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FAKULTETA ZA DRŽAVNE  
IN EVROPSKE ŠTUDIJE

# Constitutional citizenship, integration and dual citizenship among ASEAN member states

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*Robert Walters<sup>1</sup>, Erazem Bohinc<sup>2</sup>*

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## ABSTRACT

This article explores how ASEAN member states can further integrate by reforming their respective constitutions and citizenship laws. It examines how member state's constitutions have recognised citizenship. Dual citizenship has many benefits to an individual and nation state. Dual citizenship, from an economic and integration perspective eases the restrictions of movement. The ease in movement across international borders enable citizens to engage with other states and their citizens in economic and social activities. The rights of citizens have become a very important part of modern democratic states. Thus, it is examined what express rights have been afforded to the citizens of ASEAN member states through their respective constitutions. In doing so, one only needs to look at how the Republic of Slovenia has established their constitution and citizenship laws since becoming independent in 1991, and obtaining full membership to the European Union in 2004. Looking to the European Union and Slovenia, ASEAN and its member states could borrow and transplant legal principles and laws to enhance the integration process and reform their constitutions and citizenship laws.

*Key words:* Slovenia, European Union, ASEAN, Protection of Human Rights, Citizenship, Dual Citizenship, Integration, Constitution;

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<sup>1</sup> Victoria University, Melbourne, Australia.

<sup>2</sup> European Faculty of Law, Slovenia.

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## POVZETEK

Članek se ukvarja z vprašanjem možnosti držav članic ASEAN za nadaljnjo integracijo z morebitnim reformiranjem njihovih ustavnih določb in zakonodaje s področja državljanstva ter razišče kako ustave držav članic zakonsko urejajo državljanstvo. Dvojno državljanstvo prinaša veliko koristi tako posamezniku kot tudi državi. Iz ekonomske in integracijske perspektive doprinese k svobodi gibanja. S tem, ko državljanom omogoči gibanje preko državnih meja, se le tem omogoči tudi medsebojne interakcije z državljani drugih držav in državami kot takimi in to tako pri ekonomskih kot družbenih aktivnostih. Državljanske pravice so postale ključna komponenta modernih demokratičnih držav. Predstavljeno je, katere izključne ustavne pravice so dodeljene državljanom držav članic ASEAN. Republika Slovenija predstavlja dober primer države, ki se je leta 1991 osamosvojila, vzpostavila svojo Ustavo in zakonodajo s področja državljanstva in leta 2004 postala polnopravna članica EU. Države članice ASEAN bi lahko Slovenijo in EU vzele za zgled tudi pri sprejemanju nove zakonodaje, ki bi z reformiranjem ustav in zakonodaje s področja državljanstva pospešila nadaljnjo integracijo.

*Ključne besede:* Slovenija, Evropska Unija, ASEAN, Varovanje Človekovih Pravic, Državljanstvo, Dvojno Državljanstvo, Integracija, Ustava;

## 1. Introduction

The countries that make up the Association of Southeast Asian Nations (ASEAN) have been on the road to integration since 1967. ASEAN has much to offer the region of South East Asian nations, with an estimated 600 million people, with approximately \$1.5 (US) trillion dollars of combined gross domestic product in 2010.<sup>3</sup> As an economic block ASEAN when compared to the European Union (EU), which operates as a single market consisting of twenty eight countries has the ability to be on par and even surpass Europe in the future. The EU is now a major world trading power

<sup>3</sup> *Master Plan on ASEAN Connectivity: one vision, one identity, one community, Adopted in Ha Noi, Vietnam on 28 October 2010, <http://www.asean.org/documents/MPAC.pdf> (retrieved 8. 10. 2014).*

with a population estimated at more than 500 million.<sup>4</sup> In 2012, it was estimated the EU generated more than €2 trillion, whereas, the United States generated US \$16 trillion in gross domestic product.<sup>5</sup> Therefore, by ASEAN becoming a single market and further integrating will expand their economic opportunities internally and external with other regions of the world such as the EU and Australia. Apart from the economic benefits, further integration can be achieved by undertaking legislative and constitutional reform, liberalising the respective member countries citizenship laws, by providing for dual citizenship and ensuring a consistent set of expressed rights within all constitutions that reflect the 2012 Declaration on Human Rights.<sup>6</sup> Dual citizenship, for example, will enhance economic expansion by easing the movement of citizens, goods and services across national borders.

Today ASEAN's membership includes ten countries (Brunei Darussalam, Cambodia, Indonesia, Lao, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam). Article 2 of the Bangkok Declaration directs the purpose and aim of ASEAN to promote regional peace and stability through justice and the rule of law. The Master Plan on ASEAN Connectivity released in 2010 provides a framework in narrowing the gap in the integration process that will assist in facilitating regional trade, attract investment and promote deeper ties amongst its people. One way to achieve that connectivity is through law reform enabling the citizens of ASEAN member countries to obtain dual citizenship with other ASEAN countries. Furthermore, by undertaking constitutional reform to provide for a consistent set of citizenship and human rights similar to the EU's legal framework, will also contribute to connecting people by ensuring all citizens have the same set of rights no matter what country they reside.

Hung<sup>7</sup> when discussing deeper integration amongst ASEAN countries readily refers to how a similar approach and process has taken place in the EU. Upon implementation of the Maastricht Treaty by the European Union every citizen holding nationality of

<sup>4</sup> Eurostat, *Population and population change statistics*, [http://epp.eurostat.ec.europa.eu/statistics\\_explained/index.php/Population\\_and\\_population\\_change\\_statistics](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Population_and_population_change_statistics) (retrieved 8. 10. 2014).

<sup>5</sup> Eurostat, *National accounts and GDP*, [http://epp.eurostat.ec.europa.eu/statistics\\_explained/index.php/National\\_accounts\\_and\\_GDP](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/National_accounts_and_GDP) (retrieved 8. 10. 2014).

<sup>6</sup> ASEAN Human Rights Declaration, <http://www.asean.org/news/asean-statement-communiqués/item/asean-human-rights-declaration> (retrieved 8. 10. 2014).

<sup>7</sup> L. Chung Hung, *ASEAN Charter: Deeper Regional Integration under International Law?* Chinese JIL, 2010, p. 821-837.

a member state automatically became a citizen of the Union. With that, came certain rights. The most tangible rights has been the ability to move, work and reside in any member state of the Union.<sup>8</sup> With the implementation of the 2007 Lisbon Treaty<sup>9</sup>, and entry into force in 2009, the most notable improvement was the rights of all Union citizens would be recognised in a single document, i.e. the Charter of Fundamental Rights of the EU (the Charter; which was proclaimed already in 2000). Consequently, the Charter became binding on member states, and, today sets the overarching framework to enable all citizens of the Union to enjoy the same rights such as free movement. "The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values".<sup>10</sup> Those common values that have been expressed throughout EU law have enabled greater integration, particularly in the area of rights and freedoms.

To further the integration process within ASEAN countries might like to also turn to Slovenia for assistance. Slovenia only becoming independent in 1991 has had the opportunity to develop its own democratic constitution and citizenship laws. Thus, the ASEAN Secretariat can borrow or transplant law and policy from other nations to enhance this process. The practice of legal transplantation and borrowing refers to the transfer of laws, legal principles and legislation from one country to another or between legal families such as, from the civil law family to common law family and vice versa. Legal transplantation and borrowing across international jurisdiction is not new. Berkowitz<sup>11</sup> points out that borrowing and transplantation is an effective and efficient means of law reform. For instance, Cambodia and the People's Republic of Lao adopted most of their current day civil law systems from the French who arrived in the nineteenth century.<sup>12</sup> While Indonesia's legal system has been heavily influenced by the Dutch civil law.

Historically, the territory of today's Republic of Slovenia has been part of the former Roman Empire, Illyrian Provinces (Na-

<sup>8</sup> Article 20, *Treaty on the Functioning of the European Union* (Official Journal of the European Union, C 326).

<sup>9</sup> *Lisbon Treaty* (Official Journal of the European Union, C 306/01).

<sup>10</sup> *Preamble to the Charter of the Fundamental Rights of the EU* (Official Journal of the European Union, C 364/13).

<sup>11</sup> D. Berkowitz, K. Pistor, J. Richard, *Economic Development, Legality, and the Transplant Effect*, EER, 2003, 47, p. 165.

<sup>12</sup> D. Donovan, *Cambodia: Building a Legal System from Scratch*, IL, 1993, 2, p. 445-454.

poleonic French Empire; who, only for a short while, introduced Code Civil), Habsburg Monarchy, Austro-Hungarian Empire and Yugoslavia. Consequently, Slovenia's legal system has been strongly influenced by law from Yugoslavia, Austria and Germany and also other countries across Europe. By gaining independence in 1991 Slovenia included liberalising their previous citizenship laws by allowing non citizens to be naturalised and obtain dual citizenship (although the law is restrictive). The reform program also provided constitutional recognition of citizenship and established a comprehensive set of expressed rights within the constitution that reflects those rights established for all citizens across the EU and (full) member states of Council of Europe, as well as specific rights to citizens of Slovenia. Transplantation of law, legal principles, norms and institutions has been common, not only in ancient times but throughout the course of history.<sup>13</sup>

The EU remains one of the most complex political projects in the modern world. It is usually portrayed as a symbol of European unity: the triumph of voluntarily shared sovereignty over excessive nationalism, ideological division and imperial ambition. While the EU has been well established, one of the key concerns for member states has been transferring a portion of their sovereignty to the Union itself. Herman Van Rompuy stated that the age of the nation states is over and the idea that countries can stand alone is an illusion and a lie.<sup>14</sup> However, the legal framework of the EU has enabled member states to retain their sovereignty in the areas of citizenship (allowing member states to choose their future citizens). Sovereignty and the legal norm of non-intervention are long standing principle that can be found in article 2, section 1 of the United Nations Charter. Section 7 reinforces article 2 and states 'a sovereign state is empowered by international law to exercise exclusive and total jurisdiction within its territorial borders, and other states have the corresponding duty not to intervene in its internal affairs. The ASEAN Charter's Article 1 delineates the commitment demanded of each member to mutual goals. Article 1 (5) reinforces the integration process by promoting the establishment of a single market to enhance the free flow of goods,

<sup>13</sup> A. Watson, *Legal Transplants: An Approach to Comparative Law*, Athens, Second Edition, 1996, 335–351.

<sup>14</sup> D. Martin, *Nation states are dead: EU chief says the belief that countries can stand alone is a 'lie and an illusion'*, <http://www.dailymail.co.uk/news/article-1328568/Nation-states-dead-EU-chief-says-belief-countries-stand-lie.html> (retrieved 8. 10. 2014).



services and people (the citizens of ASEAN). Article 1 (7) enhances the introduction and establishment of democratic values by strengthening the rule of law, human rights and fundamental freedoms. Countries will maintain their sovereign right to develop national laws such as in the areas of citizenship and rights (right to marry and found a family, equality amongst citizens, the right to vote and stand for election).

As Walby<sup>15</sup> argues it is the nation state which is the political institution where the economic, political and cultural domains overlap', enabling the state to develop its national laws that include citizenship. A nation state in seeking to create a sense of belonging amongst its citizens provides constitutional rights and citizenship laws that aim to integrate the citizens through a shared sense of national identity. This is reinforced by Flahive<sup>16</sup> who suggests that states are political units made up of social groups who share a common identity based on shared ethnicity, language, culture and religion, and points out the importance of ethnicity and descent in establishing membership. Descent is described in most countries' citizenship laws. An individual can obtain citizenship of Thailand, for instance, if they are born in the Thai territory, to parents who hold that states citizenship. Thus, the availability of citizenship rights is often defined along ethno-cultural lines and membership of a specific civic community.<sup>17</sup> The establishment of a large, overarching political-economic community such as ASEAN includes a potential wasps' nest in dealing with the many different ethno-cultural communities of the member states, unless, as ASEAN initially chose to do, such sensitive elements are left to the discretion of the member states. Indonesia is another good example, like most ASEAN countries that is made up of many different ethnic and cultural groups. Indonesia consists of more than 726 ethnic groups residing across the world's largest archipelago<sup>18</sup> who speak many languages and adhere to different religions. As a nation state, Indonesia has es-

<sup>15</sup> S. Walby, *The Myth of the Nation-State: Theorizing Society and Politics in a Global Era*, Sociology, 2003, 3, p. 529-546.

<sup>16</sup> E. Flahive, *National Identity Crisis: The Politics of Constructing National Identity and Mandatory Detention of Asylum-Seekers in Australia and Japan*, ZJAPANR/J.JAPAN.L, 2007, 23, p. 149.

<sup>17</sup> R. Brubaker In: R. Koopmans and P. Statham, *How national citizenship shapes transnationalism, A comparative analysis of migrants Claims-making in Germany, Great Britain and the Netherlands*, REMI, 2001, p. 63-100.

<sup>18</sup> D. Utomo, *ARSIP as national identity: Case of Indonesia*, <http://ica2012.ica.org/files/pdf/Full%20papers%20upload/ica12Final00096.pdf> (retrieved 8. 10. 2014).



tablished a sense of belonging and national identity by providing citizenship to its citizens and a constitution that expresses certain rights and freedoms. Like the other states of ASEAN all have their own common language even if that is mixed with other languages such as the case in Singapore where English is becoming the number one language, but, Chinese Mandarin, Malay and others are commonly used and spoken.

An ASEAN citizenship, similar to the cultural citizenship<sup>19</sup> that has been established in the EU will assist in further integrating states and begin to develop a broader ASEAN identity. The EU as a supernational polity has been the most successful case where integration of countries having very different cultural, linguistic and historical pasts. A cultural citizenship could be extended to ASEAN that would provide the basis for constitutional reform, to be carried out by individual countries that will ensure a consistent set of rights and recognition of citizenship. With the recent introduction of the 2012 ASEAN Declaration of Human Rights and the research project undertaken by the Thammasat University in relation to the 'ASEAN Sense of Citizenship', things have slowly progressed in the citizenship area. The Sense of Citizenship project found that there was a lack of knowledge in relation to ASEAN and the concept of ASEAN citizenship across ASEAN countries, particularly in Thailand.<sup>20</sup> Thus, the beginnings of using citizenship and what it means to be a citizen of the region is underway. This paper will enhance that by focussing on the legislative and constitutional aspects of citizenship and citizens' rights. Such a result could be obtained by having the constitutions of all ASEAN member states recognise that 'citizenship be regulated by law' as, for instance, article 12 of the Constitution of Slovenia which states that citizenship is regulated by law. This would introduce a consistent constitutional approach across all countries. Firstly though let us begin by understanding whether these countries allow their citizens to have citizenship of another country.

<sup>19</sup> J. M. Delgado-Moreira, *Cultural Citizenship and the Creation of European Identity*, <http://www.sociology.org/content/vol002.003/delgado.html> (retrieved 8. 10. 2014).

<sup>20</sup> O. Tangmeesang, *Thammasat launches 'Asean Sense of Citizenship' project*, <http://www.nationmultimedia.com/national/Thammasat-launches-Asean-Sense-of-Citizenship-proj-30186243.html> (retrieved 8. 10. 2014).

## 2. Dual Citizenship

Dual citizenship enables a person to have citizens of two countries. As mentioned above Ar. 12 of the Constitution of the Republic of Slovenia stipulates that “Slovene citizenship shall be regulated by law”. The Citizenship of the Republic of Slovenia<sup>21</sup> regulates the conditions under which someone obtains Slovenian Citizenship, and provides for restricted dual citizenship (a person must prove a connection to the state).<sup>22</sup> Similar laws could be established across ASEAN countries to enable citizens to hold citizenship of another country. In the first instance this could be restricted to other ASEAN countries, then over time broadened to include Australia and member states of the EU. The final phase could be implementing laws that do not restrict having citizenship of any country across the world. Baubock<sup>23</sup> argues countries should not only tolerate, but embrace, dual citizenship. However, with the majority of ASEAN countries not recognising dual citizenship, it is the nation state and the governments that do not recognize that one of their citizens have the choice to rights, freedoms and obligations of another country. Among ASEAN countries, dual citizenship is only part of the legal framework of a few member states. In Cambodia under the Law on Nationality<sup>24</sup> there is no clear recognition of, or, renunciation of citizenship. However, article 18 states that any person who is 18 years old and has nationality of the state may renounce their nationality provided they have another nationality. A female Cambodian citizen who marries a national of another state may retain their Cambodian citizenship, unless the citizenship laws of the husband’s state requires the wife’s citizenship to be renounced. This can be undertaken without coercion from the state. However, it could be concluded article 18 is more related to preventing statelessness, than people having to renounce their citizenship, upon receipt of another.

<sup>21</sup> *Citizenship Act of the Republic of Slovenia (Official Gazette of Republic of Slovenia, no. 1/91).*

<sup>22</sup> A. Mavčič, J. Letnar Černič, P. Zagoričnik Marinič, N. Matijašević, E. Bohinc, *Citizenship and the Administration of Justice*, In: A. Alen, D. Haljan (eds.), *IEL Constitutional Law, Alphen aan den Rijn*, 2012, p. 225-226.

<sup>23</sup> R. Baubock, *Stakeholder Citizenship and Transnational Political Participation: A Normative Evaluation of External Voting*, *FLR*, 2007, 5, p. 2393-2447.

<sup>24</sup> Law on Nationality of Cambodia, adopted by the National Assembly of the Kingdom of Cambodia on 20 August 1996 during the Extraordinary Session of its first legislature. It was promulgated by Decree No. NS/RKM/1096/31 on 9 October 1996.

Article 2 of the nationality laws<sup>25</sup> of the Lao People's Democratic Republic Law on Nationality states 'Non-authorisation for Lao citizens to bear several nationalities'. The Lao People's Democratic Republic does not authorise Lao citizens to bear several nationalities at the same time. However, in accordance with article 4 provides the marriage of a Lao citizen with or the divorce from individuals holding other nationalities will not have an impact on their Lao nationality. That is, a Lao citizen who is married to a citizen of another country not holding Lao citizenship, upon divorce the Lao citizen will not lose their Lao citizenship. Article 7 states that a citizen of Lao has the right to request naturalisation of another nationality but must relinquish the Lao nationality beforehand.

Indonesia does not provide for dual citizenship. Article 19 provides that a foreign citizen legally married to an Indonesian citizen can acquire Indonesian citizenship, unless the acquisition results in double citizenship.<sup>26</sup> Moreover, article 20 allows an alien to obtain Indonesian citizenship provided that as a result of granting such citizenship the individual does not have double citizenship. While the Indonesian laws currently do not provide for dual citizenship, within the country there is a push to allow their citizens to have citizenship of another country. This has been backed up by the Jakarta Post in August 2013 where the Foreign Ministry stated there is positive developments toward recognising dual citizenship. The head of the Ministry stated that new government regulation enabling multiple entry for Indonesians of foreign nationalities that was signed in April 2013 was one of the steps towards recognising dual citizenship in Indonesia.

Similarly, a Vietnamese citizen must only have one nationality, that is, Vietnamese nationality. This is also the case for Malaysia, Singapore, and Myanmar. In contrast, a Philippine citizen who becomes a citizen of another state shall not lose their Philippines citizenship. Dual citizenship has been recognised by the Philippines. The liberalisation of the Philippines citizenship laws began

<sup>25</sup> Law on Lao Nationality, Pursuant to Chapter VI, Article 67, paragraph 1 of the Constitution of the Lao People's Democratic Republic, on the promulgation of the Constitution and of laws that have been adopted by the National Assembly; Pursuant to Resolution No. 05/NA, dated 17 May 2004, of the National Assembly of the Lao People's Democratic Republic, on the adoption of the Law on Lao Nationality (amended version); [and] Pursuant to Letter No. 17/SC, dated 25 May 2004, of the Standing Committee of the National Assembly, No 35/PO.

<sup>26</sup> Law Of The Republic Of Indonesia Number 12/ 2006 On Citizenship Of The Republic Of Indonesia.

in 2003 with the adoption of the Citizenship Retention and Re-Acquisition Act<sup>27</sup>. Panopio<sup>28</sup> notes that 'one of the reasons dual citizenship was enacted by Philippine law makers was to provide justice to the many Filipino brothers and sisters who were stripped of the Philippines citizenship when they opted for naturalisation in their adopted country'. Thailand is another country that does not allow dual citizenship for a person who has acquired citizenship of another state where their mother or father is a national of that state. Where a Thai national marries an alien they can take the nationality of that Alien, but they must renounce their Thai citizenship. Dual nationality can be obtained through birth and marriage, however, according to the law these individuals would lose their Thai citizenship. In August 2013, the Star Online<sup>29</sup> was reported that there are also calls from Thailand for Malaysia to liberalise their citizenship laws, particularly for those citizens that reside in the border region.

The establishment of dual citizenship would significantly benefit ASEAN member states as a further step to integration by easing movement restrictions of citizens, goods and services. Nevertheless, each state has a constitution, and to support ASEAN the integration process another area of reform could be achieved by ensuring a consistent approach is taken by all countries to express those rights that have been established in the 2012 Declaration on Human Rights, as well as the express recognition that citizenship is regulated by the law of that state.

### 3. Constitutional citizenship and rights

At present, the constitutions of ASEAN member states vary greatly in relation to the recognition of citizenship. The constitution of Brunei Darussalam does not provide for citizenship, or how citizenship will be regulated. Article 30 states that an individual cannot qualify to be appointed as a member of the Legislative Council or having been so appointed shall sit and vote therein, who is by virtue of his own act under the acknowledgement

<sup>27</sup> *Citizenship Retention and Re-Acquisition Act Of Philippines (R.A. 9225)*, [https://www.senate.gov.ph/republic\\_acts/ra%209225.pdf](https://www.senate.gov.ph/republic_acts/ra%209225.pdf) (retrieved 8. 10. 2014).

<sup>28</sup> J. Benedict f. Panopio, *Philippine Citizenship, Dual Citizenship, And Dual Allegiance: An Evaluation of R.A. 9225, The Dual Citizenship Law*, UST LR, 2005, p. 46-70.

<sup>29</sup> *The Star Online, KL and Bangkok to resolve dual citizenships*, <http://www.thestar.com.my/News/Nation/2013/08/23/KL-and-Bangkok-to-resolve-dual-citizenships> (retrieved 4. 2. 2014).

of allegiance, obedience or adherence to power or state outside Brunei Darussalam (2008)<sup>30</sup>. It could be argued that a person not holding citizenship of Brunei cannot be elected to the Legislative Council, but, this may also apply to a person who obtained citizenship of another state while retaining their citizenship of Brunei. As already outlined Brunei does not provide for dual citizenship. Article 39 provides His Majesty the Sultan of Brunei with the power to make laws for the peace, order, security and good government of the country.

Lao and Myanmar constitutions provide that citizenship is described by law in accordance with article 34 and 346 respectively. As mentioned earlier, the Philippines acknowledge that dual allegiance can also be regulated by the law and so go furthest in regulating citizenship.<sup>31</sup> No other country's constitution provides the same recognition of dual citizenship as the Philippines constitution has managed to achieve. Other countries could include a similar provision that would further enhance the concept of dual citizenship across the region. Article 4 goes onto say that citizens of the Philippines are those individuals that were citizens at the time of that the constitution was adopted and whose fathers or mothers are citizens of the country. Those individuals that were born before January 17, 1973 whose mothers were Filipino are also deemed citizens. Section 3 of article 4 states that citizenship of the Philippines may be lost in a manner provided by the law.

Article 33 of the Cambodian Constitution states that a Khmer citizen shall not be deprived of their nationality, or, exiled, arrested, or, deported to a foreign country unless there is an agreement in place. Those Khmer's residing in another country will be protected by the Cambodian state, and citizenship in the country shall be determined by the law. The country has the constitutional power to legislate for the acquisition of citizenship. Indonesia on the other hand has been quite progressive in its constitutional recognition of citizenship, and in particular in making the point that the local indigenous Indonesians and those people that have been naturalised are citizens according to the law. Furthermore,

<sup>30</sup> Constitution of Brunei Darussalam, Commencement: 29th September 1959 for Parts I, II, III, X XI and XII IS 105/59), 18th October 1959 for Parts IV, V, VI and VII IS 120/59] 1st January 1960 for Part VIII [S 155/59] 1st January 1962 for Part IX [S 108/62].

<sup>31</sup> C. Hill, J. Menzel, *Constitutionalism in South East Asia*, Konrad-Adenauer-Stiftung, Brunei Darussalam, [http://www.kas.de/wf/doc/kas\\_20589-1522-2-30.pdf?101005060858](http://www.kas.de/wf/doc/kas_20589-1522-2-30.pdf?101005060858) (retrieved 8. 10. 2014).

article 26 (3) states that matters concerning citizens and residents shall be regulated by law. While not clearly stating citizenship is regulated under national legislation and not the constitution, Indonesia when compared to Slovenia's constitution is very similar.

The constitutions of Malaysia and Singapore are similar to each other, whereby there is a comprehensive set of provisions that provide for acquisition and loss of citizenship. The approach taken by these states is different to the other ASEAN members that have established separate and distinct citizenship legislation at the national level. The acquisition of citizenship under the constitution of Singapore has been comprehensively presented such as article 121 that provides citizenship by birth for every person born in Singapore (the principle of *ius soli*) after September 1963. Article 121 goes on to say that a person will not be a citizen of Singapore if at the time of birth the father was not a citizen of Singapore. Furthermore, article 122 provides that citizenship can be obtained by descent, whereby, a person who has been born outside of Singapore after 16 September 1963 shall be a citizen of the country. Therefore, it is argued that to ensure consistency with other ASEAN countries, it could be time for Singapore and Malaysia to separate these laws into stand-alone national legislation. Finally, the constitution of Thailand makes no reference to citizenship. However, article 99 provides that a person has the right to vote provided they are a Thai national, being not less than eighteen years of age and having his name appear on the house register in the constituency for not less than ninety days up to the election. States could do more to recognise citizenship within their respective constitutions.

## 4. Constitutional Rights

Li-ann Thio<sup>32</sup> notes that ASEAN countries have made human rights part of the respective national agenda by establishing the 2012 Declaration. In November 2012, the ASEAN Heads of State and Governments, on the occasion of the 21st ASEAN Summit in Phnom Penh, Cambodia, put out a Declaration reaffirming the principles of ASEAN, in particular the respect for, promotion and protection of human rights and fundamental freedoms including

<sup>32</sup>L. Thio, *Implementing Human Rights in ASEAN Countries: "Promises to keep and miles to go before I sleep"*, YHRDJ, 2014, p. 4.



the principles of democracy, the rule of law and good governance. It could be argued that the ASEAN Secretariat is working towards ensuring all the citizens that form part of ASEAN have the same protections and freedoms no matter what country they are resident.

In Slovenia there are three levels of protection of Human Rights which according to Ar. 15 (5) of the Constitution: "No human right or fundamental freedom regulated by legal acts in force in Slovenia may be restricted on the grounds that this Constitution does not recognise that right or freedom or recognises it to a lesser extent." This means that the courts in Slovenia should protect Human Rights according the highest possible standards also taking into account international conventions, which were ratified by National Assembly (such as the ECHR, e.g. decision of the Constitutional Court of Slovenia Up-555/03<sup>33</sup>) and, if applicable, also EU law<sup>34</sup>. Both the ECHR in Ar. 53 (Safeguard for existing human rights) and Charter of fundamental rights of the EU in Ar. 52 and 53 ('Scope and interpretation of rights and principles' and 'Level of protection') prevent restrictive or limiting interpretation to Human Rights and fundamental freedoms application at the courts. Nevertheless also Slovenian Constitution includes special chapter on Human Rights And Fundamental Freedoms which consists of 51 (Articled 14-65) articles, some of which are constitutional programme norms and as such do not create a subjective right to work (therefore they cannot be a basis for a claim in court). However there are some constitutional programme norms also included in the Charter of fundamental rights.

In addition, the Slovenian Constitution in Ar. 13 provides that "In accordance with treaties, aliens in Slovenia enjoy all the rights guaranteed by this Constitution and laws, except for those rights that pursuant to this Constitution or law only citizens of Slovenia enjoy." That is, there is no way for citizens of ASEAN countries to bring actions against their respective states for breaches of human rights as is the case in Europe. For example, with the break up of the former Yugoslavia on 1991, Slovenia had developed new citizenship legislation that denied many former citizens of Yugoslavia Republics citizenship of Slovenia. Under the former Yugoslavia, citizens were able to move and reside in other republics. It

<sup>33</sup> CCS, 6. 6. 2006 - Up-555/03 (*Official Gazette of Republic of Slovenia*, Nr. 78/2006), para. 33.

<sup>34</sup> *Ibid.*, p. 20.



was not uncommon for people to move from Serbia, Bosnia and Herzegovina, Croatia and the other republics to Slovenia and take up residence and work. Being denied citizenship these former Yugoslav citizens found themselves without citizenship of any country and were declared stateless (i.e. apatride). Some took their cases to the Slovenian Constitutional Court and eventually cases found their way to the European Court of Human Rights in Strasbourg. In *Kurić*<sup>35</sup>, in 2012, it was argued the Slovene state had been in breach of article 8 of the Convention on Human Rights and Fundamental Freedoms for not respecting the private and family life of the applicants and the freedom that there shall be no interference by a public authority with the exercise of this right except on grounds of national security, public safety or economic well-being of the state. The case demonstrated, following Slovenia's membership to the EU, its citizens and those resident in Slovenia at the time of independence could progress matters to the European Court of Human Rights where there was an alleged breach of human rights. This higher level authority has a long way to go to be achieved in the ASEAN region in further protecting citizens from the state. However, ASEAN has commenced down a similar path with the first steps being established with the 2012 Declaration on Human Rights, but no equivalent institution has been established. Over time, a similar higher level court could be established by ASEAN for all its citizens, which will further contribute to ensuring equality across the region and expand the integration process.

The Declaration does, however, in accordance with article 18 recognize that 'every person has the right to nationality as prescribed by the law and that no person shall be arbitrarily deprived of such nationality nor denied the right to change that nationality'. This is an important observation because the provision pertaining to national governments not only retaining their sovereign right to develop citizenship laws, but also, ensuring individuals will not become stateless and without citizenship of any country. The freedom also enables states to develop laws that allow legislation to be in place to enable citizens to change their citizenship, for example, a person wants to become a Thai citizen who was originally a citizen of Singapore. Having recognised such a right, it is

<sup>35</sup> ECHR, *Kurić and Others v. Slovenia*, 26. 6. 2012 - 26828, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-111634#%7B%22itemid%22%3A%22001-111634%22%5D%7D> (retrieved 8. 10. 2014).

important for future citizenship laws within ASEAN countries, is similarly reflected in all member country's constitutions.

In comparing the Charter of fundamental rights of the EU and the ASEAN Declaration, it becomes clear that different approaches have been taken. The EU focuses on dignity, freedoms, equality, solidarity, justice, and the standout is a clear reference to 'citizen's rights'. Soysal (1994)<sup>36</sup> argues these rights account for the multiculturalism with the many different languages, cultures and heritages, enabling all citizens of member states to have the same level rights. Chapter five of the Charter consists of 8 articles that focus on the citizen by ensuring a citizen from any member state is able to vote and stand for election.<sup>37</sup> The Charter has separated general rights that apply to individuals no matter who is present in territory of the EU, and secondly have provided certain rights to only citizens of the Union. Arguably, the Charter has been established to compliment member states national rights systems and constitutions, and, not replace them. There is a wide and varied approach to how each country has gone about ensuring rights have formed part of their respective constitutions of MS of Brunei Darussalam, Cambodia, Indonesia, Lao, Malaysia, Myanmar, Philippines, Singapore and Thailand, Vietnam.

The constitution of Brunei provides no reference to the citizen, or, their rights. There is however, an indirect discussion regarding how certain rights will be managed in situations where His Majesty declares a state of emergency, by limiting and censoring publications, writings and communications, entry and search of premises, amongst others. The constitution largely sets out the framework for what government can and cannot do. Importantly, rather than provide any right for judicial review which is a common democratic principle found in countries such as Slovenian and Australia, article 84C states that the remedy of judicial review is and shall not be available in Brunei. That is, there is not option for judicial review with the state of Brunei.

<sup>36</sup> Y. Soysal, *Limits on Citizenship: Migrants and Post national Membership in Europe*, Chicago, 1994, p. 1-15.

<sup>37</sup> Citizens Rights, Article 39, Right to vote and to stand as a candidate at elections to the European Parliament, Article 40 Right to vote and to stand as a candidate at municipal elections, Article 41 Right to good administration, Article 42 Right of access to documents, Article 43 Any citizen of the Union has the right to refer to the Ombudsman, Article 44 Right to petition, Article 45 Freedom of movement and of residence, Article 46 Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

Indonesia on the other hand has established a limited set of expressed constitutional rights. There is a distinction between the citizen and non citizen, whereby, citizens have been afforded certain rights. All citizens of Indonesia are equal before the law, have the right to establish a family, education, choice of religion, communication, social security and property. The freedom of assembly and association, while being recognised under the constitution is regulated by national laws. This provides the ability for Indonesia to restrict where and how their citizens can associate and assemble. Without providing an account of what the laws state, this could extend beyond the well founded public policy issues related to health and national security. Interestingly and something that is not expressed in other constitutions is the right for Indonesian citizens to live and defend their life and existence. It could be interpreted this right extends not only between citizens, but could also include defending themselves against government authority. Along with other countries the importance of the family procreation have been expressed under article 28. One of the most fundamental obligations to citizens of Indonesia is to respect the rights of others in the community and defend the state.

For the citizens of the Republic of Lao<sup>38</sup> the expressed constitutional rights provided ensure all citizens are equal before the laws of that state. Citizens over the age of 18 have the right to vote and stand for election. Citizens also have the right to association, religion and speech; however, these freedoms can be limited by the laws of the state. While the rights expressed are not as advanced as other states, the Republic protects the individuals that have no nationality of any state (stateless, i.e. apatride) by ensuring these people enjoy similar rights to citizens, although limited. They may lodge petitions with courts and other organisations of the state. Citizens are obliged to defend the state in accord with article 49, similar to Indonesia. This obligation placed on citizens may not be consistent with modern day democratic state principles. Like many nation states today defending a country is a voluntary act of each citizen, not a formal legal requirement.

The core principles of the Malaysian constitution<sup>39</sup> include equality, free movement, speech, assembly, education, property

<sup>38</sup> C. Hill, J. Menzel, *Constitutionalism in South East Asia*, Konrad-Adenauer-Stiftung, Lao, [http://www.kas.de/wf/doc/kas\\_20589-1522-2-30.pdf?101005060858](http://www.kas.de/wf/doc/kas_20589-1522-2-30.pdf?101005060858) (retrieved 8. 10. 2014).

<sup>39</sup> *Ibidem*.

and association. However, there is no reference or recognition to the democratic principles such as the right to life, equality before the law, asylum, right to own property, free thought, conscience and religion, opinion or expression. Part II of the constitution ensures a citizens liberty is not deprived in accordance with the law, where a complaint has been made to the High Court or if the person is arrested, or, being punished where no law exists. Citizens are protected from discrimination no matter where they are from or what race or religion they practice. Additionally section 9 enables all citizens to move freely within the Malaysian territory, however and similar to other countries such as Philippines this movement can be restricted under health, national security and public order. The freedom of speech, assembly and association are freedoms consistent with many democratic states and section 10 provides Malay citizens with the opportunity to express themselves. However, the Parliament in accordance with section 10(2) can make laws to restrict these rights in the interest of security of the country. Along with the freedom of speech and association Malay citizens are able to practice the religion of their choice. Malaysia is predominantly a country that practices Islam. More importantly the discrimination against race, religion and place of birth is protected along with the respect of a person being able to undertake education.

The constitution of Myanmar<sup>40</sup> has expressed the minimum set of rights for its citizens compared to other ASEAN members. There is no expression or heading specifically stating human or citizens' rights. In summary, the rights afforded to the citizens of Myanmar are stated under the 'basic principle' of the state and include such rights as equality, liberty and justice. The implementation of these rights has been tightly controlled by national legislation outside of the constitution such as the freedom of expression. In 2014, the Human Rights Commission of the Office of the Human Rights High Commission noted that Myanmar had made significant progress towards understanding and improving the human rights to their citizens. However, the High Commissioner noted that the rule of law does not exist. While there has been progress in the area of free speech pertaining to the media, there was still a long way to go in changing the mid set of Government. The High

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<sup>40</sup> *Ibidem.*

Commissioner proposed 60 recommendations for Myanmar to further enhance and improve its move towards democracy and full respect and implementation of human rights. One of the most important pertaining to citizenship is to bring the 1982 Citizenship Act into line with international standards by providing for an objective criteria in granting citizenship that comply with the principle of non-discrimination, such as birth in the territory and descent.

Unlike other ASEAN states the Philippines have described constitutional rights as a Bill of Rights. The constitution and Bill of Rights establishes the relationship of the individual and the state. Smith<sup>41</sup> points out that the Bill of Rights was not easy because of the close identification of the Church with the state in Spain's Philippine colony. The Bill of Rights as Smith puts it, formed part of the Malolos Constitution in 1898 to protect the citizens against the abuses of Spanish Rule. Nevertheless, the Philippines today is a democratic and republican state, whereby, sovereignty resides with the people and government. Article 3 reinforces the democratic principles of the state whereby no person shall be deprived of life, liberty or property without due process of the law. Similar rights and freedom that are found in the Slovenian constitution can be found in relation to the ability for citizens of the Philippines are able to secure themselves, houses, paper and other effects against unreasonable searches and seizure by government authorities. The freedom of speech, expression allows individuals and the press to communicate to the people of the country. The freedom of religion enables its citizens to choose their religion exists as well as the ability to move freely throughout the state. However, this freedom can be restricted on public policy grounds such as health, public safety and national security. Section 8 of article 3 ensures citizens are able to choose their vocation, join and participate on a union. The protections against injustice have also been incorporated into the Bill of Rights, enabling individual access to the courts and counsel. Additionally, no person can be subject to torture, force, violence, threat or intimidation. The Philippines have a long way to go to reflect the principles of the Charter and constitutional reform is needed.

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<sup>41</sup> R. A. Smith, *The Philippine Bill of Rights, FEQ*, 1945, No. 2, p. 170-181.

Singapore has limited expressed rights within its constitution. Article 9 provides that a person is not deprived of life or personal liberty. Nonetheless, deprivation of liberty will be determined in accordance with the law and the High Court has the ability to inquire in relation to a complaint in relation to being detained. The right of liberty is quite narrow and relates to the state being able to detain any citizen or other individual. Article 10 protects against slavery and forced labour, but there is no mention of torture. Furthermore, there is recognition for the right of equality before the law, and individuals are protected from being tried twice following conviction or acquittal of an offence. However, there is little reference to the 'citizen' except in articles 12, 13 and 14 that deal with equality, equal before the law, freedom of movement, speech, assembly and association. Nevertheless, the right to religion is open to all persons, and reflects the many different religious groups currently residing throughout the Singaporean territory. Article 16 ensures there is no discriminations against any citizen of Singapore on the grounds of race, religion or place of birth. The rights of minorities has been recognised in accordance with article 69, whereby a Presidential Council for Minority Rights can be established to safeguard against the government implementing any discriminatory laws against any race, religion or community. This is an excellent demonstration by Singapore to recognise that its citizens come from many other different countries from across the globe. National laws may be established to invalidate or prohibit any provision regulating personal law and restrict free speech, expression and association. The state has retained the power to restrict the extent of the certain rights afforded to its citizens. Singapore has done very well in developing the country for its citizens, which cannot be done without hard work and the will of the citizens.

Finally, Vietnam and the Thailand<sup>42</sup> constitutions have afford its citizens with a comprehensive set of rights such as the right to vote, work, protection of labour, freedom of enterprise, education, expression, family, sexual equality, free movement assembly and association. However, structural reform is still required to ensure Vietnam and Thailand along with the other countries are consist-

<sup>42</sup> C. Hill, J. Menzel, *Constitutionalism in South East Asia*, Konrad-Adenauer-Stiftung, Thailand, [http://www.kas.de/wf/doc/kas\\_20589-1522-2-30.pdf?101005060858](http://www.kas.de/wf/doc/kas_20589-1522-2-30.pdf?101005060858) (retrieved 8. 10. 2014).



ent in expressing the rights and freedoms of the 2012 Declaration on Human Rights.

## 5. Conclusion

Today ASEAN's membership includes ten countries (Brunei Darussalam, Cambodia, Indonesia, Lao, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam). The principal objective of ASEAN is integration the above mentioned states that will help to facilitate trade, investment and connectivity of the peoples across member states. By borrowing and transplanting laws and legislation from other countries such as Slovenia and the EU, ASEAN could take their learning's and not only enhance their integration program but also not make the mistakes that the EU and member countries have encountered along the way. A way to achieve the next steps to integration across ASEAN is through legislative reform. Dual citizenship would ease the movement of people, goods, services and capital across regional ASEAN borders. In demonstrating to other nations that ASEAN and its member states are on the path to full democratisation, constitutional reform is also needed to ensure citizens rights are equal no matter what state a citizen from one of the ASEAN member states might choose to reside. The constitutional reform will further enhance the integration project, but ASEAN needs to ensure any reform in relation to human rights is consistent with the principles of the 2012 Declaration on Human Rights.