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Citizenship Rights for the Third Country Nationals

European Citizenship or the Liberalization of European Citizenship Regimes

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Abstract

This thesis is an attempt to discuss the proposals to improve the statuses and rights of the legally resident third country nationals living in the European Union. As *denizens*, third country nationals have full civil and social rights but they do not have any political rights. This is believed to denote an anomaly, which can be corrected through the grant of political rights. However, political rights are reserved only for the political community's full members, who are citizens. As the citizenship regimes of most of the member states have been based on the principle of *jus sanguinis*, which denotes an ethno-cultural and as a result an exclusive citizenship regime, the introduction of European citizenship was celebrated by the migrants' representatives, political activists and academics.

The findings of this study show that despite the high hopes, European citizenship can not provide anything for the third country nationals. On the contrary, it seems that it operates as legal and social exclusion mechanisms for them. In line with the developments that have taken place in the European citizenship regimes in the last decade, it seems that only liberalized national citizenship regimes can improve the statuses of the third country nationals.

Key words: Third country nationals, *denizenship*, European citizenship, legal exclusion, social exclusion, citizenship, liberalization.

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1 Introduction

The European economies expanded rapidly in the post war period. However, the number of unskilled workers to embrace such a rapid economic growth was inadequate. This led European states to recruit foreign labour. At first both the migrants and the host societies thought that this recruitment was a temporary situation, but in the mid 1970s it became clear that most of the guest workers were there to stay. Today third generation immigrants are living in Europe and together with the first and second generation, their number exceeds more than 14 million.

As legally resident third country nationals[1], they have acquired full social and civil rights. However, they do not have any political rights as only citizens, who are full members of the political community, can have them. When the third country nationals do not have any political rights, they are unable to influence the political processes. But they are directly affected by the decisions and policies made at the national and European levels. Keeping more than 14 million people out of the political processes denotes an anomaly in the European political systems.

This anomaly could not be corrected by the member state citizenship regimes as most of them have been formulated around the principle of *jus sanguinis*, which designates a communitarian citizenship model. The inclusiveness of the communitarian citizenship for the third country nationals is very low. Having thought that the European citizenship would correct this anomaly, migrants' representatives, academics and political activists celebrated its inauguration. Besides the idea of an inclusive European citizenship, another proposal for improving the conditions of third country nationals is the liberalization of European citizenship regimes. Discussion of these proposals is the backbone of this study.

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[1] In this thesis, the term "third country national" refers only to the legally resident immigrants who came from a country other than European Union member states.

To make a better analysis, this study starts with examining the definition of citizenship, citizenship rights, citizenship models and their approach towards the third country nationals. The statuses of third country nationals in view of the member states citizenship regimes, the European citizenship and its relation with the third country nationals and lastly the liberalization of citizenship regimes will be discussed in separate chapters. The findings of the study will be outlined in the conclusion part, where the discussion of the proposals will also take place.

1.1 Purpose and Research Questions

The purpose of this thesis is to find a feasible proposal for the improvement of the rights of the third country nationals and to correct the anomaly they are living because of exclusion from the political processes. For that purpose the study starts with defining citizenship, later it continues with examining the statuses of third country nationals in the face of citizenship regimes and it continues with examining the most discussed proposals. During study the main research question asked is:

How can the third country nationals acquire political rights to become equal with the other members of the society?

The other research questions asked are:

What is citizenship?

How is the relationship of the European citizenship with the third country nationals?

Can the European citizenship provide political rights for the third country nationals? if it can in what ways?

Can liberalization of the European citizenship regimes improve the rights of third country nationals?

1.2 Research Material

The research material used in this study can be divided into two groups: theoretical and empirical. For the first theoretical part, where the citizenship is examined I have used three edited books as my primary sources. The first one is *Challenging Immigration and Ethnic Relations Politics* (2000) by Ruud Koopmans and Paul Statham, the second one is *Challenge to the Nation-State* (1998) by Christian Joppke and the last one is *Towards Assimilation and Citizenship in Liberal Nation-States* (2003) by Christian Joppke and Ewa Morawska. For the second empirical part, I used academic journals. For the third part where I discussed European citizenship, I have mostly used Rainer Bauböck and the book *European Citizenship: National Legacies and Transnational Projects* (1999) by Klaus Eder and Bernard Giesen for theoretical parts, for the empirical parts I have used academic journals, official documents of the European institutions and speeches of EU officials.

1.3 Limitations

As migration has become one of the hot topics of the last two decades, there is a burgeoning literature on it. The thesis is not about general patterns of migration, migrant integration or multiculturalism for migrants in the European societies. It is about correcting the political anomaly, which the legally third country nationals are in and equalizing their statuses with the other members of the society. As a result it is about proposals for including third country nationals by the citizenship regimes. In that sense the thesis deals with the national citizenship, citizenship models, European citizenship and its relation with the third country nationals, how it can include the third country nationals and liberalization of citizenship regimes. However, as third country nationals are established legally resident migrants and as all materials try to cover all aspects of migration it has become difficult to extract only the situation of third country nationals from those debates.

1.4 Plan of the Thesis

The introduction will be followed by the first theoretical chapter, citizenship. In this first chapter, the definition of the citizenship, citizenship models and their approach towards the third country nationals by their nature will be told. In the second chapter the rights and statuses of the third country nationals will be discussed, a solution for them will also be proposed. The following chapter is about European citizenship, its historical evolution, the rights it grants, its relation with the third country nationals and the proposals to make it more inclusive for the inclusion of third country nationals will be discussed. The last part before conclusion is liberalization, where if the liberalization of third country nationals can provide better conditions for the third country nationals will be discussed. Here liberalization will be defined and the examples will be given. The last conclusion part will be the outline of the findings of this study.

2 Citizenship

Citizenship briefly means "the relationship between the state and the individual which is based on reciprocal rights and responsibilities" (Heywood, 1997: 402). Citizenship is used to define "the rights, privileges and duties an individual possesses by virtue of belonging to a state" in international law (Guild quoted in Shore, 2000: 71). According to Marshall quoted in Feldblum (1998: 234) citizenship is a "status denoting full membership in a community to which are attached rights and duties".

In his groundbreaking work about citizenship, T. H. Marshall speaks about three different groupings of citizenship rights: civil rights, political rights and the social rights. Civil rights are of freedom of speech, freedom of movement, freedom of conscience, equality before the law and the right to own property (quoted in Bauböck, 2004, p.13). Political rights comprise the right to vote, the right to stand for elections and the right to hold a public office. Lastly, the social rights, which are defined as the rights that should provide the minimum social standards and status to enable the individual to live in a civilized way and take her place in the civil and political spheres, complement the civil and political rights (Heywood, 1997, p.397). Having access to education in public schools, health benefits, welfare and social insurance schemes, unemployment fees are among the social rights (Soysal, 1994, p.123). These three groupings of rights complement each other. For instance as civil rights are necessary for individuals for free participation in the civil society; they participate in the political life of the community with their political rights.

Individual, holding a citizenship is considered to be a full member of the political community and this political community is usually a nation-state (Feldblum, 1998, p.233). Nation-states have the authority to entitle citizenship and as a result the boundary of a nation-state and the citizenship is generally congruent. This congruence has made citizenship as the basis of the nation-state membership (Hansen, 2003, p.87). As it helps nation-states to decide who is a member, the citizenship also lets them decide who is not. Marshall (1992, p.24) says that citizenship rights have developed as a common possession of the community whose

members are loyally tied to each other and to their civilization. It must also be kept in mind that citizenship can also be a way to distribute the scarce resources among nationals.

As Kostakopolou (2002: 442) observes every state has different definitions for political membership due to its distinct historical experiences. And these different definitions play an important part in their approach and response to the non-citizens. These definitions are present in the citizenship laws in every country and "they express distinctive understandings of nationhood and political national self-understandings" as they are the results of historical experiences of nation-state formation (Atikcan, 2006: 9).

Political theorists emphasize two different citizenship models: the republican and the communitarian[2]. They are both citizenship theories but they take different references while they are constructing their demos, the people that will be the subject of their theories. These models determine whether the citizenship of the country is inclusive or not. But besides this, the principles that the citizenship models have been based on are also important. While the republican citizenship is based on the principle of *jus soli*; communitarian citizenship model is based on *jus sanguinis* principle (Koopmans and Statham, 2000a). These principles play important roles for the non-citizens as they determine the conditions of naturalization.

2.1 Republican Citizenship Model

In the republican model of citizenship, we have demos, loyal to the constitution, taking part in the common institutions. Citizenship as a practice is learnt by the individual as he passes through several phases in the society like education and taking part in the military. The republican model of citizenship is also labeled as 'assimilationist' and exemplified by France or by the old melting pot approach of the United States (Koopmans and Statham, 2003).

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[2] As Christian Fernandez (2003) notes, a third model of citizenship; liberal citizenship can also be added to this typology, but as liberalism is first of all a political theory about the individual but not the community, it is unable to provide much guidance while we are trying to find out the inclusiveness of the citizenship regimes and their demos for the third country national migrants. That is because the liberal paradigm aims to create a citizenship, which enables individuals (who are already citizens) "to have equal access to the processes of the organization-be it legal rights, education or welfare entitlements" (Giesen and Eder, 2003: 5).

The republican citizenship has a tendency to cover all the people on the territory, in that sense in the words of Christian Fernandez (2003: 167) "every resident of the state has the potential to become a citizen, even the immigrant". According to the model, national citizenship forms a civic community, which is shaped the loyalty of the citizens to the common political values and institutions and their residence on the territory (Koopmans and Statham, 2003). After a short transition period, the model embraces the new comers irrespective of their background. This citizenship model is thought to be highly inclusive. The new comers can acquire citizenship without difficulty and their children gain citizenship at birth by the help of the *jus soli* principle.

While *jus soli* means "the right of the soil" in Latin (Merriam-Webster, 1996), in reality it is a feudal principle according to "which all products of the soil whether they are crops or people belonged to the lord" (Joppke and Morawska, 2003: 18). Today, the meaning that the principle carries has changed a lot, however, it must be kept in mind that *jus soli* citizenship regime has its roots in that feudal principle. The citizenship regime which is based on *jus soli* principle is considered to be a "civic-territorial regime" (Joppke, 2000: 151).

Territoriality means that a person who is born in that country acquires citizenship automatically. All the residents have same rights in the citizenship regime although ancestors of some of them may be of different origin or they may have lived in a different territory before (Entzinger, 2000). Territoriality has an important place in the model in the sense that the citizenship starts where the boundary of the territory starts and ends where the territory ends.

As it is told above the French citizenship regime is thought to be the best example of the republican citizenship in Europe as it is an inclusive regime (Koopmans and Statham, 2000a). In the regime immigrants are expected to prioritize Republican values and French political culture over religious and cultural affiliations (Koopmans and Statham, 2000b, p.196). It is acceptable that immigrants are expected to give up some of their ways of doing things to acquire citizenship and rights in return. Furthermore, it must be kept in mind that this citizenship model is difference blind.

2.2 Communitarian Citizenship Model

Unlike republican citizenship, communitarian citizenship does not have to cover all the people living on the territory. In this model "demos is fused less by the law and a common set of institutions and more by descent and the belief in a shared history" (Fernandez, 2003: 167). Common culture, traditions and shared history are important. The "citizenship rules serve to recognize who belongs and who does not belong to a given people" (Giesen and Eder, 2003: 7). Citizenship is not thought to be a practice that can be learnt in due time as it is thought to be in the republican model, rather it passes from one generation to another via ethno-cultural ties. As a result the boundary of the citizenship ends where the ethnic group, which is thought to be the demos end. The border of the citizenship either does not have any permeability for the potential migrants or its permeability is very, very low. As a result this model of citizenship is thought to be highly exclusive.

The communitarian citizenship model is based on the principle of *jus sanguinis*, which means "the law of the blood" in Latin (Merriam-Webster, 1996). As a citizenship principle it means that citizenship passes to a person by descent from a citizen parent. It is difficult to acquire a citizenship of a country if the regime is based on the principle of *jus sanguinis*, as it looks for a citizen parent. In the words of Koopmans and Statham (2000a: 19) "the child must have ethno-cultural ties to the nation" to acquire the citizenship. As a result, if a person does not belong to that nation, he is not going to have citizenship even if he is born and has lived all his life there. Until very recently German citizenship regime was the best example of this citizenship regime.

As it can be understood, a citizenship regime based on the principle of *jus sanguinis* is difficult to access. It does not give much opportunity for the third country nationals to acquire because it looks for descent, which none of them can provide. On the contrary the citizenship regimes based on the principle of *jus soli* is inclusive for the third country nationals if they are ready to give up some of their ways of doing things and prioritize the common values.

3 Third Country Nationals as *Denizens*

It is understandable from above that the citizenship status is reserved for the nationals. However, the demographic structures of the nation-states have changed a lot in the last decades with the migration flows. Today many non-nationals and non-citizens live in the European nation-states. In the beginning of the 1993, the number of the legally resident non-EC nationals were almost 12 million. Today their number is estimated to be around 15 million. According to Bhabha (1999: 13) third country nationals comprise "three in every 100 European workers".

With the emergence of these foreigners[3], the distinction between the citizen and the non-citizen is blurred. A new category within the non-citizens has emerged: *aliens* and *denizens*. The temporary residents are called *aliens,* while long-term residents, with permanent resident statuses have been named by Thomas Hammar as *denizens* (Atikcan, 2006). As Hammar observes these long-term legal resident immigrants enjoy citizenship rights as *"denizens"* and they depend "upon the beneficent paternalistic concern of bodies like trade unions and churches" (quoted in Rex, 2000: 59).

Denizens are not foreigners anymore but they are also not citizens of the host state. These people are "foreign citizens with a legal and permanent resident status in the host state" (Atikcan, 2006: 5). According to Hammar (quoted in Kveinen, 2002: 24) a non-citizen has to pass three entrance gates before he becomes a citizen and is included to the political community. These three different gates correspond to three different phases in the immigration process. The first gate is the most difficult phase: stage of entry for a short period by gaining lawful admission (Kauranen and Tuori, 2002). In the second gate permanent

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[3] Virginie Guiraudon (1998: 305) says that the words 'foreigner' and 'non-national' are used interchangeably to mark a person who is not a national of the state he is living in and anyone who does not have the full citizenship status. As Guiraudon diagnoses there are many different and confusing categories about these people; the concepts of 'migrant' or 'immigrant' do not have the same meaning. Some of immigrants have already naturalized or some of them (ex-colonials) have always been nationals, do not cover the same people. Another confusion is about "the immigrants that have never immigrated" like the second-generation Turkish people living in Germany (Ibid: 305).

residential status and work permit is regulated and the third gate is about naturalization or regulating the nationality (Shachar, 2003).

A foreign citizen can be said to be a *denizen* only after he passes to the second stage of this process, when he is able to acquire full residential status and work permit. For several reasons most of these *denizens* do not or can not pass to the final, naturalization stage. Sometimes the *denizen* does not want to break its legal link with the country of origin because of the "myth of return". But in most of the times the reason for not acquiring the citizenship is the restrictive naturalization policies of the host states. In many cases it is difficult for them to qualify for the acquisition of citizenship. Not letting dual citizenship is also another obstacle because this makes *denizens* to make a choice between the citizenship of the country of origin and the host state (Kveinen, 2002).

Denizens can benefit from almost all civil and social rights with their permanent resident statuses. They have "the right to family reunion, free access to employment (Austria, Ireland and Luxembourg want a work permit), entitlement to social security and social assistance and access to education" (Kostakopolou, 2002: 444). However in most of the member states they have limited political rights. *Denizen*s can not take place in the political life of the country as political rights, differently from civil and social rights, are only entitled to the citizenship. There are however, exceptions to this rule. Rainer Bauböck (2004) says that most of the old 15 EU member states have granted the third country nationals the right to vote in the local elections. Today, third country nationals living in Ireland, Sweden, Denmark, the Netherlands and Finland can vote in local elections. In the UK, only migrants from Commonwealth countries other than EU citizens can vote and this creates a differentiation among the third country nationals living in the UK; the ones with a right to vote in local elections and the ones without it.

Similar to UK, third country nationals from only certain countries can vote in the local elections of Spain and Portugal. These countries are the former colonies of Portugal and Spain. Third country nationals can not vote in Austria but Vienna City Parliament ruled out in 2002 that all foreign nationals who have been living in Vienna for five years can vote in district elections (Jenny, Zucha and Hofinger, 2004). The Italian and French governments also wanted to extend voting rights of the third country nationals in local elections in 1998 and

2000 respectively, however they failed because of the opposition and the constitutional constraints (Bauböck, 2004).

Another restriction of franchise is that some member states let their *denizens* vote in the local elections but they do not let them stand as candidates in the elections. Bauböck (2004: 13) says that this conflicts with "a general democratic principle that voters can only be represented by other voters like themselves, not by special class of persons who monopolize the right to hold public offices".

On the other hand in none of the Member States can third country nationals participate in the national elections. Important decisions are always made at the national level. For instance national budget, country's immigration and minority policies are all decided by the national government. Furthermore, national government sends its members to the European Union, Ministers from government represent the Member State in the Council of Ministers and the Commissioners are appointed by the national governments. Third country nationals are believed to be "de facto" members of the society in the words of J.M. Sorensen (quoted in Atikcan, 2006: 14) as "they pay taxes, participate in the labour market, bring up families, contribute and receive welfare benefits and involve in the social and cultural life". However, when they can not vote they do not have any say over how the money is spent, how these policies should be amended or how their statuses can be ameliorated.

This situation conflicts with the liberal values that the European states respect. It must also be kept in mind that an inclusive citizenship regime is also an indicator of the standard of a democratic state. Although the *denizenship* status seems to solve the problems, keeping a part of the populace out of the political process means weakening of the legitimacy of a democratic rule in that state. As a consequence, "inclusion of these people by the citizenship regimes in the long-run is a necessity" (Bauböck, 2004: 3).

Furthermore as again Bauböck (Ibid: 4) observes, "where third country nationals are excluded from citizenship in the host state, the migrants form an ethnic underclass whose exclusion contributes to deteriorating standards in employment, housing, health and education". Citizenship can not solve these problems alone, however, it is accepted that it is a necessary condition in fighting these problems.

As a result, today the third country nationals benefit from the civil and social rights of the citizenship by the help of their *denizen* status. However, *denizenship* must be thought as a temporary status on the road to citizenship. That is because only citizens can become the full members of the society, only they can have political rights, which are crucial in exercising civil and social rights and only a citizen can be exempt from deportation. *Denizen* third country nationals must acquire political rights to be able defend their rights and interests.

4 European Citizenship and the Third Country Nationals

4.1 European Citizenship

In 1991, the Article 8 of the Treaty on European Union has said that "Citizenship of the Union is hereby established" and added that "every person holding the nationality of a Member State shall be a citizen of the Community" (Treaty on European Union, 1993). The following articles 8a, 8b, 8c, 8d and 8e arrange the content of the European citizenship.

As it is defined above, with having different connotations in different national contexts, the citizenship understood in its classical form, means "the relationship between the state and the individual, which are based on reciprocal rights and responsibilities" (Heywood, 1997: 402) and it is thought to be "a status denoting full membership in political community which is usually a nation-state (Feldblum, 1998: 234). As a result the words nationality and citizenship are generally used interchangeably by the academics as if they are the different sides of a coin. According to the Wiener (1997) the most important difference between the European citizenship and classical citizenship is the lack of nationality in the former. There is no European national identity, which according to Wiener makes the use of the concept of citizenship problematic within the framework of the European Community.

Furthermore, as another difference of the European citizenship from the classical citizenship, academics have often mentioned the nonexistence of any duties or responsibilities associated with the citizenship. These duties or responsibilities are considered as participation in political life and taking arms when it is necessary for the defense of the country. After the Second World War, with the establishment of the welfare states in Europe, new responsibilities; to work, to pay taxes and to take place in military service have been added to this list (Shore, 2000; Komurculer, 2006).

Rather than responsibilities the European citizenship is more about rights. It is crystallized around the principle of free movement. Therefore the rights it brings focus on the mobility of the worker in the first place (d'Oliveria, 1993, p.81). EU citizenship entitles:

- "The right to move and reside freely within the EU
- The right to vote for and stand as a candidate at municipal and European Parliament elections in whichever Member State and EU citizen resides
- Access to the diplomatic and consular protection of another Member State outside the EU
- The right to petition to the European Parliament and to complain to the European Ombudsman
- The right to contract and receive response from any EU institution in any one of 12 languages
- The right to access Parliament, Commission and Council documents under certain conditions
- The right to non-discrimination on the grounds of nationality within the scope of Community Law
- The guarantee of fundamental rights as upheld by the European Convention on Human Rights and the Charter of Fundamental Rights of the EU.
- Protection from discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual discrimination
- Equal access to community service" (European Union Citizenship, European Union Rights, 2003, par. 2).

The main reason for the introduction of European citizenship is "to create an ever closer union among the peoples of Europe" (CEC, 1992: 3). According to many academics it was the result of the integration which has started to touch to the economic and social rights of individuals (Kostakopolou, 1998; Geddes, 1995). According to the supporters of this view the introduction of the Union citizenship became necessary both for the protection of individuals and for the establishment of a European civil society. As Atikcan (2006: 2) also observes, with the increase in the competences of the European Union, it became necessary to bring the European Union to the ordinary people and back it up with a kind of popular legitimacy.

Today many academics accept that the Union Citizenship does not bring anything new rather than a new name for a bunch of existing rights for the Member State citizens, " a nice blue ribbon around scattered elements of a general notion of citizenship" in the words of d'Oliveira (1993: 81). Closa and Welsh (quoted in Shore, 2000: 76) say that they see the introduction of new rights to be enlarged in the future indicating that the Union citizenship

may have a political character in the future. However the general view is that most of the rights given by the European citizenship already existed or the difference is so slight to bring an important consequence.

When the Article 8 of the Treaty on European Union says that "every person holding the nationality of a member state shall be a citizen of the Union", it makes it clear that only the nationals of the member states can become European citizens (Treaty on European Union, 1993: p. 8). The third country nationals are left outside the framework of European citizenship. However, European citizenship has had important impacts on the third country nationals. In the following sections how the European citizenship operates as legal and social exclusion mechanisms for the third country nationals and the proposals to make the European citizenship more inclusive to include the third country nationals will be discussed.

4.2. European Citizenship as a legal exclusion

The European Union and the European integration have often been taken as a challenge to the national sovereignties of the Member States in the fields of migration and ethnic relations. The introduction of European-level human rights codes, the European Court of Justice and the embryonic European citizenship have been interpreted as elements limiting the powers of the member states and guaranteeing the migrants' basic rights by many academics (d'Oliveria, 1993; Lahav, 2004). In their minds, people have always associated European integration with liberal values which most of them believe bring more rights to the migrants.

However, this is actually where, the European Citizenship receives the harshest criticism. With the definition of the European citizen in Art.8 of the EC Treaty, which says that "every person holding the nationality of a member state shall be a citizen of the Union" (Treaty on European Union, 1993), access to the European citizenship "depends on the rules for acquisition, transmission and loss of various national citizenships" (Bauböck, 1997: 12). When the acquisition of a member state nationality becomes the most important qualifier for the European citizenship, 12-13 million Third Country Nationals are excluded from the benefits of the European citizenship (Atikcan, 2006).

As it is told above, when the third country nationals can not become the citizens of Europe, they can not benefit from the rights, which the European citizenship introduces, other than the right to petition to the European Parliament and the right to complain to the European Ombudsman (Bhabha, 1999). Freedom of movement for workers is the most important promise that the EU has given and free movement of persons is the most important right of the European citizenship, around which the other rights crystallize. However, since the last couple of years, third country nationals had to take visas while they were entering to another member state. With the latest amendments, this was partly corrected; they can enter and travel within the Schengen area for a period of up to three months without a valid visa (European Commission, 2003). However, after three months, they have to return to their country of residence to reenter the Schengen area and they can not "apply for work, education or start a business on equal terms with European citizens" in a member state other than their country of residence (Fernandez, 2003: 169).

European citizenship lacks any foundation for the betterment of the migrant rights at present. It is obvious that it is a derivative of and additional to national citizenships of the Member States and as a result it can not provide anything for the third country nationals. On the contrary, the European citizenship is believed to deteriorate the statuses of these people (Rostek & Davies, 2006). According to Faist (1995, p.192) the statuses of most of the third country nationals were approximate to those of the citizens, but now they find themselves in a second class position. According to Bauböck (1997) the European citizenship lowered their statuses to a third class citizenry, while putting immigrants/migrants coming from other European countries to the second class. Now a new category within migrants is existent: European migrants and non-European migrants that provides ground for the discrimination of third country nationals.

Jacqueline Bhabha (1999: 16) also takes attention to the legal exclusion of third country nationals and says that "the member states have been able to protect their traditional sovereign prerogatives over the questions of citizenship by deciding to grant the European citizenship on the basis of member state nationality". The eligibility for the acquisition of nationality differ in every member state they may look for the place of birth, descent, ancestry, with a range of linguistic, cultural or other legal qualifiers (ibid, 1999).

The authority to determine the nationality and national citizenship is still at the hands of member states. As it is told above the third country nationals are *denizens* and while they have civil and social rights, they do not have any political rights as only full citizens can have political rights. To be able to benefit from the political rights of the European citizenship, which are the right to vote and stand as candidates in the local and European Parliament elections, the third country nationals must naturalize first. However, member states have very different citizenship and naturalization rules from each other. This creates another criticism for the European citizenship, which in the end has negative consequences for the third country nationals. Rainer Bauböck (1997: 11) asks "how can 27 different procedures of admission lead to a single and common status of citizenship?".

The answer shows the limits of European citizenship. Different naturalization policies create anomalies. Here are some illustrations of them:

In the beginning of the 1990s Italy began to let people of Italian ancestry living in the South America have Italian citizenship. These people did not have to live for a certain period of time in Italy. Many Argentineans and Brazilians who have roots in Italy applied for citizenship, and they were not only interested in Italian passports but also in European passports which would let them migrate to Spain, England or even to the US. Italy is not the only Member State which provides unlimited access to its citizenship via descent. Seven of the old Member States and all the new Members let their emigrants maintain, transfer or reacquire their citizenship by descent from one generation to another without asking for a certain period of residence requirement (Bauböck, 2006).

In 2004 the European Court of Justice decided positively in the case of Man Levette Chen, a Chinese mother, whose claim was for residence in the United Kingdom. Ms. Chen had lived in the UK with a residence permit, however during this period she got pregnant and went to Belfast to give birth to her baby. Here it must be noted that at that time the Republic of Ireland has started to entitle automatic citizenship to anyone born in anywhere in the island. As a result, Chen's baby acquired an Irish and a European citizenship by birth and Ms. Chen automatically got the right to stay in the UK as she has become the caregiver of a European citizen. Later a referendum was held in the Republic of Ireland to abolish the automatic acquisition of citizenship by birth as the Irish people became afraid of 'birth tourism' by third country nationals (Tryfonidou, 2005).

The example of Turkish brothers, one of whom goes to Germany, the other to Sweden in the 1960s, is often given. While Brother A, who has lived all his life in Germany after migration, can not have any political rights in the German society, the Brother B, who has been able to become a Swedish citizen after five years of legally residence is a full member of Swedish society with political rights. Furthermore Brother B and his children are European citizens as the union citizenship is a derivative of the member state citizenships. The anomaly in this picture is this: when they visit their cousins in Germany, Brother B's children can vote in the European Parliament elections and the local elections in Germany although their cousins, who were born; have lived all their life in Germany and probably can only speak German, can not vote in the local elections (Fernandez, 2003). Or think of another Turkish family whose members settle in different member states again. One of the sisters migrates to Belgium, where she acquires citizenship only after three years of legally residence. Now as a European citizen, she can join her sister in Austria, where she will be able to vote in the European Parliament and local elections. While at the same time her sister will not be able to participate in the political life of the country she lives in as she has to wait for ten years before she can apply to acquire citizenship (Bauböck, 2006). It is indeed difficult to understand why should a European citizen who has just moved to another EU state have a right to vote in a local election while a third country national, born in that member state is excluded from participating in political process of his own city?

Another problem is that there is a tension between freedom of movement and national self-determination of citizenship for the third country nationals. Normally migrants can not have the right to move freely more than 3 months within the European Union. Even if they had the right to move freely, this would impose an obstacle for their future because of the current arrangements. If migrants moved freely, they would never have the chance to become European citizens as almost all Member States look for certain time of continuous residence for naturalization.

As a result, by excluding third country nationals legally, the European citizenship seems to aggravate the existing anomalies in the treatment of the third country nationals. As it is a derivative of national citizenships, it fails to provide any political rights and any rights that grow out of the right to free movement. It lowered their statuses to the third class citizenry from second class and it has put European citizens to the second class. Furthermore

while it is acquired via national citizenships, and naturalization policies of member states vary a lot, it creates inequalities even among the third country nationals themselves in their access to European citizenship.

4.3. European Citizenship as a social exclusion

As it is told in the first chapter, the citizenship is also a membership. The individual holding the citizenship of a polity is considered to be a full member of that political community, which means that the citizenship also works as a conception and decides who is a member and who is not. As a result, every citizenship regime is exclusive by nature because it defines who is 'in', and from this definition who is 'out' is also defined. From this, it is understandable that who is 'in' in the box of the European citizenship is 'every person holding the nationality of a member state' (Art. 8, TEU).

Dominique Schnapper (1997) says that European citizenship upsets with its definition which takes national citizenship as the reference point. Bhabha (1999: 15) says that by doing this the European citizenship failed to "provide an inclusive basis for belonging in Europe", as citizenship laws differ in member states. Moreover according to O'Keefe (quoted in Bhabha, 1999: 16) the European citizenship "established a unitary basis for exclusion rather than a coherent set of criteria for inclusion". According to Kostakopolou (2002: 445) "a rare opportunity was missed for subjecting the member states' definition of 'who makes up the European people' to a normative test and for building an inclusive democratic polity which respects the other and gives all its residents a stake in the success of the project of its post-national democracy".

European citizenship's exclusion of third country nationals has important conclusions for the membership in Euro-polity (Atikcan, 2006: 3). That is because European citizenship provides the most important definition for the identity of the European polity. The European identity understood from this definition is a one "that is based primarily on national understandings, ethnic lineage or civic status rather than on recognition of globalized nature of Europe's new population base" (Bhabha, 1999: 18).

As Fernandez (2003: 172) observes differently from legal exclusion, "social exclusion operates indirectly and implicitly through the promotion of identities which are incompatible with certain groups of people". In the case of European citizenship, according to Hansen (2000, p.139) the discourse of the European citizenship has been increasingly based on an ethno-cultural understanding of citizenship and identity. The main elements of the European citizenship and identity discourse have become the European traditions and cultural heritage (Fernandez, 2003). Shared culture, heritage, history and civilization are the important concepts that the European Commission and the European Parliament have used in their reports about European citizenship (Bhabha, 1999). According to former Commission President Jacques Santer "the sources of the European common cultural heritage –the heritage of the Western mind and heritage - are Greek, Latin and Judeo-Christian" (quoted in Hansen, 2000: 153). In a similar vein, the European Parliament wrote in one of its reports that the European culture of today is a continuity of 'classical culture and Christianity (ibid). In a speech made in European Parliament, former Commission President Romano Prodi said that "Christianity constituted the common consciousness of European integration" (Prodi, 1999). Other important cultural and historical developments like "the Renaissance, the Enlightenment, modern science, Industrial Revolution, the worldwide dissemination of European currents of thought during the nineteenth century" are also visited in the formation of European citizenship (Hansen, 2000: 156).

It must be noted that the discourse of the European identity and the European citizenship does not aim to exclude the third country nationals. However, the way they are defined prevents third country nationals' identification with the European institutions. When the discourse of the European citizenship is based on the Christianity and other ethno-cultural qualifiers, the citizenship turns out to be highly exclusive. As a result under these circumstances, in the words of Fernandez (2003: 174)," it is very difficult for a non-white and non-Christian first generation immigrant to identify himself with a community which seeks identity in descent and Christianity".

As a result besides operating as a legal exclusion mechanism, the European citizenship operates as a social exclusion mechanism, too.

4.4. How can European Citizenship include the Third Country Nationals?

Academics and Migrants Associations have suggested a variety of proposals to make the European citizenship more inclusive to include the third country nationals and correct this anomaly. The most discussed suggestions have become to reformulate the European citizenship on the basis of residence, the harmonization of Member States' naturalization policies and expanding the rights of the third country nationals via the jurisprudence of the European Court of Justice.

4.4.1. A European Citizenship based on residence

One of the most discussed suggestion is separating European citizenship from its basis; the national citizenship. In this view, the European citizenship would be based on territorial residence and it would be granted to all third country nationals who legally resided in one member state (within the European Union) for at least five years (Oger, 2003; Hansen, 1998).

Taha Mellouk from the Migrants Forum says that their aim is to work for the acquisition of European citizenship by third country nationals. He says that they see it as a way to guarantee certain rights for the long- term residents, which may lead to full citizenship in due time (Schuster and Solomos, 2002: 15).

This model of European citizenship would only give "certain basic of rights of political participation, welfare entitlements, educational benefits" (Giesen and Eder, 2003: 9). Local and national rights, which are different in every member state or in the city or place of residence, will complete these rights. In this model basic rights are provided by the supranational polity; they are decoupled from the national level of citizenship and by this way the citizenship regimes will include the *denizens*. However, this would be a very radical arrangement which would turn the European Union into a federation like the US or Germany and it is hard to believe that such a move can take the support of the people (Bauböck, 2006).

Likewise, in none of the four national contexts, where this model was raised as a discussion point by the migrants' representatives, could the model find any support to become an alternative to national citizenship (Schuster and Solomos, 2002).

4.4.2. Harmonization of Member States' Naturalization Policies

Another alternative for the inclusion of the third country nationals by the European citizenship is seen as the harmonization of naturalization policies of the member states. In this context harmonization refers to the "legal process of standardization" (Leach, 2006: 2). In a number of areas, "EU reregulatory policies harmonize existing national regulations into a single, European regulatory framework" (Hix, 2005: 260) and when "national laws are harmonized they are made consistent across the EU" (EUABC, 2007). The harmonization of naturalization policies means that the requirements for the acquisition of national citizenship will be same in all member states. As a result, the access conditions for the European citizenship via national citizenships would be unified.

In that way, the member states would continue to control the access to their citizenship and the citizenship law, however perhaps with the harmonization made on a liberal definition, the citizenship law would be more inclusive for the third country nationals (Hansen, 1998).

There are several obstacles for this proposal. First of all, as it is told above, citizenship has "different connotations" in different national contexts (Schnapper, 1997: 201) due to distinct historical experiences of nation-state formation. Citizenship rules of the states can be thought as the written form of those experiences and they reflect the political self-understanding of those nations (Atikcan, 2006). That is why the citizenship rules of every member state are different and member states would simply prefer to keep this difference. Besides the definitions and self understandings, member states have different approaches to the principles of *jus sanguinis* and *jus soli* and they have different adjustments for the citizens from the former colonies. As a result it is very unlikely that the member states would transfer competence to the European institutions in this realm so the proposal for the harmonization of naturalization law to make the European citizenship more inclusive for the third country nationals seems to fail.

4.4.3. Jurisprudence of European Court of Justice

Another alternative to make European citizenship more inclusive is thought to be the enhancement of third country nationals' political rights by the European Court of Justice. It is argued that the European Court of Justice can do this by using its competence over the interpretation of the term 'worker'. Ziedalski (2000; 619) notes that Article 48 of the Rome Treaty does not define the term 'worker'. It is left to the interpretation of the European Court of Justice. The Court mentioned that the term was to be a European Economic Community concept and took its determination from the hands of national governments.

The Court has provided a comprehensive definition for the term 'worker' in its judgement for the Deborah Lawrie-Blum v Land Baden Württemberg case in 1986. According to this definition the worker is "any person performing for remuneration work the nature of which is not determined by himself for and under the control of another, regardless of the legal nature of the employment relationship" (European Court of Justice, 1986: 1). This definition is thought to be a very expansive one. The European Court of Justice could not change the content of the European citizenship or it could not intervene to the naturalization policies of the member states, however, by granting enhanced political rights to the third country nationals because of their worker statuses, it could open the back door of European citizenship to them (Hansen, 1998).

However, what the Advocate General Mancini stated in another case brought before the Court before the Deborah Lawrie-Blum v Land Baden Württemberg is helpful in understanding the approach of the Court to this issue. In the judgement of that case (1983, C-238/83) the Advocate General Mancini stated that:

> "The 'workers' referred in the Article 48 of the Rome Treaty must be Community citizens. The article itself confirms it. In any event there is no doubt that the authors of the Treaties of Paris and Rome intended to limit freedom of movement to citizens of Member States: see the express provisions to that effect in Article 69 of the ECSC Treaty and Article 96 of EAEC Treaty. It follows that Article 48 can not be applied either to a national of a non-member country or to a student"

Only after a couple of years from the handling of these cases by the European Court of Justice, Council of the European Communities issued a Resolution in 1985 on guidelines for a Community policy on migration (Council Resolution 85/C/186/04), which said that "the

presence of population groups from third countries is becoming more and more permanent" and told that the "matters relating to the access, residence and employment of migrant workers from third countries fall under the jurisdiction of governments of the member states" (Council of the European Communities, 1985: 4). In that sense the Resolution made it clear that the power of the European Court of Justice about the third country nationals was limited.

As Randall Hansen (1998: 757) observes these explicit limits on the powers of the European Court of Justice in dealing with matters about the third country nationals have also eliminated the chance of "ECJ-created path to political citizenship" for third country nationals. As a conclusion it can be said that like the other two alternatives for making the European citizenship more inclusive for the third country nationals, this alternative also fails in bringing better conditions.

5 Liberalization

In several dictionaries liberalization means "to make liberal", "to progress or reform as in political or religious affairs" and "relaxation of previous government restrictions usually in areas of social or economic policy" (Merriam Webster, 1996; Random House Unabridged Dictionary, 2006). 'Liberalization of a citizenship regime' in this context refers to make a citizenship regime of a country more inclusive to be able to cover a heterogeneous society, by introducing amendments in the citizenship laws, which base the regime more on the principle of *jus soli* and break its link with a specific ethno-cultural group.

Citizenship laws of the EU Member States had been stable. In his groundbreaking study Rogers Brubaker (Escobar, 1996) examines French and German citizenship regimes and he finds out that their approaches to the immigration are directly related with their traditions of state-building and national identity. Rogers Brubaker has argued that citizenship policies of France and Germany have been shaped by their national culture and therefore they are reluctant to change. However, with the establishment of the second and third generation immigrants in Europe, the European societies have become more heterogeneous. In the words of Follesdal (1998: 13) "the look and sound of Europeans are changing" and migration challenges exclusive citizenship regimes of the member states (Joppke, 2000). In her famous article *The European Debate on Citizenship,* Dominique Schnapper (1997) attracts attention to the contradictory status of third country nationals and in accordance with the main argument of this thesis; she says that the national citizenships must be expanded to cover foreigners:

> "Giving the right to reside and guaranteeing civil, economic and social rights without granting the right to vote and to participate in political life, means creating second class citizens who, unlike others can not defend their rights and interests through political action. Principles of equality and liberty must apply to all, foreigners included…. the citizenship must be expanded to foreigners" (Ibid: 206).

Almost all of the EU member states' citizenship regimes were based on the *jus sanguinis* principle and they were exclusive for the non-citizens. As it is told in the first

chapter, a citizenship regime based on *jus sanguinis* only lets the citizenship be acquired via blood ties. None of the migrants have descent of blood, which means that second and even the third generation immigrants will be foreigners in their country of birth.

Today almost all academics accept that the third country nationals must be included by the political communities in which they are living. For this they have to become full members; citizens of those political communities. This can be achieved if the exclusive citizenship regimes of the member states are liberalized. If the exclusive regimes are reformulated around the principle of *jus soli*, in a way the nationality will be separated from the acquisition and exercise of citizenship. This will the make the citizenship regime more inclusive for the third country nationals; who are the immigrants that have never immigrated in most cases (Feldblum, 1998).

As third country nationals do not have political clout citizenship laws have been never or rarely brought under discussion. However, the last decade has witnessed liberalization efforts in the citizenship laws of the member states. One by one, citizenship regimes of the member states have started to conform to the fact that they are transforming to countries of immigration. In the words of Rainer Bauböck (2006: 12) "the most pronounced liberal trend concerns the introduction of *jus soli*".

In 1999 Germany changed its citizenship regime and introduced *jus soli*. By January 2000, individuals born in Germany from foreign parents that have legally resided there at least eight years are entitled to citizenship automatically at birth (Münch, 2001, p.107). With this new amendment German citizenship is now more inclusive than the French citizenship, in which automatic citizenship to a new born baby is only given if he has a parent born in the country (Feldblum, 1998).

Several EU Member States followed Germany and introduced amendments to their citizenship regimes. For instance Belgian citizenship policy was revised in 2000 and now any legally resident foreigner can become a Belgian citizen with a simple declaration (Martiniello and Rea, 2003). In 2001, Luxembourg reduced the period of residence from ten to five years (Kollwelter, 2007) and Sweden revised its citizenship regime to allow dual citizenship (Gustafson, 2005). In 2003, Finland followed Sweden in letting dual citizenship. Lastly Portugal extended its citizenship for second and third generation immigrants in 2006. Third

generation with a parent born in Portugal acquires citizenship automatically at birth, while the second generation acquires citizenship with a simple declaration if one of the parents legally resided in Portugal for five years. The new law also created an opportunity for the first generation immigrants to acquire Portugese citizenship if they have clean criminal records and can speak Portugese (Queiroz, 2007). Italy, which has had one of the strictest citizenship policies among the EU Member States, is discussing a draft law which will ease citizenship laws if it is accepted. Now it takes 15 years for a migrant to become a citizen in Italy (Jasch, 2006). Greek policy for citizenship is considered to be the most restrictive one and it seems unlikely to expect a change in the policy soon. However, as one of the old emigrant countries, Spain is expected to make an amendment in its citizenship policy to strengthen elements of *jus soli*.

All these liberalizations strengthened *jus soli* in the European citizenship regimes. Pure *jus sanguinis* regimes have been left as they have become anachronistic and pure *jus soli* regimes were modified, in the case of Ireland in 2005, to shield against new waves of migration (Joppke, 2003). They have reduced the period of residence and other requirements for acquisition of citizenship or they have let new citizens retain their former nationality (Bauböck, 2006). However this liberalization trend is not without exceptions. For instance Austria, Denmark, Germany, the Netherlands and Luxembourg still do not let new citizens hold their former citizenships. Furthermore, the Netherlands amended its citizenship laws in 2003 and left a more liberal regime (Keeney Nana, 2007)

Interesting enough in some cases the principle of *jus soli* may not be inclusive enough. It is told that *jus soli* fails to provide citizenship to the "so-called generation 1.5" (Bauböck, 2006: 17). The 'generation 1.5' are the children who were born abroad but have immigrated with their parents when they were still very young, or who have joined their parents later. For these cases Swedish citizenship laws provides the most inclusive regime. A child who does not hold Swedish citizenship acquires Swedish citizenship by notification of her parents who have legally resided in the country for five years (Act on Swedish Citizenship, 2001). Furthermore Citizenship regimes based on pure *jus soli* can not distinguish people who give birth on the country's territory as a strategic move as in the case of Levette Chen.

Today the principles of *jus soli* and *jus sanguinis* are combined in most of the Member States' citizenship regimes. In these countries, for the child to have the citizenship of the

country, one of the parents must be a legal resident for a certain period of time or the parent himself must be born in the country too. In some countries, the child acquires the citizenship only after she reaches to a certain age but not immediately at birth on the territory (Feldblum, 1998).

These new reforms clearly signal a deviation from the exclusive ethno-cultural conception of citizenship. Besides the introduction of *jus soli* elements, member states have also added citizenship tests to naturalization policies. These tests, which are applied in Austria, Greece, Denmark, Germany, the Netherlands and the United Kingdom at present, are about country's history, constitution and every day culture (Koopmans and Statham, 2003). The tests have become important in the citizenship debate about whether their introduction is problematic or meaningful. For the purpose of this thesis entering into this discussion will not provide anything, however, whether good or bad, the introduction of these tests along with *jus soli* elements is an indicator that citizenship is no longer attached to ethnic identity and descent. In a way it becomes a reward for the people who can communicate in the country's language, who can earn his living, identify himself with the culture, history and values of the host society (Bauböck, 2006).

6 Conclusion

Today third country nationals are not invisible in the European societies any more. They have settled in Europe and their number is estimated to be more than 14 million. As residents of member states, they are directly affected by the policies made both in national and European levels. However, they are unable to have any say on those policies or defend their rights and interests through political action because they are *denizens* of national citizenships and "they are *invisibles* of European citizenship" (Fernandez, 2003: 174).

With their *denizen* statuses, third country nationals can benefit from the social and civil rights components of the citizenship rights; however they are deprived of political rights, which are crucial for any person in exercising his social and civil rights. *Denizenship* status is a temporary solution. It must be seen; as "a step towards equal membership and full participation"; as a stop in the road of citizenship (Kostakopolou, 2002: 450).

Today almost all academics working on the third country nationals in Europe, say that these people must be included by the political communities they are living in. The only way for their inclusion is to complement their social and civil rights with political rights, in other words, the only way for their inclusion is their becoming citizens of those political communities.

When the European citizenship was first introduced, the academics and migrants' representatives hoped that it might include third country nationals too and provide political rights for them. As a result the anomaly, in which the third country nationals are in, would be corrected by the citizenship of the European polity. However, on the contrary, the European citizenship deteriorated the conditions of third country nationals by operating as legal and social exclusion mechanisms for them. When this was the result several propositions have been put forward to make the European citizenship more inclusive for the third country nationals. The three most discussed proposals, basing the European citizenship on residence, harmonization of naturalization laws of the member states and the enhancement of the rights of the third country nationals via European Court of Justice Jurisprudence are discussed in

this thesis. The findings of this discussion show that all of these proposals are unlikely to take place because of the member states' national sovereignty concerns. Like many academics Rostek and Davies (2006: 1) observe that member states want to maintain their exclusive competence in deciding who will be their citizens and as a result they will "jealously guard their roles as gate keepers" of the European citizenship. When this is the case, in line with the arguments of this thesis, it becomes obvious that European citizenship can not provide anything for the third country nationals unless the member states want it. Member states have made it clear that the only way for the acquisition of European citizenship, is the acquisition of a citizenship of a member state.

As a result, it seems that third country nationals can only become equals with the other members of the society they are living in, via the acquisition of citizenship of that member state. However, when it is considered that the principle of *jus sanguinis,* which denotes an exclusive ethno-cultural citizenship regime especially for those who do not have any ethnic ties to the nation, has an important role in the European citizenship regimes and dual citizenship is not permitted in most of them, the acquisition of citizenship by the third country nationals seems difficult. If the citizenship regimes of the member states are liberalized or in other words, if they are reformulated around the principle of *jus soli* and as a result their link with a specific ethnic group is broken, they will become more inclusive and they will be able to cover all the people living in European societies, which have become more heterogeneous with the establishment of the third country nationals.

As a result it can be said that the rights of the third country nationals can not be improved by the European citizenship, but only by the liberalization of the European citizenship regimes. The developments that have taken place in the last decade seem to be in line with this argument. One by one the member states have started to liberalize their citizenship regimes to include the second and third generation immigrants. As a concluding remark, accompanied with language tests and integration courses in most cases, a liberal citizenship regime based on the principle of *jus soli* is the only alternative for third country nationals to become equals with the other members of the society they are living in.

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