

Opinion of the European Economic and Social Committee on 'A more inclusive citizenship open to immigrants' (own-initiative opinion)

(2014/C 67/04)

Rapporteur: **Mr PARIZA CASTAÑOS**

On 14 February 2013 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an opinion on

A more inclusive citizenship open to immigrants

(own-initiative opinion).

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 3 October 2013.

At its 493rd plenary session, held on 16 and 17 October 2013 (meeting of 16 October), the European Economic and Social Committee adopted the following opinion by 176 votes to 10, with 14 abstentions.

1. Recommendations and proposals

1.1 The Committee notes that over the last ten years, very significant steps have been taken in the EU with the aim of ensuring equal rights, freedoms and guarantees linked to the status of European citizenship, strengthening the criterion of residence as opposed to nationality. European citizenship is developing into a citizenship of residence, linked to the Charter of Fundamental Rights and the values and principles enshrined in the Treaty (TFEU).

1.2 The Committee believes that the time has come for an evaluation and to identify the unfinished work and remaining obstacles to a more inclusive, participatory and civic European citizenship which is open to everybody residing on a stable basis.

1.3 The Europeans of the 21st century have to face up to a major challenge: broadening the base of our democracies, including new citizens with equal rights and obligations. In order to achieve this, the right to Member State nationality and European citizenship must include all people of immigrant origin, who bring great national, ethnic, religious and cultural diversity. The Committee considers European democracies to be free and open societies, which must be based on the inclusion of all citizens, whatever their origins and reference points.

1.4 The Committee proposes that a debate be launched on whether the current legislative and political bases of European immigration, citizenship and integration policy are sufficient for today's increasingly pluralist and highly diverse European societies.

1.5 The economic crisis has pushed the protection of fundamental rights, integration and the fight against discrimination off the political agenda. The EESC would warn of the risks of

increased intolerance, racism and xenophobia against immigrants and minorities. Politicians, social leaders and the media must act with a great sense of responsibility and set a great social and political example to combat these forms of behaviour and the EU's institutions must act decisively to protect fundamental rights.

1.6 The Committee wishes to send a clear message to those who, based on a form of nationalism which excludes others, define national and European identity in a way that deprives millions of people of citizenship rights, leaving them with a weak legal status, because of their national origin. The quality of democracy in Europe must be improved, extending access to Member State nationality and European citizenship.

Recommendations for the Member States

1.7 Given that many Member States have legislation that is restrictive as regards access to nationality, the Committee calls on them to adopt more flexible legislation and administrative procedures, in order to enable third-country nationals with long-term resident status ⁽¹⁾ to acquire nationality.

1.8 The Committee urges the Member States to conclude agreements with immigrants' countries of origin to enable them to hold dual nationality.

1.9 Member States should sign and ratify the 1997 European Convention on Nationality and the 1992 Convention on the Participation of Foreigners in Public Life at Local Level and show due regard for the principles of proportionality, effective remedy and non-discrimination in their policies on acquisition and loss of nationality.

⁽¹⁾ Directive 2003/109.

1.10 The Committee notes that in a number of Member States, there remain barriers to political rights, such as the right to vote and the rights of association and political participation, and recommends that these Member States amend their legislation to ensure political rights for third-country nationals residing there on a stable basis.

Proposal for Treaty reform

1.11 The Committee proposes that, in future, when the EU undertakes a new reform of the Treaty (TFEU), it amends Article 20 so that third-country nationals who have stable, long-term resident status can also become EU citizens.

1.12 The criterion of people's residence should be used to obtain Union citizenship. As the Committee pointed out in an earlier opinion ⁽²⁾, residence is already a criterion in European law for granting various economic, social, cultural and civil rights and freedoms to third-country nationals. Many of these rights are of a similar nature to European citizenship. However, certain political rights, such as voting, are currently excluded. The Committee reiterates that "legal stable residence must also be a route to achieving citizenship of the European Union" ⁽³⁾.

Proposal for the European Institutions

1.13 The EU Charter of Fundamental Rights is binding in nature and creates a new framework for European policies on immigration, integration and citizenship. The Commission should analyse the way in which the Charter affects the status and rights of third-country nationals, with a view to launching new initiatives to adapt immigration law to the guarantees enshrined in the Charter.

1.14 The Charter provides the general basis for a new concept of civic citizenship (a common set of basic rights and obligations) for third-country nationals. The Committee suggests that developing this civic citizenship should be a priority of the new political programme that will follow on from the Stockholm Programme as of 2014.

1.15 The EU should adopt an **Immigration Code** to provide greater transparency and legal clarity regarding the rights and freedoms of third-country nationals residing in the EU. The Committee considers that European immigration law should guarantee equal treatment and the principle of non-discrimination.

1.16 The Commission should assess the on-going problems in Member States' practices with regard to protecting the fundamental rights of third-country nationals, especially in relation to social rights, mobility and access to effective remedy.

1.17 The Commission should investigate the barriers that in some Member States still hamper implementation of the long-term resident status and the Blue Card ⁽⁴⁾ and should bring infringement proceedings against those Member States that fail to comply with Community legislation.

1.18 In the context of the Agenda for Integration, the Commission should carry out an assessment of the procedures and barriers faced by Member States regarding the acquisition and loss of nationality, and the impact of these on EU citizenship.

1.19 The Committee calls on the European Commission to draw up a report on the state of play of discussions in the EU concerning the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ⁽⁵⁾. The Commission should ensure that the conditions for ratifying this convention are in place.

2. European citizenship

2.1 2013 has been declared **European Year of Citizens**. Citizenship of the Union is one of the most effective instruments for forging a common identity for all Europeans. The Committee considers that the political philosophy which underpinned the founding of the EU remains extremely relevant: as Jean Monnet said, "We are not making a coalition of States, but are uniting people".

2.2 European citizenship is not a meaningless concept, but rather a specific legal and political status made up of rights and freedoms. Democracy, freedom, the rule of law, equality and human rights are the values underpinning the European Union, as enshrined in Article 2 of the Treaty on European Union.

2.3 The Committee believes that in these difficult times, with the serious economic, social and political crisis which is devastating Europe, innovative strategies need to be implemented to promote a more open and inclusive citizenship and boost the confidence of everyone living in the European Union.

2.4 The European Commission has published the second EU citizenship report, entitled *EU citizens: your rights, your future*, which examines some of the existing obstacles and problems. The Committee welcomes the Commission's report, but would point out the absence of political action regarding third-country nationals who have similar European rights and freedoms, but who do not have full citizenship.

⁽²⁾ OJ 208 C, 3.9.2003, p 76.

⁽³⁾ OJ C 208, 3.9.2003, p. 76, point 4.3.

⁽⁴⁾ Directive 2009/50.

⁽⁵⁾ United Nations General Assembly of 18.12.1990.

2.5 The Committee is launching a number of initiatives to promote more active European citizenship, but draws attention to the seriousness of the problem facing many young people who are second- or third-generation descendants of immigrants and who have to contend with serious situations of discrimination and exclusion, which has the effect, in particular, of diminishing their sense of belonging to a society that considers them "second class citizens".

3. The European integration agenda: involving immigrants in the democratic process

3.1 Ten years ago, the Committee proposed that integration should form an essential part of the common immigration policy and called for the implementation of a European agenda. In 2004 the Council adopted the Common Basic Principles for integration, which include the following: "access for immigrants to institutions, as well as to public and private goods and services, on a basis equal to national citizens and in a non-discriminatory way is a critical foundation for better integration" and "the participation of immigrants in the democratic process and in the formulation of integration policies and measures, especially at the local level, supports their integration".

3.2 The Commission, in cooperation with the EESC, is implementing the European integration agenda and promoting many activities to support the Member States. The EESC and the Commission have set up the European Integration⁽⁶⁾ Forum to facilitate the participation of immigrants and civil society organisations.

3.3 The Committee has contributed to the integration agenda through various opinions⁽⁷⁾.

3.4 The Forum has analysed the importance to integration of immigrants' participation in the democratic process and consider that Member States which facilitate migrants' access to citizenship rights improve integration. The Committee therefore calls on Member States, within the framework of their domestic legislation, to adopt more flexible laws enabling third-country nationals who are long-term residents to acquire nationality.

3.5 The Committee considers that unions, employers and NGOs have an inclusive approach, and ease the participation of immigrants in the democratic life of their organisations. Civil society aims to support third-country nationals who are active members of organisations.

3.6 Integration is a two-way social process of mutual adaptation between immigrants and the host society, which should be supported through good governance in the EU, at the national, regional and local levels. A common European focus offers great added value, because it links integration to the values and principles set out in the Treaty, to equal treatment and non-discrimination, to the Charter of Fundamental Rights, the European Convention on Human Rights and the Europe 2020 agenda.

3.7 European legislation on immigration should ensure equal treatment and the principle of non-discrimination. In this connection, the issue of rights and possibilities relating to language and religion should be mentioned. The Committee considers it a very positive step that the Commission is proposing a Directive⁽⁸⁾ to facilitate the exercise of rights conferred on workers in the context of freedom of movement.

3.8 However, the Committee has proposed that everybody residing in the EU should receive fair treatment, regardless of their migratory status or nationality. To that end, some of the current restrictions to EU citizenship status need to be overcome.

4. Nationality, residence and EU citizenship

4.1 The Committee wishes to renew the debate on the nature of European citizenship, in relation to third-country nationals residing legally and on a stable basis in the EU. There must be a return to the approach originally set out in the Conclusions of the Tampere Council⁽⁹⁾. Fair and equal treatment for European citizens and nationals of third countries, as laid down in Tampere⁽¹⁰⁾, is still a political priority, since the objectives have not been achieved after 14 years of the common immigration policy.

4.2 It falls to Member States to grant nationality on the basis of their own domestic law, as the Treaty does not confer on the EU powers to harmonise legislation: this is therefore a matter covered by national sovereignty.

⁽⁸⁾ COM(2013) 236 final.

⁽⁹⁾ Tampere European Council, Presidency conclusions, 15 and 16 October 1999.

⁽¹⁰⁾ Paragraph 18 states that:

The European Union must ensure fair treatment of third country nationals who reside legally on the territory of its Member States. A more vigorous integration policy should aim at granting them rights and obligations comparable to those of EU citizens. It should also enhance non-discrimination in economic, social and cultural life and develop measures against racism and xenophobia.

Paragraph 21 stipulates that:

The legal status of third country nationals should be approximated to that of Member States' nationals. 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.

⁽⁶⁾ <http://ec.europa.eu/ewsi/en/policy/legal.cfm>

⁽⁷⁾ OJ C 318, 29.10.2011, pp. 69–75; OJ C 48, 15.2.2011, pp. 6–13; OJ C 354, 28.12.2010, pp. 16–22; OJ C 347, 18.12.2010, pp. 19–27; OJ C 128, 18.5.2010, pp. 29–35; OJ C 27, 3.2.2009, pp. 95–98; OJ C 318, 23.12.2006, pp. 128–136; OJ C 125, 27.5.2002, pp. 112–122.

4.3 However, in all Member States, immigrant organisations, unions and NGOs are running initiatives and promoting debate with a view to speeding up naturalisation and nationality procedures for immigrants and making them more flexible, facilitating integration, since societies and states are not being inclusive if they deny equal treatment and rights of participation to people who reside there on a stable basis.

4.4 The concept of European citizenship is firmly anchored in the Treaties, in EU law and in the Charter of Fundamental Rights. Article 20 of the Treaty (TFEU) in particular states that "every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship". Nationality, as acquired and lost under the different national legislations, is thus the "master key" to EU citizenship⁽¹⁾.

4.5 The close link between European citizenship status and nationality of a Member State has been the subject of many debates and criticisms since European citizenship was established in 1992 by the Maastricht Treaty. This connection means that third-country nationals residing legally in the EU are in principle formally excluded from Union citizenship, and these people have therefore remained "invisible" in European debates on citizenship and in participation in politics and in democratic life.

4.6 A restrictive interpretation of Union citizenship takes the view that there is a homogenous and clearly identifiable group of people known as European citizens and another of people classified as third-country nationals who are not considered citizens of Europe.

4.7 But who are these European "citizens"? Is it right to restrict Union citizenship to people with the nationality of a Member State? Do third-country nationals not have certain rights and freedoms similar and comparable to those of European citizens? What are the current limitations and challenges of Union citizenship? What role do political participation and the right to vote play in this context? Why are many young people of immigrant background still viewed as "second-class citizens"? If immigrants' participation in the democratic process helps them to integrate, why are they excluded?

4.8 So far, it has been the Member States who have decided indirectly which people are European citizens and which are not. This must change, so that Union citizenship can be at the heart of European integration.

⁽¹⁾ De Groot, G.R. (1998) The relationship between the nationality legislation of the Member States of the European Union and European Citizenship, Chapter VI, in M. La Torre (ed.), *European Citizenship: An Institutional Challenge*, The Hague: Kluwer International Law.

5. "Civic" European citizenship

5.1 The Charter of Fundamental Rights provides the general bases for a new concept of civic, inclusive and participatory citizenship, which the Committee believes needs to be established.

5.2 The Commission has stated that the Charter of Fundamental Rights could provide a reference for the development of the concept of civic citizenship (comprising a common set of core rights and obligations) for third-country nationals.

5.3 The Charter of Fundamental Rights of the EU is binding, with a legal value similar to that of the Treaties. The Charter has transformed and consolidated the features of Union citizenship status. It applies both to European citizens and to third-country nationals. Title V is dedicated to "citizens' rights", but its Article 41 (right to good administration) and Article 45(2) (freedom of movement and of residence) also include nationals of third countries.

5.4 The EESC would point out that the other provisions of the Charter apply to everybody, regardless of nationality. The Charter restricts Member States' discretionary power regarding matters relating to security of residence, family reunification, expulsion, and acquisition and loss of nationality. One of the Charter's crucial features is Chapter VI on justice, which includes the right to effective justice and remedy if fundamental and citizenship rights are violated.

5.5 The Committee believes that, taken together, Union citizenship and the Charter can have profound effects in terms of extending the personal scope of European citizenship status. One of the greatest challenges is to guarantee access to effective remedy for third-country nationals whose fundamental rights and freedoms have been subjected to exemptions and violations by Member States and their authorities in relation to European law⁽¹²⁾.

5.6 During the preparatory work for the European Convention, the Committee adopted a Resolution in which it stated that "Policies for integrating immigrants need to be improved. The Committee calls on the Convention to examine the possibility of granting Union citizenship to third-country nationals with long-term resident status⁽¹³⁾."

⁽¹²⁾ S. Carrera, M. De Somer and B. Petkova (2012), *The Court of Justice of the European Union as a Fundamental Rights Tribunal: Challenges for the Effective Delivery of Fundamental Rights in the Area of Freedom, Security and Justice*, CEPS Policy Brief, Centre for European Policy Studies, Brussels.

⁽¹³⁾ OJ C 61, 14.3.2003, p. 170, point 2.11.

5.7 In its Communication on Community immigration policy⁽¹⁴⁾, the Commission set the objective of developing a European legal framework for the admission and residence of third-country nationals and a common legal status based on the principle of providing sets of rights and responsibilities on a basis of equality with those of European citizens, but differentiated according to the length of stay.

5.8 Enabling migrants to acquire citizenship after a minimum period of five years might be a sufficient guarantee for many migrants to settle successfully into society or be a first step in the process of acquiring the nationality of the Member State concerned.

5.9 In its opinion on *Access to European Union citizenship*, the Committee pointed out that this broad definition corresponded to the one adopted by the Commission and termed "civic citizenship".

5.10 The Committee argued that "civic citizenship" at European level should be understood as "participatory and inclusive citizenship" for all persons who reside on a stable basis in the Union's territory, with equality for all before the law as one of its core principles. In its opinion on *Access to European Union citizenship*, the Committee pointed out that this would enshrine "the commitment to equal treatment for third party nationals in order to promote and facilitate the civic integration of third party nationals residing legally and on a stable basis in one of the Member States (equality before the law)" and make it possible to tackle the discrimination currently being suffered by third-country nationals.

6. Ten years on, there are still problems that need to be addressed

6.1 Over the last ten years, Europe has implemented policies, adopted legislation and laid down case law which is highly significant both in terms of Union citizenship and in terms of the status of third-country nationals. These processes have meant a gradual expansion of the rights, freedoms and guarantees of European citizenship, on the basis of residence. Nevertheless, the Committee believes that expansion to be incomplete, with too many limitations.

6.2 One of the most important legislative steps has been the adoption of the **Directive on citizenship (2004/38)**, which harmonised the previously dispersed and fragmented European legislative framework on free movement and residence in a single legal instrument. The EU has been particularly active in

recognising rights and anti-discrimination provisions for third-country nationals with family members who are European citizens. The Directive expressly recognises various rights and freedoms for family members who are third-country nationals which are of a very similar nature to those enjoyed by European citizens.

6.2.1 The Committee agrees with the Commission that one of the most important challenges is to make the rights laid down in the Directive accessible to everybody in their daily lives, eliminating certain national bad practices, and offering effective legal protection for those whose citizenship freedoms have been violated.

6.2.2 While these "citizenship rights" derive directly from the family relationship, they can only be accessed when European citizens and their families exercise their right of free movement or emigrate to a second Member State. The exercise of intra-EU mobility is still one of the conditions for granting family members the protection conferred by European citizenship⁽¹⁵⁾. The Directive also recognises a permanent right of residence for those family members after five years of residence.

6.2.3 However, the Committee believes that national authorities still have laws and practices which hinder free movement and residence for European citizens' family members. Furthermore, there are still situations of reverse discrimination suffered by foreign family members of European citizens, which must be resolved⁽¹⁶⁾.

6.3 **The Court of Justice of the EU** has been very active and has played a positive and proactive role in protecting and interpreting the rules and individual rights attached to European citizenship⁽¹⁷⁾. The Court of Justice has stated that Union citizenship is destined to be the fundamental status of European citizens⁽¹⁸⁾.

6.3.1 The Committee welcomes the Court of Justice's case law on citizenship, and would point out that the majority of that case law was incorporated with the adoption of the Directive, since it brought together all of the main judgments on matters relating to free movement and European citizenship up to 2004.

⁽¹⁵⁾ Guild, E. (2004), *The Legal Elements of European Identity: EU Citizenship and Migration Law*, The Hague: Kluwer Law International, European Law Library.

⁽¹⁶⁾ European Annual Report on the free movement of workers in Europe 2010-2011, K. Groenendijk et al., January 2012, European Commission, DG Employment. See <http://ec.europa.eu/social/main.jsp?catId=475&langId=en>.

⁽¹⁷⁾ Kostakopoulou, T. (2007), *European Citizenship: Writing the Future*, European Law Journal, Special Issue on EU Citizenship, Vol. 13, Issue 5, pp. 623-646.

⁽¹⁸⁾ C-184/99, Grzelczyk.

⁽¹⁴⁾ COM(2000) 757 final.

6.3.2 The Court of Justice has also produced extensive case law on the general principles of European law⁽¹⁹⁾, such as those relating to proportionality and non-discrimination, which apply to everybody, regardless of their nationality or migration status, affected by Union actions or law. The case law has also related to the competences of the Member States regarding the acquisition and loss of nationality, and their implications for European citizenship and the rights connected to it.

6.3.3 The Court has stated on several occasions that in exercising powers on matters of nationality, the Member States are obliged to pay particular attention to the consequences of their legislation and decisions in the context of European law on citizenship and free movement, in particular the full exercise of the rights and freedoms attached to EU citizenship⁽²⁰⁾.

6.4 **Since 2003, a package of European law on immigration has been in force**, with legal instruments relating to entry and residence conditions for third-country nationals. Some of the rights and guarantees provided by these are similar to those conferred by European citizenship. **Directive 2003/109 concerning the status of third-country nationals who are long-term residents**⁽²¹⁾ established a common legal status for third-country nationals residing legally in the territory of a Member State for an uninterrupted period of five years.

6.4.1 The Committee would point out that the Directive's approach was to harmonise the status of European citizens and the status of third-country nationals who are long-term residents, and protect their security of residence in the Union. However, the common status does not yet offer these people equality and full citizenship, but rather "quasi-equality" or "third-class quasi-citizenship" subject to a number of conditions⁽²²⁾. As the Commission pointed out in its report on the application of the Directive⁽²³⁾, while Article 11 of the Directive provides for quasi-equality of treatment between long-term residents and nationals, there is a serious lack of information regarding the way it should be applied, hindering its effective implementation.

⁽¹⁹⁾ De Groot, G.R. (2005), Towards a European Nationality Law, in H. Schneider (ed.), *Migration, Integration and Citizenship: A Challenge for Europe's Future*, Vol. I, pp. 13-53.

⁽²⁰⁾ See for example the following cases: C-369/90, Micheletti, C-192/99, Kaur, C-135/08, Rottmann. See J. Shaw (ed.) (2012), *Has the European Court of Justice Challenged Member States Sovereignty in Nationality Law?* EUI Working Paper RSCAS 2011/62, EUDO Citizenship Observatory, Florence.

⁽²¹⁾ For an analysis on the Directive and its origins, see S. Carrera (2009), *In Search of the Perfect Citizen? The intersection between integration, immigration and nationality in the EU*, Martinus Nijhoff Publishers, Leiden.

⁽²²⁾ See Article 11 of the Directive. Groenendijk, K. (2006), *The legal integration of potential citizens: Denizens in the EU in the final years before the implementation of the 2003 directive on long-term resident third country nationals*, in R. Bauböck, E. Erbsoll, K. Groenendijk and H. Waldrauch (eds.), *Acquisition and Loss of Nationality, Volume I: Comparative Analyses: Policies and Trends in 15 European Countries*, Amsterdam: Amsterdam University Press, pp. 385-410.

⁽²³⁾ COM(2011) 585: Report on the application of Directive 2003/109/EC

6.4.2 Furthermore, as one of the aspects of its added value, the Directive provides for the possibility of exercising "free movement" or mobility to a second Member State and also to be treated in a "quasi-equal" manner. The inclusion of an intra-EU mobility or free movement dimension brings to mind the same EU citizenship model followed by European citizenship law to promote mobility within the EU.

6.5 Other directives relating to European immigration law also include an "intra-EU mobility" dimension and approach similar to that of the long duration status, in order to increase the attractiveness of European labour markets, **such as Directive 2009/50 on the Blue Card for highly-skilled immigrants**.

6.6 However, the Committee believes that, due to shortcomings in implementation on the part of certain Member States, the conditions and criteria for enabling third-country nationals and their families to reside and work in a second Member State other than the one which granted them the European permit, are far from being equivalent to the cross-border freedom of movement of European citizens.

6.7 Furthermore, the fragmented and sectoral nature of the legislative framework regarding legal immigration does not favour equal treatment or a uniform framework of rights for third-country nationals residing in the EU and wishing to exercise free movement within it⁽²⁴⁾.

7. Dialogue with countries of origin

7.1 The Committee has in other opinions proposed stepping up social and political dialogue with countries of origin of immigrants coming to Europe. The EESC welcomes the fact that a number of agreements have been signed.

7.2 This dialogue should also include rights of citizenship. The Committee considers that agreements between states that allow dual citizenship are a very positive step towards third country nationals being able to hold civil, social and political rights.

7.3 Some Member States, however, make political rights conditional on reciprocity. The Committee notes that while this can be a positive mechanism, in some cases it limits the rights of individuals when countries of origin do not support the reciprocity criterion.

⁽²⁴⁾ S. Carrera et al. (2011), *Labour Immigration Policy in the EU: A Renewed Agenda for Europe 2020*, CEPS Policy Brief, Centre for European Policy Studies, Brussels.

7.4 The EESC would like to see EU external policy fully committed to the drive for global governance of international migration, under the United Nations umbrella and on the basis of, among other applicable international legal instruments, the Universal Declaration of Human Rights, the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (which the Committee has proposed ⁽²⁵⁾ that the EU ratify), the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the ILO conventions.

Brussels, 16 October 2013.

The President
of the European Economic and Social Committee
Henri MALOSSE

⁽²⁵⁾ OJ C 302 de 7.12.2004, p. 49.