



European Network Against Racism
Réseau européen contre le racisme
Europäisches Netz gegen Rassismus

EU Citizens' Rights – The way forward

Preliminary comments of the European Network Against Racism
on the Commission Working Document: Consultation on EU
Citizenship

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The European Network against Racism (ENAR) is a network of some 600 NGOs working to combat racism in all EU Member States. ENAR is determined to fight racism, racial discrimination, xenophobia and related intolerance, to promote equality of treatment between EU citizens and third country nationals, and to link local/regional/national and European initiatives.

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Introduction

ENAR welcomes this opportunity to contribute to the debate focusing on the rights of individual citizens stemming from Union citizenship.

This consultation and the policy debate that will take place over the summer 2010 to inform the preparation of the Communication on Union Citizenship, to be issued in October 2010, is an important opportunity to reshape the way in which the European Union approaches EU citizens' rights and to enhance the notion of EU Citizenship.

How citizenship is defined, applied and experienced is an important element in the fight against racism in Europe. Both the concept and practice of citizenship require rethinking. For organisations striving for equality the question is how to move forward. It is not possible to do away with the legal construct of citizenship in European Union countries. But it is necessary to rethink social, civil, political and cultural constructs of citizenship, both at the national and European levels, and ensure that they are inclusive in theory and practice.

ENAR hopes that the EU would seize this opportunity to rethink its current concept of EU Citizenship in order to base it on more inclusive and non-discriminatory principles by putting non-discrimination, anti-racism and equality mainstreaming at the heart of the debate.

In this paper we primarily respond to the questions addressing the obstacles faced by EU citizens in the exercise of their rights under EU citizenship, from an anti-racist perspective, and then go on to explaining why we believe enhancing EU citizenship is an important issue for the European Union to focus on in the upcoming debate.

These priorities are drawn from a wide range of debates within the ENAR network and are based upon the evidence that we have gathered over the past 10 years of working together against racism.

Key Commission Consultation Questions

QUESTION 1: What are the main obstacles European Union citizens currently face in the exercise of their rights resulting from Union citizenship? What could be done to address these obstacles?

ENAR RESPONSE:

The ENAR Shadow Reports demonstrate that racism and discrimination can be experienced by EU citizens when they migrate to another Member State.

More substantial reference to the negative experiences of EU citizens in the context of intra-EU migration has been noted in recent national reports. The experiences of Bulgarian and Romanian nationals including Roma are identified as of emerging concern¹.

¹ ENAR Shadow Report 2007, Racism in Europe

While three EU15 Member States² granted equal rights to the new Member States in 2004, no Member State granted the same rights to nationals of Bulgaria and Romania upon their accession to the EU.

While nationals of EU12³ Member States have particular experiences, all nationals of EU Member States, new and old, can be at risk of discrimination in other Member States, as demonstrated through the profile of people seeking redress through anti-discrimination legislation⁴.

⇒ **Discrimination and the violation of fundamental rights are key obstacles to the free movement of EU citizens and action to tackle these must be a priority**

The denial of the right to free movement for ethnic minorities in Europe results from different barriers. There is evidence that the free movement rights of certain ethnic and religious minorities, in particular the Roma, are regularly violated. Thus enforcement of the legal rights to free movement must take particular account of the right to non-discrimination and must be undertaken swiftly in order to ensure an effective remedy for those subject to illegal deportation or other violations of the right to free movement.

More subtly, the right to free movement for ethnic and religious minorities in Europe is curtailed by a series of barriers linked to racism and discrimination. The lack of comprehensive protection against discrimination hinders free movement of EU citizens as does the lack of a minimum level of protection against racism as a crime. Moreover, the problems in securing the existing rights to non-discrimination, such as lack of transposition, lack of access to justice and wide exceptions to the principle of equal treatment represent significant barriers to free movement for EU citizens. There is a need to ensure that anti-discrimination is at the core of EU citizenship and that means adequate transposition of existing law. The lack of sanctioning from the mandated EU institutions of countries which hinder the right to free movement on account of race (especially for Roma citizens of EU countries going to, for e.g. Italy) is another barrier for a consistent notion of EU citizenship. Such barriers need to be addressed.

⇒ **Language and Cultural Barriers**

Language barriers often result in EU citizens not being able to go through bureaucratic processes in order to benefit from services to which they are entitled under EU citizenship. Moreover, they are very often in a position of information deficit meaning that they are not fully aware of their rights and the procedures which need to be undertaken in order to actualise those entitlements. The particular nationality of a migrant, including whether s/he comes from within or from outside the EU, has little impact on the ability to overcome these difficulties. In this regard, positive action measures should be taken to overcome these hurdles. Such measures could include the provision of information manuals in different languages, translation of core application forms and assistance with the filling in of such forms.

² Countries concerned include Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden and the United Kingdom.

³ Countries concerned include Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia.

⁴ ENAR Shadow Report 2007, Racism in Europe.

QUESTION 2: In which areas should the rights of EU citizens be strengthened?

ENAR RESPONSE:

⇒ **Access to information about rights**

As mentioned above, EU citizens, and ethnic and religious minorities in particular, are very often in a position of information deficit and are not fully aware of their rights and the procedures which need to be undertaken in order to actualise those entitlements. Portuguese workers who are denied certain rights in Northern Ireland for instance, on the basis that they are simply not British, when in fact they are entitled to those rights as EU citizens, are treated unequally and do not challenge such actions as they are simply not aware of the rights they are entitled to under EU citizenship. Raising awareness about EU citizens' rights is therefore crucial.

⇒ **Access to the labour market and basic social services**

The context of intra-EU migration has changed somewhat since the accession of "new" Member States in 2004 and in 2007. A8⁵ nationals are excluded from accessing the labour market by virtue of their EU citizenship in all but three Member States.

In Ireland, Sweden and the UK where the labour market is open to all EU nationals except nationals of Bulgaria and Romania, there is evidence to suggest that nationals of EU12 Member States face barriers that have not affected nationals of EU15 Member States to the same extent. For example, the "habitual residency condition" in Ireland was introduced in response to accession in May 2004, limiting access to certain entitlements and services. Such conditions had not been placed on EU15 nationals. Since its introduction, the habitual residency condition applies to all those not habitually resident including all EU nationals and returned Irish emigrants.⁶

In 2007 a high profile incident occurred in Ireland, highlighting the "grey area" in which EU citizens from Romania and Bulgaria find themselves; this was the case of Roma from Romania who were residing in a camp on a roundabout of a motorway, the M50 with no services and dependent on the charity of NGOs. The EU citizens who were also Roma, found themselves homeless and unable to access services despite being EU citizens.

⇒ **Representation and participation in European and local elections**

ENAR has raised concerns regarding the low representation of EU citizens of migrant and/or ethnic minority origin among election candidates. Currently under 2% of MEPs are from ethnic minorities and yet over 5% of the European population is of ethnic minority origin.

Related to this is the issue of political participation of ethnic minorities. ENAR had called on political parties to ensure that they would encourage the political participation of ethnic and religious minorities as much as possible in the 2009 elections; in order to do this; their programme should have also addressed the specific and concrete concerns of this part of the population.

⁵ 12 of the EU15 Member States put in place travel restrictions for nationals of EU10 Member States, with the exception of citizens of Malta and Cyprus. These eight countries are commonly referred to as A8 countries.

⁶ Evidence from NGOs suggests that some A8 nationals are paid below the minimum wage.

ENAR believes that any actions taken to promote participation in elections to the European Parliament and in local elections must include specific actions aimed to ensure ethnic and religious minorities' participation.

⇒ **Clear pathways to citizenship**

The only way to access EU citizenship is by having one of the Member States' nationalities. However, EU Member States have different rules regarding access to nationality, rules which have evolved over the course of time and which have been adapted more or less successfully to immigrants settling on their territory. It causes a paradoxical situation: the same person coming from a third country under the same circumstances will be treated very differently depending on the Member State they live in. Some Member States have relatively straightforward systems to access nationality; others have very lengthy and strict procedures. An EU standard on this issue is needed to address the difficulties that some persons face in certain EU Member States.

⇒ **Access for third country nationals to similar citizenship rights**

In addition to the symbolic nature of this, giving third country nationals the possibility to vote and stand for elections can be seen as a step on the pathway to them getting EU citizenship, and as such encourages a larger number of potential active EU citizens.

Additional Comments

The issue of citizenship returns to the question of the type of society which is being constructed. In order to be viable, the EU must be built on the basis of its diversity and by allowing all those who live within its borders to take part fully in this project of developing society. If the EU wants something other than an economic project, if it really wants a social and political Europe, then the citizenship of the Union must be accorded to all the people who live there – including third country nationals who are residents in Europe.

All the people who live in the European Union must have the right to free movement, to settle in a country of the Union, to vote and to stand in local and European elections. Electoral systems however, are very different across EU Member States, thereby creating extra hurdles. A single uniform EU system needs to be put in place.

The right to vote, even if it is not in itself sufficient to solve all the problems of collective life, is sensible not only because it can be demonstrated in relation to a political project but above all because it symbolises the equality of the citizens.

If we want EU citizenship to correspond to the aspirations and needs of all its inhabitants, we must mobilise to promote a multicultural, social and egalitarian Europe which respects the rights and dignity of the individual.

ENAR, which defends this idea of a multicultural Europe, respecting its diversity, which promotes equal rights and opportunities for all, calls for the recognition of EU citizenship for all the residents of the EU and so that the obstacles which stand in the way of a full and effective exercising of these rights are removed.

Even if citizenship of the Union does not actually indicate major progress in terms of rights, it is essential not to underestimate the symbolic significance which it represents.

Furthermore, de-linking EU basic rights, such as freedom of movement or voting rights, from national citizenship is key in introducing a new and visionary approach to EU citizenship. One partial, but significant step has been made with the EU Charter of Fundamental Rights however we need to move further. Whether it is based on residence or “constitutional patriotism”, citizenship needs to be reshaped.

Conclusion

ENAR strongly hopes that the European Commission’s Communication on Union Citizenship will take into account the experiences and social realities of the many ethnic and religious minorities who live in Europe and who have rights stemming from EU citizenship. Based on a sound human rights basis, the concerns outlined in this submission analyses the main obstacles faced by ethnic and religious minorities when exercising their EU rights. In this context ENAR hopes that there will be increasing political will to address these issues at European level, and to use European Citizenship as a tool to make Europe more inclusive.

To this end, ENAR calls on the following specific policy actions:

- Ensure all EU citizens are treated equally
- Ensure anti-discrimination is at the core of EU citizenship through adequate transposition of existing EU law
- Establish an EU standard on access to citizenship
- Ensure better political representation and participation of EU ethnic and religious minorities
- Ensure access for third country nationals to similar citizenship rights
- Raise awareness about EU citizens’ rights