Chapter Twelve

Functions of EU Citizenship

This part will deal with the functions of EU citizenship, i.e., diplomatic protection and free movement rights. It is exactly in this context that the argument that EU citizenship could be additional to national citizenship rather than derivative gains its strength. Closer examination will show to what extent EU citizenship has become a fundamental status in the EU and outside its borders.

12.1. Protection of EU Citizens outside the EU

Ever since introduction of EU citizenship the provisions on diplomatic protection and consular assistance have been neglected. Apart from brief references to a couple of cases the discussion stopped by general reference to international law. This has had good reasons because the EU’s action was limited due to the intergovernmental approach and differences in national practices. However, the Lisbon Treaty has changed the situation in three contexts. First, it has strengthened EU competence in common foreign and security policy and external action in general. Article 35 TEU provides that diplomatic and consular missions of Member States and Union delegations should co-operate and contribute to implementing the right of EU citizens to protection in the territory of third countries. Second, the legally binding Fundamental Rights Charter in Article 46 refers to entitlement of every EU citizen to protection by the diplomatic or consular authorities. Third, the TFEU has been strengthened. In addition to a general reference to diplomatic and consular protection in Article 20 TFEU, Article 23 TFEU provides:

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection

---

by the diplomatic or consular authorities of any Member State, on the same condition as the nationals of that State. Member States shall adopt the necessary provisions and start the international negotiations required to secure this protection.

The Council, acting in accordance with a special legislative procedure and after consulting the European Parliament, may adopt directives establishing the coordination and cooperation measures necessary to facilitate such protection.

The first paragraph does not significantly change the principle as once enshrined in ex Article 20 TEC. It provides for entitlement to enjoy equal protection if compared to nationals of the protecting Member State when no national consular or diplomatic protection is offered by the Member State of their nationality. This clause thus amounts to an extension of the principle of equal treatment of EU citizens when in third countries.  

The main added value is that after elimination of the inter-governmental aspect of Article 23 TFEU the Council has express competence in the field of consular protection. Article 23(2) TFEU gives a sufficient basis for pragmatic cooperation environments that can be fine-tuned on a regular basis to establish environments by its various partners. Moreover, the Council acting under special legislative procedure may adopt directives to facilitate co-operation and a system of protection.

The Council can also facilitate fulfilment of the obligation to start negotiations for conclusion of an international agreement by Member States. Individual protection as prescribed in the EC Treaty is dependent not only upon treaties between Member States but also on cooperation from third countries. Decisive for protection in reality, therefore, is the extent to which the third country accepts cooperation as well as to what extent it views the EU as creating a sufficient tie between the individual and the country offering protection.

Article 8 of the Vienna Convention is very open to taking over of consular functions by third States, though subject to the agreement of the receiving State. Even in relation to consular protection according to Article 8 of the Vienna Convention on Consular Relations (1963) the acceptance of the receiving State is necessary:

---

4 Ibid.