

**Eva-Maria Poptcheva**

# **MULTILEVEL CITIZENSHIP**

**THE RIGHT TO  
CONSULAR PROTECTION  
OF EU CITIZENS ABROAD**



P.I.E. Peter Lang

## Preface

The book of Eva-Maria Poptcheva addresses questions of utter importance for the way forward of European integration. The conviction that the future of the European Union towards a real federation passes inevitably through a positively construed ‘Union of Rights’, making citizens believing again in the European project, is in the centre of this book. The book acknowledges rightfully the stage in which European integration is at this moment by not trying to impose a rather idealistic concept of a federal Union citizenship, conceived of by the hierarchical relationship between national, supranational and international norms, but understands to combine both citizens’ aspiration to be part of a community entitling to certain rights, as well as Member States’ legitimate interest to remain Masters of core state competences inherent to their state sovereignty, and the strive of the international community to see observed the rules of the game between international law subjects. This is the great achievement of the paradigm of ‘multilevel constitutionalism’ – it allows us to overcome the shortcomings of the current stage of the European Union architecture, somewhere on the way to a federal union.

The multilevel-constitutionalism approach has turned into a quasi-philosophical paradigm, into a being and time, to put it with Heidegger’s words, seeking to explain in an abstract-juridical way the interplay of legal orders within one and the same subject. Nowadays, it is no longer possible to employ a legal approach to the analysis of a right without taking into account that the applicable normative framework features diverse levels of legal production, and, as shown by the European constitutional doctrine, needs to deploy its paramount efficacy ensuring to its right-holders the best possible protection. And there lies the greatest achievement of this book: it breaths new life into the legal-philosophical concept in applying the multilevel-constitutionalism approach to a concrete institution of law – the right to consular protection of Union citizens abroad.

Mrs Poptcheva’s book embarks on a challenging journey of meticulously identifying the relationships between legal norms deriving from national, European Union and international law and practices, which only in their multilevel interplay construe the right to consular protection of Union citizens as an EU fundamental right. A great challenge and at the same time an achievement of the book is the lack of other constitutionalist analysis of the right to consular protection, having the constitutionalist relinquished the examination of consular protection under the law of the European Union to the foreign affairs science, depriving it in this way of a dogmatic analysis

that does justice to its constitutional character as a right deriving from the Union citizenship status. The analysis of the elements construing consular protection as a right, turning it into an identifiable institution of law that cannot be desnaturalised, shows the potential that this right offers in times of globalisation to the protection of persons in distress, which was left in the past to the mercy of the political discretion. This book is therefore the first monograph offering a dogmatically founded analysis of the configuration elements of the right to consular protection (right holders, exercise, guarantees, etc.) providing scientific evidence for its character as a fundamental right, against the attempts of both some Member States and parts of the scientific community to write it off as a mere State discretion and denying it the advantages implied by the rights deriving from Union citizenship.

But the book goes beyond the mere appraisal of a fundamental right and frames the analysis of all Union citizenship rights under consideration of the symbiotic relation between the Union citizenship status as a constitutional paradigm and the rights flowing from that status. The book is visionary in the way it extrapolates the findings surrounding the dogmatic framework of the right to consular protection as a fundamental right, conceived of through the interplay of legal norms belonging to diverse legal orders, to the analysis of Union citizenship as ‘multilevel citizenship’. The book converts in this way the analysis of the right to consular protection into a case in point for the construction of multilevel citizenship as a constitutional paradigm best suited to explain the quasi-federal setting of Union citizenship in a triangle of legal relationships between Union citizens, Member States and the European Union.

The book’s innovative spirit is owed not only to the constitutionalist approach to the right to consular protection embedded in the dogmatic environment of Union citizenship as a constitutional status, but also in the coherent analysis of all legal norms operating within the provision of consular protection, including the 28 Member States’ legal norms and practices. Inspired by a study on the national rules governing consular protection in the EU Member States conducted by the Instituto Europeo de Derecho for the former Directorate General Justice, Freedom and Security of the European Commission, Mrs. Poptcheva undertook a major challenge in seeking to identify the dogmatic consequences of the divergent level of juridification of the right to consular protection in the Member States for the legal design of consular protection under the law of the European Union. There are not many scholars living up to the challenges posed by comparative analysis in the way done in this book by Mrs Poptcheva, not least owing to her background as a real European lawyer, being a Bulgarian national with a German law degree from the Albert-Ludwigs-University in Freiburg i.Br., and holding a European PhD in Law from the Autonomous University of Barcelona.

The comparative analysis requires indeed not only an understanding of the differences between the Member States' legal cultures but also a mastery of a methodology enabling us to establish existing differences but also to positively construe a common European model. The book thus successfully strikes a balance between Union citizens' strive for protection not only from their own country but also from other Member States on the one side, and the practicability of such aspirations under due account of the general interest to be observed by the EU Member States on the other side, making of this book, despite its coherent dogmatic approach, an indispensable guide for all actors operating in the field of consular protection.

As the supervisor of Mrs Poptcheva doctoral thesis, I am very glad about the publication of this book, as a culmination of a research initiated in a European project, followed by a doctoral thesis defended at the Universidad Autónoma de Barcelona with the highest distinction. It is a rigorous work and at the same time forward-looking to a future in which we, the Union citizens, wish to relate ourselves as such not only when we move across the Member States but also beyond EU territory, since consular protection, as a citizenship right, identifies us as such and makes us holders of a common legal baggage vis-à-vis the whole international community.

The focus of the present book on Union citizenship and the rights flowing from the "fundamental status of Union citizens" is more than adequate in the current crisis bedeviling the European project. Today, the easy recourse to the moral and economic crisis is a demagogic charge against institutions, against the application of the law, against European integration. If we would listen to the many messages that overflow the media, we would see that, in many cases, all evil comes from Europe. And the alarm calls are made to discredit the democratic systems that we have implemented in Europe in recent decades. While acknowledging the difficulties and the mistakes done, that are present in our integration process, it is necessary to send a message of warning against populism, nationalism and other 'isms' that inundate us, just now, when we have to renew the legitimate representation of European citizens in the shape of the European Parliament. As recognized amongst those who want Europe to remain a bastion of defense of the values included in the Lisbon Treaty, we are also facing the challenge of reinventing the EU's institutional architecture and our legal system and to bring all this nearer to the citizens.

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