



**THE CASE FOR ADDING TO  
EUROPEAN CITIZENSHIP**

# **A RIGHT TO A HEALTHY ENVIRONMENT**

BACKGROUND DISCUSSION PAPER



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## THE CASE FOR ADDING TO EUROPEAN CITIZENSHIP A RIGHT TO A HEALTHY ENVIRONMENT

### 1. Background

When Union citizenship was added to the Maastricht Treaty in 1993, it was on the basis of a proposal by Spain which saw this as a first step of an “evolving process” since a “genuine Union will logically require full-scale European citizenship.” The aim was to get agreement on a first set of rights, essentially linked to freedom of movement and procedural rights for citizens in relation to the EU Institutions, as a first step of an “evolving dimension.” European citizenship was seen as a dynamic process, “which should inform all the policies of the Union”. Apparently one of the draft texts on Union citizenship included an environmental right and duty: “Citizens should have a right to enjoy a healthy environment coupled with an obligation to preserve and protect it”.<sup>1</sup> This idea of the core<sup>2</sup> set of rights in what has now become Articles 18-24 of the Treaty on the Functioning of the European Union (TFEU) – to which others may be added – is reflected in Article 25, which requires the Commission to report every three years on developments related to Part II on Non-discrimination and Citizenship of the Union and, if appropriate, to propose new rights. The next Commission report is due in early 2020.

The Commission has, thus far, failed to act in a future-oriented direction and propose to add any new rights in any of the reports. Instead, these reports largely cover past activities. This reflects an absence of political will and the fact that Article 25 does not follow the normal legislative process of co-decision between the European Parliament and the Council and majority voting. In the area of citizenship, decisions are taken via a special legislative procedure: after the consent in the European Parliament by unanimity in the Council and in many member states ratification by national parliaments. This procedural obstacle should not have led legislators to forget the original intention of EU citizenship as an incomplete and evolving status. Going back to the legal definition of the citizenship of the Union is a helpful reminder that it is not limited to any particular set of rights. According to Article 20 TFEU: “Citizenship of the Union is hereby established. 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”. Nothing in principle excludes linking the right to a healthy environment to it. Indeed, when the intergovernmental conference was called in 1996 for the next revision leading to the Treaty of Amsterdam, European environmental organisations proposed adding the following article to Part 2 on Citizenship of the Union: “Every citizen of the Union shall have the right to a clean and healthy environment, access to the decision-making process, information, and justice as part of a general right to human development” (Greening the

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<sup>1</sup> Kostakopoulou, D. (2019). Imagine: European Union Social Citizenship and Post-Marshallian Rights and Duties. In *Debating European Citizenship* (pp. 279-285). Springer, p. 283.

<sup>2</sup>Author: Tony Venables, Founder  
ECIT Foundation  
Web: <https://ecit-foundation.eu/>  
E-mail: [info@ecit-foundation.eu](mailto:info@ecit-foundation.eu)

Treaty 2 ). However, governments showed little political will at the time to develop Union citizenship.

Is it too late to revive the initial spirit of the Treaties, add new rights and link them to other European policies as intended? There are two reasons for asserting that on the contrary this is the right time to do so:

Firstly, there is a case for asserting that freedom of movement, the original right of the European citizen, had to become better established before this new status could be linked to other policies. The balance sheet is mixed when it comes to freedom of movement – there is still a gap between the fine principles of European law and the obstacles people find in daily life, particularly those on a low income and likely to suffer discrimination. Nevertheless, the number of people living and working in another Member State has doubled over the last decade to reach 18 million. Eurobarometer polls clearly show that freedom of movement is the most popular of the EU's policies and that 73% of the population on average see themselves as European citizens.<sup>3</sup> When Union citizenship was first introduced in the Treaties, many observers saw it as little more than a public relations exercise, but it has deeper historical roots, more legal substance and is more widely practiced than they assumed. Furthermore, the inclusion of citizenship in the Treaties has encouraged a process of consolidating and updating the legislation in the Citizens' Rights Directive 2004/38/EC, the rules on the coordination of social security entitlements and the recognition of professional qualifications. Above all, the European Court of Justice has made this citizenship a "fundamental status" in a series of landmark rulings and one which can be invoked in a court.<sup>4</sup> Thanks to the Luxembourg Court this is a real citizenship and that status had to be established first before linking EU citizenship in any meaningful way to other policies.

Secondly, however, the focus has become too narrow. Over 12 years of EU crises with banking, the Euro, migration, security, Brexit, climate and the rise of nationalistic populism, EU citizenship has become largely irrelevant despite its potential role in creating solidarity among citizens across borders to help find solutions to such crises. At best EU citizenship has offered an escape route allowing those hit by youth unemployment in the South for example to find employment in the better performing economies of the North, adding to East-West intra-EU mobility from new to old Member States. The rights attached to European citizenship to petition the European Parliament, elect the European Parliament, complain to the European ombudsman or launch a European citizen's initiative are not necessarily linked to freedom of movement and can be used without moving from one's country. There are also rights of a similar kind in other parts of the Treaties, such as the right of access to documents or those stemming from EU regulations and directives. One area where these rights are used more than in others is environmental protection. There is therefore a link between environmental protection and EU citizenship. These are however procedural rights of access and participation and not substantial rights like that to freedom of movement. EU citizenship will only become as relevant to stayers as to movers when the rights attached to this status are expanded.

## **2. The case for attaching a right to a healthy environment to EU citizenship**

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<sup>3</sup> European Commission, 'Spring 2019 Standard Eurobarometer: Europeans upbeat about the state of the European Union – best results in 5 years', Press Release, 5 August 2019, Available at: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_19\\_4969](https://ec.europa.eu/commission/presscorner/detail/en/IP_19_4969)

<sup>4</sup> The ECJ made the claim that Union citizenship is "destined to become the fundamental status of the citizens of the European Union" early on in the *Grzelczyk case*, (para 31) and repeated in many cases thereafter.

The arguments in favour of this link are strong and to an extent self-evident:

- EU citizenship is the first legally established transnational citizenship of the modern era whilst the protection of the environment is both a local and a transnational challenge. As the Council of Europe puts it on its website: “It is obvious that what happens in one place impacts on another and whatever we do, our actions have consequences both locally and globally”.<sup>5</sup> One way to explain European citizenship is to show how rivers and wind patterns carry pollution across borders and mean that no country can combat threats to the environment on its own. Whether consciously or not, campaigns to protect the environment are acts of European qua transnational citizenship. More broadly, our future as citizens and that of our children will depend not just on what our own government will do but to the extent countries are in step with one another to combat climate change and bring about the changes to the economy and society this will entail. If EU citizenship is to be linked, as it should, to other policies of the Union, fighting climate change and other threats to the environment stand out because environmental problems are often transnational in nature.
- EU citizenship is challenged too by the certainty which can no longer be ignored: we cannot keep on exploiting the environment and the earth’s resources to the extent that we put our own future and that of our children at risk. Policy makers tend to appeal to people as consumers to make use of their power of choice to reduce plastic waste for example. This can have a short-term powerful effect but many consumers – especially those on a low income – are locked into consumption habits and resist changes such as fuel tax increases. The climate emergency economy involves deeper changes than could be brought about by better use of consumer choice alone. Different production and consumption habits are needed. Policy makers need to be able appeal to a more environmental citizenship. Everyone can understand that a safe and healthy environment is an important prerequisite for the enjoyment of our basic human rights and above all the rights to life and health. In particular, to halt and reverse climate change, a more profound change would however need to occur in *how we see ourselves as citizens*. The bundle of rights, entitlements and duties that citizenship involves defines both our relations with each other and to the State so that within a community or a country and even across Europe, we see ourselves to an extent as being in the same boat. The dimension of including the natural environment in our sense of citizenship has yet to catch up with our growing awareness of the threats to which is subjected.
- EU citizenship is not just about rights, but also participation. In that dimension, EU citizenship has gone furthest in the environmental field. At European and international level, the claim is that governments operating in an open way and with civic participation will make better decisions for the environment and that public awareness and access to information on threats to the environment will contribute to better enforcement.<sup>6</sup> Individuals and environmental organisations are among the principle users of the procedures put in place under the Treaty chapter on Union citizenship and non-discrimination, as the

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<sup>5</sup> Council of Europe, ‘Compass: Manual for Human Rights Education with Young People’, Available at: <https://www.coe.int/en/web/compass/environment>

<sup>6</sup> Cf. Principle 10 of the 1992 Rio Declaration on Environment and Development, Available at: [http://www.unesco.org/education/pdf/RIO\\_E.PDF](http://www.unesco.org/education/pdf/RIO_E.PDF)

numbers of petitions, complaints to the European ombudsman and the growing number of European citizens' initiatives (ECIs) related to environmental campaigns show. The link with EU citizenship is clear with environmental organisations always in the forefront of the campaign for more access to EU documents, freedom of information and transparency in EU decision-making. The extent of participation and transparency in EU decision-making is in general further advanced in the environmental area than in other policy areas, some of which are lagging a long way behind. *The environment is the advance guard of participation.* The practice of EU citizenship is clear not only in claims being made towards the EU but also from movements across Europe such as the School Strikes and demonstrations by Extinction Rebellion. Threats to the environment have to be tackled locally whilst being on a scale where citizens have to make their voice heard on a European and global level. The more a sense of citizenship develops beyond the nation state and the more the need to act together with citizens of other countries is practiced, the better both for EU citizenship and the environment.

### 3. How to add the right to a healthy environment to EU citizenship

Could EU citizenship give individuals a right to a healthy environment? There is no immediate and clear answer. There are theoretical options which would have to be discussed further. This is because, despite the expanding body of EU and international law over the last fifty years, the scope for individuals to claim enforceable rights is limited. The emphasis is placed more on the obligation of public authorities to ensure that standards are met rather than on the rights of the individual to claim. EU Citizenship should be seen as one of the 6 chapters in the broader framework of the Charter of Fundamental Rights of the European Union,<sup>7</sup> but even this recent version of fundamental and more modern rights does not contain a right to environment. Instead, Article 37 states: "A high level of environmental protection and the improvement of the environment must be integrated into the policies of the Union and assured with the principle of sustainable development". In "Towards a Green EU Constitution", a coalition of European environmental organisations made this counter proposal for Article 37: "Every person has the right to live in a clean healthy environment as well as the duty to safeguard the quality of the environment for present and future generations". The authors of the proposal stressed that protecting the environment is not just about rights but also responsibilities and that their proposal reflected a declaration on the environmental imperative by the European Council in Dublin in June 1990 which endorsed the right to a clean and healthy environment for the citizens of the EU. The fact that this proposal was not taken up and that the Charter does not refer to a right to a healthy environment may reflect perpetual uncertainty and debate about the proper place of human rights law in the development of environmental law. Nevertheless the point is made in different versions of "Greening the Treaty" for successive revision processes that the proposals for environmental rights go no further than what some Member States already have in their constitution and have signed up to with the Aarhus Convention (see below)

Rights to a healthy environment appear to be explored generally on *three* pathways:

a) *The link between human rights and the environment.*

This was made forcefully in the Stockholm Declaration at the 1<sup>st</sup> [UN Conference on the Human Environment in 1972](#) which stated that "Man has the fundamental right to freedom, equality and

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<sup>7</sup> Available at: [https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf)

adequate conditions of life, in an environment of a quality that permits life of dignity and well-being [...] and he bears a solemn responsibility to protect and improve the environment for present and future generations." Subsequent UN conferences, however, watered down this statement reflecting the unease by some governments about framing action on the environment in a human rights context. One alternative option therefore considered is the 'greening' of existing human rights i.e. under existing rights to life, health, private and family life- or perhaps in future the right to respect for human dignity under the Charter of Fundamental Rights. The European Court of Human Rights in Strasbourg has developed case law including environmental concerns under the European Convention on Human Rights (ECHR). However, the link between communities defending human rights and those defending the environment is not always obvious. How courts may decide is also unpredictable. Sometimes they might give prominence to environmental concerns whilst on others they might recognise that public authorities have a margin of discretion to balance different interests in society. Issues of standing and the right of plaintiffs to raise their case are also obstacles. There have been attempts to add an environmental protocol to the ECHR which might succeed one day.

*b) Adding a right to a healthy environment to EU citizenship*

The option of creating a substantive right to the environment has already been taken up in some 100 constitutions throughout the world. The challenge then becomes one of enforcement because such a right can easily be just a 'paper tiger'. The difficulty is that environmental rights touch on so many fundamental rights and areas of government policy. It implies achieving a certain level of environmental quality free of risks to human rights. A substantive right to the environment would therefore be of a programmatic nature. Linked to EU citizenship it would have to be backed up by legislation and policies by the EU and Member States to which the necessary resources would have to be allocated. One could assume that the EU Institutions, which have already built up a substantial body of legislation and some resources to protect the environment, might well be sympathetic to this approach along with the more advanced Member States, but that there would be resistance from others. The objection might not be to the principle of adding a right to a healthy environment to EU citizenship, but to what obligations might flow from that in practice.

*c) Procedural rights to environment*

The strong political support for procedural rights by environmental policy makers has the backing of UN declarations. Procedural rights and environmental democracy find their most advanced expression in the first legally binding instrument linking human rights and the environment in the [Aarhus Convention](#) of 1998. The title of the Convention shows that this is a comprehensive text: this is the *Convention on Access to information, Public participation in decision-making and Access to justice in environmental matters*. Now that there is more debate about democratic participation as well as initiatives at the European level including the promise by the new Commission of a democracy action plan, the Convention which has to be applied by the EU should not be forgotten since it has the potential to set standards higher in some respects than existing procedures. Environmental organisations will continue to play a role promoting the Convention through awareness raising and training. The Convention should be appropriated as an instrument of European citizenship.

#### 4. A tentative conclusion

It is 26 years since the Maastricht Treaty which introduced the status of Union citizenship came into force. It took time for the European Court of Justice to turn this into a real citizenship, but now that this has been achieved with an important body of case law and an expanding regulatory framework, is it not time to consider the case for adding new rights? This is the first transnational citizenship of the modern era and environment is the first and most pressing modern transnational challenge. It is one which is making us think differently about citizenship. The case for bringing the two together was the original intention of the authors of the Maastricht Treaty and is now long overdue.

Citizenship is an area where any possible change should be thought through and explored from different angles and where any change is likely to take time, quite rightly. Adding a right to a healthy environment to EU citizenship may require a Treaty change and if it does not and Article 25 could be used, the procedure is difficult and subject to unanimity.

Rights to environment is on its side a contested field of study and debate, even though there does not appear to be an incompatibility between the three routes for securing them outlined above. It is on procedural rights under EU standards and the Aarhus Convention that the rights to environment have gone furthest and probably here that the links which already exist in practice to EU citizenship should be made more explicit.

In exploring this territory, the first stage would be for ECIT to do more preliminary research and prepare a background discussion document with input from European environmental organisations.

This would be put to a seminar during the next summer university on European citizenship in September 2020. This should bring together a specialised audience of human rights and environmental lawyers, environmental activists, policy makers and researchers. From this event consensus should be reached on proposals to put to the EU Institutions to be backed up by a European campaign. One option would be to consider launching a citizens' initiative to collect signatures behind a demand to add the right to a healthy environment to European citizenship.

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