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ALL THAT GLITTERS IS NOT GOLD



Discriminatory effects of EU citizenship

Annette Schrauwen

The introduction of European Union citizenship with the Maastricht Treaty in 1992 was welcomed as a significant step towards deeper political integration in the EU. But besides bringing such advantages to EU citizens as free movement and access to political life, it has contributed to an increased gap between EU citizens and those who in Eurospeak are called third-country nationals living in the EU.

To illustrate the different patterns of how EU citizenship enhances this gap, let me introduce three Chinese cousins. Each has lived in a different EU Member State for more than 20 years. The first one lives in Paris, the second in Amsterdam and the third one on Gibraltar. All of them decided not to apply for the nationality of their respective Member State for different economic and private reasons, including the difficult naturalisation process.

The cousin in Paris has always been very active in his neighbourhood and participates in parental committees at his children's school. As the school's possible relocation has



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become a hotly debated issue in the upcoming local elections, the Chinese cousin feels excluded: he is not allowed to vote in these elections. His sense of exclusion increases upon discovering that his Portuguese neighbour, who just recently moved to France, is allowed to vote.

This means that EU citizenship leads to a layer of discrimination not only between French citizens and foreign residents, but also among foreign residents in France – more specifically, between EU expatriates and third-country nationals.

The Chinese cousin living in Amsterdam has more luck. Since 1986, foreigners who have resided in the Netherlands for more than five years are allowed to participate in local elections. However, since the introduction of EU citizenship in 1992, foreign EU citizens do not have to wait five years before they can vote, as EU citizenship gives immediate access to local elections in the EU. The difference in residence term leads to a certain level of discrimination between the Chinese cousin and EU nationals.

So much for local voting rights. In elections for the European Parliament, none of the Chinese cousins is entitled to vote, and therefore all are excluded from the European

polity. This despite the fact that the EU has developed into more than an area of free movement within a single market, as the European Parliament has gained competences to co-decide on the status and rights of third-country nationals in the EU. With the recent financial crisis and the EU rescue measures for Greece and Ireland, the Chi-

nese cousins realised that the EU also has a financial impact on everyone paying taxes in the Member States. As they have paid taxes in the EU for over 20 years, should they bring up the old adage ‘no taxation without representation’?

Furthermore, the cousins understand that the number of seats each Member State has in the European Parliament is determined by the number of residents, including those who do not hold an EU passport. It seems unfair to them to be

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counted in the distribution of parliamentary seats but not be granted the right to vote for candidates to fill those seats.

The United Kingdom is the only EU Member State that grants voting rights for European Parliament elections to third-country nationals; however, only to a specific category of non-EU nationals on a specific part of the territory: Commonwealth of Nations citizens (mostly those of former British colonies) on Gibraltar. After a legal struggle between Spain and the United Kingdom, the European Court of Human Rights made clear that, because European law covered Gibraltarians, they should have the right to vote in European elections.

This situation seems unfair to the third Chinese cousin, who lives and works on Gibraltar. Non-EU nationals who belong to the British Commonwealth may vote in European elections, whereas she may not.

Meanwhile, the Chinese cousin living in Amsterdam learns that in the European elections of 2009, all Dutch expatriates were allowed to vote, including those who have spent their whole lives in the Netherlands' Antilles and Aruba. As Dutch nationals, they are also EU citizens and enjoy the rights attached to EU citizenship. His cousin living in Paris explains to him that inhabitants of certain French overseas territories can also vote in European Parliament elections and even have their own candidates.

Thus, all three cousins are left with feelings of injustice and exclusion, because they are not allowed to vote in European Parliament elections and thus participate in creation of European policies that indisputably affect their daily lives. The European discussion on pensions, health care and social benefits, for example, is relevant to everyone living and working in the EU, not only nationals of one of the Member States.

'Us' and 'the others'?

not only our three Chinese cousins, but about 20 million people have lived for a longer period in the European Union without having the nationality of one of

the 27 Member States. They make up 4 percent of the total EU population. Although they spend their lives in the EU, they do not have the political rights that come with EU citizenship. As EU citizenship is linked to nationality of Member States and not available to foreign residents in the EU, it leads to enhanced discrimination and feelings of exclusion, as shown above.

The EU is aware of the discriminatory impact of EU citizenship and has tried to close the gap between ‘us’ and ‘the others’ through the creation of a long-term resident status, which is available to economically independent third-country nationals who have lawfully resided at least five years in a Member State. Though EU Member States still may impose integration conditions such as language exams before according that status, a third-country national who is granted long-term resident status enjoys free movement rights that come close to those of an EU citizen.

Unfortunately, long-term resident status does not remedy the existing gap in political rights, such as voting rights at local or European level. Member States decide who gets the right to vote in local elections, which leads to perceived discrimination among foreigners in some countries.

On EU level and before December 2009, when the Treaty of Lisbon entered into force, EU Member States were also free to decide who could vote in European Parliament elections, which granted third-country nationals voting rights in some countries. The Treaty of Lisbon, however, changed this by explicitly stating that the European Parliament is composed of ‘representatives of the Union’s citizens’, that is, EU citizens. This has made the gap between EU and non-EU residents in respect to voting rights for the European Parliament even more difficult to bridge.

What to do? The quest for an active civil society

The story of the three cousins shows how the introduction of EU citizenship has led to further discrimination against and exclusion of third-country nationals in the

EU. One way to overcome this situation would be to acquire EU citizenship. But that is only possible via acquisition of the nationality of one of the Member States, and there are multiple reasons why people do not want to obtain nationality of the State they live in. Moreover, acquiring nationality has become more difficult through the introduction of integration and language exams in a number of EU Member States.

Thus, as long as EU citizenship is linked to Member State nationality and not opened up to foreign residents in the EU, an interim way to stop the discriminatory electoral effects of EU citizenship would be to change the electoral laws in such a way that a certain period of lawful residence would confer voting rights.

Local elections are regulated at the national level, so inclusion of third-country nationals should be advocated with the national authorities. A number of EU Member States already allow non-EU residents to vote in local and even regional elections. And in other EU Member States the subject is debated thanks to pressure from civil society and the European Parliament to grant third-country nationals local voting rights similar to those enjoyed by European citizens.

Surprisingly, there is no such pressure for European Parliament elections. For lack of a uniform election procedure, this election is also regulated at the national level. The inclusion of third-country nationals is not really debated at national level, and less so at European level.

Interestingly, extension of voting rights for all non-EU nationals is advocated only on Gibraltar, notably by the British trade union Unite. They held a mock election during the last European Parliament elections, and the number of third-country nationals that placed their mock vote showed the strength of feeling and the perceived unfairness of further distinguishing between categories of foreigners (EU expatriates, Commonwealth citizens and other third-country nationals).

Unfortunately, since the Lisbon Treaty, EU Member States are probably no longer free to determine who gets the right to

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vote for the European Parliament. In fact, it is likely that even Commonwealth citizens on Gibraltar will lose their European vote. The blame here lies with EU citizenship and its ties to nationality. With the explicit link between European Parliament and EU citizenship, the Lisbon Treaty connects nationality ties to the European Parliament and its elections. Thus, EU citizenship enlarges the gap between 'us' and 'the others', and is going in the opposite direction from the statements and attempts made by Union officials to provide long-term resident third-country nationals with rights and obligations comparable to those of EU citizens.

The first working documents and reports for reform of electoral procedures for the European Parliament to prepare for the 2014 elections merely mention the link between Union citizenship and European Parliament as an issue that needs further consideration. These documents suggest calling up a Convention to consider the relationship between Union citizenship and electoral reform. It is far from clear whether there will be such a Convention. If so, it could provide a window of opportunity for those who lobby for more inclusive European voting rights and want to open the shutters closed by EU citizenship.

As always, agenda setting is the first step. Unfortunately, the recently created possibility of a citizen's initiative does not offer help here. According to the rules, a citizen's initiative can only be proposed when the Commission has the competence to initiate legislation. Elections for the European Parliament do not fall within the Commission's competence, nor do voting rights for non-EU residents at local level. If we want to stop the discriminatory effects of EU citizenship, we need multi-level action, targeted at the European Parliament, national parliaments and national governments.

Third-country nationals living permanently in the EU should be given equal voting rights, as EU decisions affect them in their living environment and financial situation just as much as they affect EU citizens.