duties will be introduced, like European taxes or the duty to serve in European peace missions. The development of a functional system of rights and duties for citizens without referring to a 'European identity' or a 'European feeling' should be possible. Although the European Commission does not mention 'European citizenship' in her "Agenda 2000", the Commission uses notions as social cohesion when speaking about the integration process. Furthermore, the Commission publishes directives and policy papers to give European culture and languages a position as well. This policy clearly creates social and cultural opportunities for European citizens. It is obvious that 'European citizenship' is being used as an instrument in the relation between the Commission and its European citizens.

[6]Court of Justice 1970, December 17, Internationale Handelsgesellschaft GmbH, Einfuhr- und Vorratstelle für Getreide und Futtermittel, case 11/70 (1970) ECR 1125 and Court of Justice 1974, May 14, Nold KG Commission, case 4.73, 1974 ECR 491.

The Lisbon Treaty, which was concluded in 2007, although not ratified yet because of Irish obstruction, includes the rights, freedoms and principles recognized in the Charter of Fundamental Rights of the EU. The Treaty explicitly mentions in several articles fundamental rights like freedom, dignity, equality and solidarity, which can be referred to by citizens.[7] These rights are, however, absolute. Apart from this, the Treaty accepts the superiority of the European Court of Justice as the most important institution for the protection of human rights in the Union. It is the task of the European Agency for Fundamental Rights, which was recently established in Vienna in 2007 to provide the Union and its member states professional support in these matters.[8] The fact that the Union considers itself a community of values undeniably follows from Article 1a of the Lisbon Treaty: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and man prevail." It is imaginable that in this Europe as a community of values – apart from the fact whether one is emotionally connected to it or not – common languages can be used to serve common interests. These languages could be the well established 'big' European languages like English, French and German, but it may not be excluded that a completely new language will be chosen as a working language. That language will have the function of a *lingua franca* comparably to Latin in the Middle Ages. To maintain neutrality, a completely new working language with a practical character could be chosen as well, such as Esperanto. Then it will be possible to develop a European community of values that will exist independently from national citizenship and identity. The citizens of the EU will be like members of a family all belonging to this community of values, and this will give content to their European identity.

[7]The directives on fundamental rights have been adopted from the Charter of Fundamental Rights of the EU (2000), which is not binding.

[8]The European Agency for Fundamental Rights has been established in Vienna by law (EU) nr. 168/2007, February 15, 2007.

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