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**The Practice of Temporary Loss of EU Citizenship: Questioning
Renunciation Prior to Acquisition of Nationality**

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Abstract

This thesis seeks to analyse the practice of the temporary loss of EU citizenship. It results from the obligation to renounce the previous nationality prior to the acquisition of another one in naturalisation procedures. The thesis' aim is to establish whether the temporary loss of the status of EU citizenship and the rights attached to it would fall within the scope of EU law and, if so, what would be the extent of such protection. First, a thorough analysis of the national practices is conducted, both from the perspective of the host Member States and the Member States of origin. It is shown that various Member States contribute to such a result. Then, EU law is scrutinised, building on the CJEU's case-law. It is argued that a temporary loss of EU citizenship would fall under the scope of both Articles 20 and 21 TFEU and, respectively, be treated as a deprivation of EU citizenship or as a restriction to free movement rights. It is found that it is most likely that the CJEU would apply a proportionality test under Article 20 TFEU, in which Article 7 Charter could be considered. Although the practice would not be disproportionate in all cases, it is submitted that longer periods of statelessness would be. To give strength to this argument, international law conventions are analysed due to the importance given to them by the CJEU. It is contended that there is evidence of a lack of compatibility of the temporary loss of nationality with international law. Therefore, it is concluded that, if the CJEU took into account all of these elements, a future case on this topic would be considered within the scope of EU law. Moreover, depending on the length of the period of statelessness, it would be rendered disproportionate under EU law.

Keywords

EU citizenship – statelessness – naturalisation – renunciation requirements – free movement rights

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List of Abbreviations

1954 Convention – 1954 Convention Relating to the Status of Stateless Persons

1961 Convention – 1961 Convention on the Reduction of Statelessness

1963 Convention – Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality 1963

AG – Advocate General

Charter – Charter of Fundamental Rights of the European Union

CJEU – Court of Justice of the European Union

Directive 2004/38 – Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States

ECHR – European Convention on Human Rights

ECN – European Convention on Nationality

EU – European Union

TEU – Treaty on the European Union

TFEU – Treaty on the Functioning of the European Union

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1. Introduction and Methodology

1.1. Renunciation requirements and their acceptance within the EU

Some Member States prohibit dual nationality for naturalised nationals. This means that EU citizens who meet the requirements for naturalisation in the host Member State must renounce their nationality in the Member State of origin. Out of the Member States that prohibit dual nationality, Austria, Croatia, Estonia, Lithuania, the Netherlands and Spain do not allow any exceptions for EU citizens, whereas Slovenia grants an exception to most EU citizens but not to all. Still, only Austria, Croatia, Estonia, Lithuania and Slovenia impose renunciation requirements prior to the acquisition of nationality.

This practice raises two potential problems. Firstly, to what regards the prohibition of dual nationality for EU citizens in itself, as they wish to be further integrated in the EU and end up losing rights in the Member State of origin. Secondly, it leads to the temporary loss of nationality and EU citizenship, where the person has already given up his or her previous nationality and has not been granted the new nationality just yet. Thus, he or she is rendered stateless for that time period.¹ This waiting period can last up to years, during which certain rights, such as free movement rights, are lost until the new nationality is granted. The focus of this thesis will be on the second problem.

Nonetheless, the Member States that impose such renunciation requirements are not the only ones to blame. The result of statelessness could easily be avoided if the Member States of origin would prohibit their nationals from renouncing their nationality before having actually acquired the new one. As a matter of fact, some Member States allow for their nationality to be renounced only after the acquisition of a new one.² Contrarily, Croatia, Denmark, Germany, Hungary, Slovenia, Sweden, Bulgaria, Estonia, Latvia, Lithuania, Luxembourg, Poland, Romania and Slovakia have enacted laws that allow individuals to renounce their nationality without having first acquired another one, namely after having received a guarantee of future acquisition. This practice will also be in the spotlight.

Permanent loss of EU citizenship is the most severe result of such practices, where the assurance of acquisition of nationality or the granting of naturalisation are withdrawn. Still, this

¹ See the international legal definition of a stateless person in the 1954 Convention relating to the Status of Stateless Persons (adopted 28 September 1954, entered into force 6 June 1960) 360 UNTS 117 art 1(1). See, for instance, 'Nationality and Statelessness: Handbook for Parliamentarians No 22' (*Inter-Parliamentary Union and UN Refugee Agency*, July 2014), 35 <<https://www.unhcr.org/protection/statelessness/53d8ddab6/nationality-statelessness-handbook-parliamentarians-22.html>> accessed 2 August 2023.

² This is the case of Austria, Cyprus, France, Greece, Italy, Malta, Portugal, Spain, Belgium, the Czech Republic, Finland, Ireland and the Netherlands.

situation is already protected under international and EU law and has been extensively dealt with by scholars. Contrarily, the temporary loss of EU citizenship was briefly explored in *JY*³ and in the case notes commenting on the judgment. Therefore, it is not clear whether it falls within the scope of EU law and, if so, what the extent of such protection would be. As a result, this topic deserves one's full attention.

Furthermore, one might wonder how many EU citizens are potentially affected by these national laws. Thus, it is relevant to mention that the Eurostat statistics show that, out of the 827 000 persons who acquired EU citizenship in 2021, 13% were nationals of another Member State.⁴ As regards the Member States most important for the analysis, it is known that 1 693 persons in Austria, 70 in Croatia, 19 in Estonia, 0 in Lithuania and 90 in Slovenia, who were nationals of another Member State, acquired their nationality.⁵ Accordingly, even though the number is more significant in some Member States than others, these rules have an impact on those EU citizens who choose to naturalise in these Member States. It is not merely a hypothetical problem.

1.2. Methodology and structure

The aim of this thesis is to reply to the following research question: 'To what extent is the temporary loss of EU citizenship, as a result of renunciation requirements in naturalisation procedures and their acceptance prior to the acquisition of nationality, compatible with Articles 20 and 21 TFEU?'. The methodology adopted is that of doctrinal legal research through the study of EU, international, and national law and case-law, as well as articles and reports by scholars. In order to address and answer the main research question, it is necessary to assess certain sub-questions.

Firstly, Section 2 aims to answer the sub-question 'What do the laws, case-law and practices of the Member States say in relation to renunciation requirements prior to naturalisation and their acceptance?'. In this regard, national laws, case-law and reports on the naturalisation procedure must be analysed from the perspective of the Member States that impose renunciation requirements. Moreover, the laws of Member States that approve of such a

³ Judgment of 18 January 2022, *JY v Wiener Landesregierung*, C-118/20, EU:C:2022:34 is the most relevant judgment of the CJEU to date on the practice of demanding the renunciation of the previous nationality prior to naturalisation, which led to the temporary loss of EU citizenship, and the subsequent withdrawal of the assurance of acquisition, which led to the permanent loss of EU citizenship. On this second point, it is worth mentioning the hypothetical example given in Opinion of Advocate General Mengozzi, *Tjebbes and Others*, C-221/17, EU:C:2018:572, paragraph 88, which ultimately came true.

⁴ 'Citizenship granted to 827 000 people in 2021' (*Eurostat*, 1 March 2023) <<https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20230301-1>> accessed 1 August 2023.

⁵ 'Acquisition of citizenship by age group, sex and former citizenship' (*Eurostat*, 24 March 2023) <https://ec.europa.eu/eurostat/databrowser/view/MIGR_ACQ__custom_7041066/default/table?lang=en> accessed 1 August 2023.

practice and allow their nationals to renounce their nationality without first having acquired a new one will be studied.

Secondly, Section 3 will assess the compatibility of the practice with EU law. The sub-question 'To what extent can the EU limit the Member States' discretion in the field of nationality?' will be replied to. This analysis will include recent developments that could indicate a development in the EU's ability to limit it, most specifically regarding the criteria for the acquisition of Member State nationality. Moreover, it is of utmost importance to consider the prohibition of dual nationality within the EU, as that is the premise behind the practice of the temporary loss of EU citizenship. On this point, the sub-question 'Is the prohibition of dual nationality compatible with EU law?' will be addressed. Then, an answer will be found for the sub-question 'Is the temporary loss of EU citizenship within the scope of EU law?'. It will be determined if it falls under the scope of EU law in order to ascertain what kind of protection could be offered to these EU citizens. As such, the sub-question 'How can the result of the temporary loss of EU citizenship be protected under EU law?' will equally be answered. In particular, it will be assessed from the perspective of the deprivation of the status of EU citizenship and the interference with free movement rights under Articles 20 and 21 TFEU, respectively. The focus will be on Articles 20 and 21 TFEU, the case-law of the CJEU, as well as the relevant articles of the Charter, recurring to what has been written by scholars to support their interpretation.

Thirdly, in Section 4, international law will be used as inspiration to determine whether the practice is compatible with EU law. For this reason, international law will be scrutinised, guided by the sub-question 'Is the temporary loss of nationality compatible with international law?'. In this way, it will be possible to conclude whether the temporary loss of nationality is permitted or prohibited under its provisions. Despite being more ancillary to the analysis, it remains relevant, considering that the Conventions to which the Member States are parties have proven to have weight in the analysis of the CJEU in relation to statelessness.⁶ These necessary sources and steps will provide all the elements needed to enable an answer to the main research question in Section 5.

1.3. Assumptions and limitations

On the one hand, this thesis starts from the assumption that the temporary loss of EU citizenship leads to the loss of the rights attached to that status. Moreover, it is assumed that there are five Member States that impose renunciation requirements prior to the acquisition of nationality and that there are fourteen Member States that allow it. It is believed that this

⁶ See, for instance, Judgment of 18 January 2022, *JY v Wiener Landesregierung*, C-118/20, EU:C:2022:34, paragraph 55 and Judgment of 2 March 2010, *Rottmann*, C-135/08, EU:C:2010:104, paragraphs 52-53.

outcome is problematic due to the negative results for naturalisation candidates and the values on which the EU is built. Still, the analysis is not based on any pre-conceptualised idea according to which this practice is evidently compatible or not with EU law. That remains to be discovered.

On the other hand, there are certain limitations that should be highlighted from the start. First of all, the result of the temporary loss of nationality will not be considered in relation to the naturalisation of third-country nationals in the Member States. They were not yet EU citizens to begin with, and the CJEU's case-law on the loss of EU citizenship cannot be applied. For that reason, and taking into consideration the lack of competence of the EU in the field of nationality, it would be too far-fetched to claim that this practice could be incompatible with EU law in relation to third-country nationals. Still, it is acknowledged that enforcing periods of statelessness has negative consequences for the life of any person, regardless of whether they were once EU citizens or are about to become one. Furthermore, the lawfulness of the withdrawal of assurances, which has been one of the most discussed topics in the casenotes on *JY*, will not be assessed, neither in the analysis of EU law nor of international law. It would relate to the permanent loss of EU citizenship, and, thus, it is irrelevant for this analysis.

Additionally, it is important to note that the Netherlands indeed prohibits dual nationality, but the renunciation of the previous nationality only takes place after the acquisition of the new one.⁷ Differently, in the case of Spain, even though the declaration of renunciation takes place before the acquisition of Spanish nationality,⁸ the applicants do not need to provide any additional documentation proving that they renounced the other nationality nor to inform the authorities of their Member State of origin that they have acquired Spanish nationality.⁹ As the applicants renounce their nationality only before a Spanish judge, the renunciation can either

⁷ See Consolidated Version of the Netherlands Nationality Act (*Rijkswet op het Nederlanderschap*) [2015], arts 9(1)(b) and 15(1)(d) and 'Renouncing your nationality' (*IND*, 23 May 2022) <<https://ind.nl/en/renouncing-your-nationality#renouncing-your-nationality-how-does-it-work->> accessed 2 August 2023. See also Ricky van Oers, Betty de Hart and Kees Groenendijk, 'Country report: the Netherlands' (2013) EUDO Citizenship Observatory 2013/1, 14 <<https://hdl.handle.net/1814/19629>> accessed 2 August 2023, Anita Böcker and Ricky van Oers, 'Naturalisations procedures for immigrants: Netherlands' (2013) EUDO Citizenship Observatory NP 2013/26, 7 <<https://hdl.handle.net/1814/29792>> accessed 2 August 2023, 'Dual citizenship' (*Government of the Netherlands*) <www.government.nl/topics/dutch-citizenship/dual-citizenship> accessed 2 August 2023 and Council of State (*Raad van State*) 18 August 2004, 200306971/1.

⁸ Consolidated Version of the Spanish Civil Code (*Real Decreto de 24 de julio de 1889 por el que se publica el Código Civil*) [2013], art 23(b), noting that nationals from countries with dual nationality agreements with Spain, more notably Portugal, pursuant to art 24(2), and France, pursuant to Convenio de nacionalidad entre el Reino de España y la República Francesa [2022], shall be exempt from this requirement. See also Ruth Rubio Marín, Irene Sobrino, Alberto Martín Pérez and Francisco Javier Moreno Fuentes, 'Country report on citizenship law: Spain' (2015) EUDO Citizenship Observatory 2015/04, 5, 34 and 39 <<https://hdl.handle.net/1814/34480>> accessed 2 August 2023. Further requirements can be found in Consolidated Version of the Spanish Civil Code (*Real Decreto de 24 de julio de 1889 por el que se publica el Código Civil*) [2013], art 21(4) and in Versión Consolidada del Real Decreto 1004/2015, de 6 de noviembre, por el que se aprueba el Reglamento por el que se regula el procedimiento para la adquisición de la nacionalidad española por residencia [2020], art 12(1).

⁹ Alberto Martín Pérez and Francisco Moreno Fuentes, 'Naturalisations procedures for immigrants: Spain' (2013) EUDO Citizenship Observatory NP 2013/19, 4 <<https://hdl.handle.net/1814/29798>> accessed 2 August 2023.

constitute a valid or invalid act depending on whether the Member State of origin accepts it or not. For that reason, this formal compromise has doubtful legal consequences.¹⁰ Moreover, Spanish nationals by naturalisation lose their nationality when, for a period of three years, they have made exclusive use of the nationality that they declared to have renounced upon the acquisition of Spanish nationality.¹¹ This means that it will hardly lead to the loss of nationality. Therefore, the Netherlands and Spain will not be taken into consideration for the analysis of national practices. It must also be recognised that Slovakia indeed prohibits dual nationality for its nationals who wish to naturalise in another Member State,¹² but not for nationals of other Member States who wish to naturalise in Slovakia.¹³ Thus, it is not relevant to be assessed in this thesis.

Last of all, the existence of databases that contain accurate information in English on national law and case-law, as well as reports on the naturalisation procedures of each Member State, will enable a detailed assessment of the national practices. Still, having knowledge of especially the Croatian, German, Estonian, Lithuanian and Slovenian languages would likely have facilitated the analysis.

¹⁰ *ibid* 6. Note that it can still constitute a barrier to naturalisation, pursuant to Ruth Rubio Marín, Irene Sobrino, Alberto Martín Pérez and Francisco Javier Moreno Fuentes, 'Country report on citizenship law: Spain' (2015) EUDO Citizenship Observatory 2015/04, 5 and 34 <<https://hdl.handle.net/1814/34480>> accessed 2 August 2023.

¹¹ Consolidated Version of the Spanish Civil Code (*Real Decreto de 24 de julio de 1889 por el que se publica el Código Civil*) [2013], art 25(1)(a). See also Ruth Rubio Marín, Irene Sobrino, Alberto Martín Pérez and Francisco Javier Moreno Fuentes, 'Country report on citizenship law: Spain' (2015) EUDO Citizenship Observatory 2015/04, 27 <<https://hdl.handle.net/1814/34480>> accessed 2 August 2023.

¹² Consolidated Version of the Act No. 40/1993 Coll. on Nationality of the Slovak Republic (*Zákon Národnej rady Slovenskej republiky z 19. januára 1993 o štátnom občianstve Slovenskej republiky*) [2010], art 9(1)(b). See also 'Pathways to citizenship for third-country nationals in the EU Member States: National Report 2019 - EMN Slovak Republic' (2019) European Migration Network, 6 and 25 <https://home-affairs.ec.europa.eu/system/files/2022-08/emn-sk_study_on_pathways_to_citizenship_sr_en.pdf> accessed 14 August 2023.

¹³ 'Pathways to citizenship for third-country nationals in the EU Member States: National Report 2019 - EMN Slovak Republic' (2019) European Migration Network, 6 and 25-26 <https://home-affairs.ec.europa.eu/system/files/2022-08/emn-sk_study_on_pathways_to_citizenship_sr_en.pdf> accessed 14 August 2023. For further reading on the criteria for naturalisation, see Consolidated Version of the Act No. 40/1993 Coll. on Nationality of the Slovak Republic (*Zákon Národnej rady Slovenskej republiky z 19. januára 1993 o štátnom občianstve Slovenskej republiky*) [2010], art 8(3).

2. National practices leading to temporary loss of nationality

2.1. The obligation to meet renunciation requirements prior to acquisition of nationality

In order to assess whether there is an incompatibility with EU law, it is first necessary to analyse the law and practice of the Member States that oblige naturalisation candidates to renounce their previous nationality before acquiring the new one.¹⁴ As a consequence, they are rendered temporarily stateless.

2.1.1. Austria

The granting of Austrian nationality is provisionally guaranteed to a candidate in cases where, within two years, he or she gives proof of having relinquished the previous nationality. The guarantee is given if, namely, it makes it possible or could facilitate relinquishing the nationality.¹⁵ The nationality will be granted as soon as the candidate does so.¹⁶

Thus, the national legislation itself shows sufficient proof of the existence of a renunciation requirement and the demand to relinquish the former nationality prior to acquiring Austrian nationality. Still, there is equally pertinent case-law on the matter, which demonstrates the

¹⁴ In this regard, see 'Citizenship Case Law' (*Global Citizenship Observatory*) <<https://globalcit.eu/citizenship-case-law/>> accessed 2 August 2023, 'Global Nationality Laws Database' (*Global Citizenship Observatory*) <<https://globalcit.eu/national-citizenship-laws/>> accessed 2 August 2023, Maarten Vink, Luuk van der Baaren, Rainer Bauböck, Jelena Džankić, Iseult Honohan and Bronwen Manby, 'GLOBALCIT Citizenship Law Dataset – Modes of Acquisition of Citizenship' (*Global Citizenship Observatory*, 2021) <<https://globalcit.eu/modes-acquisition-citizenship/>> accessed 2 August 2023 and 'Case Law Search' (*Statelessness Case Law Database*) <<https://caselaw.statelessness.eu/caselaw-search>> accessed 2 August 2023.

¹⁵ Consolidated Version of the Federal Law concerning Austrian Nationality, 1985 Nationality Act (*Staatsbürgerschaftsgesetz 1985*) [2021], art 20(1)(3). Note that, exceptionally, it can be granted if the applicant gives proof that he or she was unable or could not reasonably be expected to take the necessary steps to relinquish it, pursuant to art 20(3)(1) and (2), or establishes that, to do so, he or she would have had to make payments that were out of proportion, pursuant to art 20(4). See also art 10(3)(1), Migration Policy Group, 'Access to citizenship and its impact on immigrant integration: ACIT handbook for Austria' (2013) EUDO Citizenship Observatory ACIT Handbooks, 11 <<https://hdl.handle.net/1814/29766>> accessed 2 August 2023, Joachim Stern and Gerd Valchars, 'Naturalisations procedures for immigrants: Austria' (2013) EUDO Citizenship Observatory NP 2013/04, 9-10 <<https://hdl.handle.net/1814/29773>> accessed 2 August 2023, Joachim Stern and Gerd Valchars, 'Country Report: Austria' (2013) EUDO Citizenship Observatory 2013/28, 23-24 <<https://hdl.handle.net/1814/60232>> accessed 6 March 2023 and Martin Stiller, 'Pathways to Citizenship for Foreigners in Austria' (2019) European Migration Network, 70-71 <https://home-affairs.ec.europa.eu/system/files/2022-09/emn-national-report-2019_citizenship.pdf> accessed 2 August 2023. For a simplified explanation, see 'Dual Citizenship' (*oesterreich.gv.at*, 21 February 2023) <https://www.oesterreich.gv.at/en/themen/leben_in_oesterreich/staatsbuergerschaft/Seite.260430.html> accessed 2 August 2023.

¹⁶ Consolidated Version of the Federal Law concerning Austrian Nationality, 1985 Nationality Act (*Staatsbürgerschaftsgesetz 1985*) [2021], art 20(3)(1).

temporary statelessness outcome very clearly.¹⁷ The one case worth highlighting led to *JY*.¹⁸ *JY* was stateless for almost two years,¹⁹ even before the assurance was withdrawn and she became (permanently) stateless. Moreover, under Austrian administrative law, all authorities have to make a decision at the latest within six months of the application being submitted.²⁰ Nevertheless, it is known that there are often delays,²¹ which is also visible in the case-law presented.²²

2.1.2. Croatia

An applicant who wishes to acquire Croatian nationality by naturalisation needs to fulfil the requirement of having been dismissed from his or her previous nationality or of submitting proof that he or she will acquire dismissal if granted Croatian nationality.²³ In case the person fulfils all the requirements for naturalisation but the renunciation one, a guarantee of acceptance to Croatian nationality may be issued for a term of two years.²⁴

There is relevant case-law confirming the practice. It concerns a UK national and, at the time, EU citizen who received a guarantee that he would be granted Croatian nationality if he renounced his UK nationality. In the following year, after a criminal conviction, his naturalisation application was rejected, and he was rendered stateless.²⁵ The facts of the case are ancillary, and the conclusion that needs to be drawn is that the applicant had to renounce his nationality prior to acquiring Croatian nationality.

¹⁷ In this regard, see Constitutional Court of Austria (*Verfassungsgerichtshof*) 13 March 2019, E4081/2018 and Constitutional Court of Austria 29 September 2011 (*Verfassungsgerichtshof*), G154/10-8, 19516. These two cases concerned Serbian nationals, and the outcome was similar, as they received assurance of acquiring Austrian nationality if they renounced their former one, which they did, and later the assurance was withdrawn, leading to their statelessness.

¹⁸ Vienna Administrative Court (*Verwaltungsgericht Wien*) 23 January 2018 and Judgment of 18 January 2022, *JY v Wiener Landesregierung*, C-118/20, EU:C:2022:34.

¹⁹ Judgment of 18 January 2022, *JY v Wiener Landesregierung*, C-118/20, EU:C:2022:34, paragraphs 15-16.

²⁰ Bundesrecht konsolidiert: Allgemeines Verwaltungsverfahrensgesetz 1991 [2023], art 73(1).

²¹ Joachim Stern and Gerd Valchars, 'Naturalisations procedures for immigrants: Austria' (2013) EUDO Citizenship Observatory NP 2013/04, 10 <<https://hdl.handle.net/1814/29773>> accessed 2 August 2023.

²² By means of example, *JY* was provisionally guaranteed Austrian nationality on 11 March 2014, she lost Estonian nationality on 27 August 2015 and the decision of assurance was revoked on 6 July 2017, pursuant to Judgment of 18 January 2022, *JY v Wiener Landesregierung*, C-118/20, EU:C:2022:34, paragraphs 14-16.

²³ Consolidated Version of the Law on Croatian Citizenship (*Zakon o Hrvatskom Državljanstvu*) [2011], art 8(1)(2). Still, there are exceptions, as, according to art 8(2), this requirement is fulfilled if the applicant will lose his or her nationality simply by naturalisation, pursuant to the laws of the country of origin. Moreover, if a country does not permit dismissal from its nationality or places requirements that cannot be fulfilled, a statement by the applicant will be sufficient to renounce the nationality, pursuant to art 8(3). See also Juraj Sajfert, 'Naturalisations procedures for immigrants: Croatia' (2013) EUDO Citizenship Observatory NP 2013/10, 5 <<https://hdl.handle.net/1814/29776>> accessed 2 August 2023 and 'Pathways to citizenship for third-country nationals in the EU Member States: National Report 2019 - EMN Croatia' (2019) European Migration Network, 25-26 <https://home-affairs.ec.europa.eu/system/files/2019-12/04_croatia_pathways_to_citizenship_en.pdf> accessed 2 August 2023.

²⁴ Consolidated Version of the Law on Croatian Citizenship (*Zakon o Hrvatskom Državljanstvu*) [2011], art 8a.

²⁵ Administrative Court of Split (*Upravni sud u Splitu*) 31 March 2017, Usl-293/15-6.

2.1.3. Estonia

The applicant, when submitting the application for the acquisition of Estonian nationality, must prove that he or she has been released from the previous nationality.²⁶ Despite the lack of relevant case-law available, it is clear that Estonia allows for renunciation to take place before the acquisition of nationality. Most importantly, the information submitted by the study drafted in 2019 by the European Migration Network determines that a candidate who applies for Estonian nationality must submit a document stating that he or she is renouncing another nationality. Additionally, it clarifies that the nationality is granted to him or her conditionally. The decision comes into effect, and consequently, the candidate becomes an Estonian national only after presenting proof of having been released from the former nationality.²⁷

It is worth noting that if the conditions are met, the documents are submitted to the Government six months following the registration of the application.²⁸ The Government has no time limit to take a decision on the grant of Estonian nationality. Still, there is evidence dating from 2013 that decisions are normally taken within a reasonably short period of time.²⁹

2.1.4. Lithuania

To be granted Lithuanian nationality, the candidate must meet the requirement of expressing his or her will in writing to renounce his or her nationality after being granted the new nationality.³⁰ This rule applies if the laws of the State of origin allow for renunciation prior to acquisition.³¹ The person must take a public and solemn oath of allegiance to the Republic of

²⁶ Consolidated Version of the Citizenship Act (*Kodakondsuse seadus*) [2020], art 12(2). Alternatively, the applicant could prove that he or she will be released from it in relation to the acquisition of Estonian nationality, as it would occur if the Member State of origin prohibits dual nationality and the voluntary acquisition of another nationality leads to automatic loss of nationality. See also art 1(2). Note that Estonian law includes fewer exceptions than that of most Member States making use of renunciation requirements, which tend to have exemptions for vulnerability reasons, such as impossibility due to costs, distance, or policy of the country of origin, according to Migration Policy Group, 'Access to citizenship and its impact on immigrant integration: ACIT handbook for Estonia' (2013) EUDO Citizenship Observatory ACIT Handbooks, 8 <<https://hdl.handle.net/1814/29772>> accessed 2 August 2023. Even so, more exceptions have been included with the creation of art 3(2).

²⁷ 'Pathways to citizenship for third-country nationals in the EU Member States: National Report 2019 - EMN Estonia' (2019) European Migration Network, 31 <https://home-affairs.ec.europa.eu/system/files/2020-01/08_estonia_citizenship_study_en.pdf> accessed 2 August 2023.

²⁸ Consolidated Version of the Citizenship Act (*Kodakondsuse seadus*) [2020], art 19(3).

²⁹ Vadim Poleshchuk, 'Naturalisations procedures for immigrants: Estonia' (2013) EUDO Citizenship Observatory NP 2013/08, 9 <<https://hdl.handle.net/1814/29780>> accessed 2 August 2023.

³⁰ Consolidated Version of the Republic of Lithuania Law on Citizenship (*Lietuvos Respublikos Pilietybės Įstatymas*) [2016], art 18(1)(6).

³¹ Note that the candidate could also meet the requirement if he or she would lose the nationality of the original State on acquiring Lithuanian nationality if, pursuant to the law of the State of origin, the person would automatically lose the previous nationality on acquisition of the Lithuanian one, pursuant to Consolidated Version of the Republic of Lithuania Law on Citizenship (*Lietuvos Respublikos Pilietybės Įstatymas*) [2016], art 18(1)(6).

Lithuania³² within two years after having been granted nationality,³³ under the condition of first providing evidence of no longer holding the nationality of another State.³⁴ Nonetheless, that person only becomes a Lithuanian national and acquires the rights, freedoms and duties attached to that status after taking the oath.³⁵

At first sight, it would seem like the person becomes a Lithuanian national once the decree by the President of the Republic enters into force. However, the law, as well as the country reports³⁶ and a study dating from 2019 by the European Migration Network,³⁷ make it clear that this is not the case. As a rule, first the decree granting the nationality is issued, then the person must renounce the nationality and only after, once the oath takes place, he or she will actually acquire the nationality. For instance, in cases where the law of another State establishes the procedure for renunciation only after a new nationality has been acquired, the person is allowed to take the oath and then submit evidence of the loss of nationality within one year.³⁸ Consequently, it proves that before, there had been no acquisition of nationality.

2.1.5. Slovenia

One of the conditions that a person requesting naturalisation must fulfil to be granted Slovenian nationality is having been released from the current nationality or proving that he or

³² Republic of Lithuania Law on Citizenship (*Lietuvos Respublikos Pilietybės Įstatymas*), art 23(1), amended by Lietuvos Respublikos pilietybės įstatymo Nr. XI-1196 2, 7, 12, 15, 16, 18, 21, 23, 24, 26, 27, 33, 37, 40, 41, 41-1 ir 42 straipsnių pakeitimo ir įstatymo papildymo 21-1 straipsniu įstatymas [2020], art 9.

³³ Republic of Lithuania Law on Citizenship (*Lietuvos Respublikos Pilietybės Įstatymas*), art 23(4)(2), amended by Lietuvos Respublikos pilietybės įstatymo Nr. XI-1196 2, 7, 12, 15, 16, 18, 21, 23, 24, 26, 27, 33, 37, 40, 41, 41-1 ir 42 straipsnių pakeitimo ir įstatymo papildymo 21-1 straipsniu įstatymas [2020], art 9.

³⁴ Republic of Lithuania Law on Citizenship (*Lietuvos Respublikos Pilietybės Įstatymas*), art 23(9), amended by Lietuvos Respublikos pilietybės įstatymo Nr. XI-1196 2, 7, 12, 15, 16, 18, 21, 23, 24, 26, 27, 33, 37, 40, 41, 41-1 ir 42 straipsnių pakeitimo ir įstatymo papildymo 21-1 straipsniu įstatymas [2020], art 9. Still, this requirement is not applicable where the Member State does not allow for renunciation of nationality nor for the loss of its nationality on acquisition of another citizenship, as well as where such procedures exist but do not meet the criteria of reasonableness.

³⁵ Republic of Lithuania Law on Citizenship (*Lietuvos Respublikos Pilietybės Įstatymas*), art 23(12), added by Lietuvos Respublikos pilietybės įstatymo Nr. XI-1196 2, 7, 12, 15, 16, 18, 21, 23, 24, 26, 27, 33, 37, 40, 41, 41-1 ir 42 straipsnių pakeitimo ir įstatymo papildymo 21-1 straipsniu įstatymas [2020], art 9. On the importance of taking the oath, see Supreme Administrative Court of Lithuania (*Lietuvos Vyriausiosios Administracinės Teismas*) 26 March 2015, A-1424-602/2015. For further reading on the procedure to follow in order to take the oath of allegiance, see 'Oath of Allegiance to the Republic of Lithuania' (*Migration Law Center*) <<https://www.migration.lt/oath-of-allegiance-to-the-republic-of-lithuania>> accessed 17 August 2023.

³⁶ Ramute Ruškyte, 'Naturalisations procedures for immigrants: Lithuania' (2013) EUDO Citizenship Observatory NP 2013/29, 3-4 and 5-6 <<https://hdl.handle.net/1814/29789>> accessed 2 August 2023.

³⁷ 'Pathways to citizenship for third-country nationals in the Republic of Lithuania' (2022) European Migration Network, 9, 37, 41, 45 and 53 <https://home-affairs.ec.europa.eu/system/files/2022-03/Lithuania_pathways_to_citizenship_en.pdf> accessed 2 August 2023.

³⁸ Republic of Lithuania Law on Citizenship (*Lietuvos Respublikos Pilietybės Įstatymas*), art 23(13), as well as art 23(14), added by Lietuvos Respublikos pilietybės įstatymo Nr. XI-1196 2, 7, 12, 15, 16, 18, 21, 23, 24, 26, 27, 33, 37, 40, 41, 41-1 ir 42 straipsnių pakeitimo ir įstatymo papildymo 21-1 straipsniu įstatymas [2020], art 9. It also matters to mention Republic of Lithuania Law on Citizenship (*Lietuvos Respublikos Pilietybės Įstatymas*), 24(9), added by Lietuvos Respublikos pilietybės įstatymo Nr. XI-1196 2, 7, 12, 15, 16, 18, 21, 23, 24, 26, 27, 33, 37, 40, 41, 41-1 ir 42 straipsnių pakeitimo ir įstatymo papildymo 21-1 straipsniu įstatymas [2020], art 10.

she will obtain release if he or she acquires the nationality.³⁹ The applicant becomes a Slovenian national only after taking an oath to respect the legal systems of Slovenia.⁴⁰

It is known that the renunciation requirement may lead to temporary statelessness.⁴¹ It is also relevant to mention that an EU citizen does not need to submit proof of fulfilling the renunciation requirement if there is reciprocity between the Member States.⁴² Thus, for most EU citizens, this requirement will not be applicable. Nevertheless, it can affect the nationals of the Member States that do not accept dual nationality, not even in relation to EU citizens.

Although the legislation does not regulate the maximum length of the procedure, it can be deduced that its actual duration is around two years and six months,⁴³ although attention should be given to the fact that ten years have passed since this conclusion was drawn.

2.2. The acceptance of renunciation prior to acquisition of nationality

All the Member States have enacted laws on loss of nationality and permit renunciation of their nationality under certain conditions.⁴⁴ Several of them only allow their nationals to renounce their nationality when they have already acquired a new one.⁴⁵ Alternatively, if they do allow it

³⁹ Consolidated Version of the Citizenship of the Republic of Slovenia Act (*Zakon o državljanstvu Republike Slovenije*) [2006], art 10(1)(2). Still, pursuant to art 10(2), the condition is considered fulfilled if the person proves that, pursuant to the law of his or her country, he or she will lose nationality by naturalisation itself. Another possibility would be to submit evidence that his or her country has not decided on the application for release of nationality within a reasonable period of time. This is the case if the person applied for release of nationality within sixty days after the assurance was issued and did everything necessary within two years from the receipt of the assurance to successfully complete the procedure. Moreover, if he or she proves that the release will not be granted, declaring that he or she will renounce the previous nationality if Slovenian nationality is granted is sufficient.

⁴⁰ Consolidated Version of the Citizenship of the Republic of Slovenia Act (*Zakon o državljanstvu Republike Slovenije*) [2006], art 10(1)(10). See also Maša Kovič Dine, 'Naturalisations procedures for immigrants: Slovenia' (2013) EUDO Citizenship Observatory NP 2013/33, 10 <<https://hdl.handle.net/1814/29797>> accessed 2 August 2023.

⁴¹ Felicita Medved, 'Country Report: Slovenia' (2013) EUDO Citizenship Observatory 2013/24, 12 <<https://hdl.handle.net/1814/19636>> accessed 2 August 2023.

⁴² Consolidated Version of the Citizenship of the Republic of Slovenia Act (*Zakon o državljanstvu Republike Slovenije*) [2006], art 10(2).

⁴³ Maša Kovič Dine, 'Naturalisations procedures for immigrants: Slovenia' (2013) EUDO Citizenship Observatory NP 2013/33, 10 <<https://hdl.handle.net/1814/29797>> accessed 2 August 2023.

⁴⁴ In this regard, see Maarten Vink, Luuk van der Baaren, Rainer Bauböck, Jelena Džankić, Iseult Honohan and Bronwen Manby, 'GLOBALCIT Citizenship Law Dataset – Modes of Loss of Citizenship' (*Global Citizenship Observatory*, 2021) <<https://globalcit.eu/modes-loss-citizenship/>> accessed 2 August 2023.

⁴⁵ This is the case of Austria (see Consolidated Version of the Federal Law concerning Austrian Nationality, 1985 Nationality Act (*Staatsbürgerschaftsgesetz 1985*) [2021], art 37(1)(1)), Cyprus (see Consolidated Version of the Civil Registry Law of 2002 (*Ο Περί Αρχείου Πληθυσμού Νόμος του 2002*) [2012], art 112(1) as well as Nicos Trimikliniotis, 'Country report on citizenship law: Cyprus' (2015) EUDO Citizenship Observatory 2015/01, 14-15 <<https://hdl.handle.net/1814/34479>> accessed 2 August 2023), France (see Consolidated Version of the Civil Code (*Code Civil*) [2006], arts 23 and 23-4), Greece (Consolidated Version of the Greek Citizenship Code (*Κώδικα της Ελληνικής Ιθαγένειας*) [2010], art 16(1) and (2)), Italy (see Consolidated Version of the Act No. 91 of 5 February 1992 (*Legge 5 febbraio 1992, n. 91*) [2018], art 11(1)), Malta (see Consolidated Version of the Maltese Citizenship Act, art 13(1) [2020] as well as Eugène Buttigieg and Daniela DeBono, 'Country report on citizenship law: Malta' (2015) EUDO Citizenship Observatory 2015/05, 21 <<https://hdl.handle.net/1814/34482>> accessed 2 August 2023), Portugal (see Versão Consolidada da Lei n.º 37/81, de 03 de Outubro (Lei da Nacionalidade) [2020], art 8 as well as Ana Rita Gil and Nuno Piçarra, 'Report on citizenship law: Portugal' (2020) GLOBALCIT 2020/01, 24 <<https://hdl.handle.net/1814/66204>> accessed 2 August 2023) and Spain (see Consolidated Version of the Spanish Civil Code (*Real Decreto de 24 de julio de 1889 por el que se publica el Código Civil*) [2013], art 24(3)).

before the acquisition, the decision or declaration only produces legal effects upon the actual acquisition of another nationality.⁴⁶ As such, these Member States prevent both permanent and temporary loss of EU citizenship. Contrarily, the remaining Member States do not protect their nationals against temporary statelessness in such a way. For that reason, their laws are the ones that deserve to be analysed, as the possibility of renouncing Member State nationality without having first acquired another one perpetuates the practice above described.⁴⁷

On the one hand, there is a group of Member States that permits temporary loss of nationality and, thus, allows their nationals to be potentially stateless for long periods. Nonetheless, it offers a safeguard in case the nationality is not acquired within a certain time limit. This is the case of Croatia, Denmark, Germany, Hungary, Slovenia and Sweden.

To start with, a German national may be released from his or her nationality if he or she has received assurance that another nationality will be granted.⁴⁸ Still, the release will be deemed null and void if the person fails to acquire it within one year of the issuance of the certificate of release.⁴⁹ In Slovenia, the decision on the release of nationality can also be revoked if the person so requires, within one year from the date it is received, in case the other nationality has not been acquired.⁵⁰ Although one year is a long time, these Member States offer a considerably strong safeguard against a long-lasting condition of temporary loss of EU citizenship.

Then, in Croatia, a national can renounce his or her nationality if it is proven that he or she will acquire another nationality.⁵¹ However, the decision on dismissal from Croatian nationality will be repudiated upon request if the other nationality is not acquired within three years. The competent authorities must be informed of this fact within the following three years.⁵² Similarly,

⁴⁶ This is the case of Belgium (see Version Consolidée de la Code de la Nationalité Belge [2022], art 22(1)(2) as well as Marie-Claire Foblets and Zeynep Yanasmayan, 'Country report: Belgium' (2013) EUDO Citizenship Observatory 2013/27, 14 <<https://hdl.handle.net/1814/19603>> accessed 2 August 2023), the Czech Republic (see Act of July 11, 2013 on Citizenship of the Czech Republic and on the amendment of selected other laws (*Zákon č. 186/2013 Sb., Zákon o státním občanství České republiky a o změně některých zákonů*), art 40(1)(c), 40(2)(b) and 40(9)), Finland (see Consolidated Version of the Nationality Act (*Kansalaisuuslaki*) [2007], art 35(1) and (2)), Ireland (see Consolidated Version of the Irish Nationality and Citizenship Act, 1956 [2023], art 21(1) as well as John Handoll, 'Country report: Ireland' (2012) EUDO Citizenship Observatory 2012/02, 14 <<https://hdl.handle.net/1814/19618>> accessed 2 August 2023) and the Netherlands (see Consolidated Version of the Netherlands Nationality Act (*Rijkswet op het Nederlanderschap*) [2015], art 15(1)(a) and (b), Geconsolideerde regelgeving van de Rijkswet op het Nederlanderschap [2022], art 14(8) and Geconsolideerde regelgeving van de Handleiding Rijkswet op het Nederlanderschap 2003 [2023]).

⁴⁷ Note that other criteria under national law will be disregarded, such as the need to be at least 18 years old or to reside abroad.

⁴⁸ Consolidated Version of the Nationality Act (*Staatsangehörigkeitgesetz*) [2012], art 18.

⁴⁹ *ibid* art 24. See also art 23 and Anuscheh Farahat and Kay Hailbronner, 'Report on citizenship law: Germany' (2020) GLOBALCIT 2020/05, 19 <<https://hdl.handle.net/1814/66430>> accessed 2 August 2023.

⁵⁰ Consolidated Version of the Citizenship of the Republic of Slovenia Act (*Zakon o državljanstvu Republike Slovenije*) [2006], arts 18(1)(7), 20 and 21(1) and (2).

⁵¹ Consolidated Version of the Law on Croatian Citizenship (*Zakon o Hrvatskom Državljanstvu*) [2011], art 18(5).

⁵² *ibid* art 19. See also 'Deprivation of nationality and the prevention of statelessness in Europe' (*Statelessness Index*, July 2021), 10 <[11](https://www.statelessness.eu/sites/default/files/2021-</p></div><div data-bbox=)

a Hungarian national may renounce his or her nationality if he or she is able to evidence the probable acquisition of another nationality.⁵³ Although the loss occurs on the day the certificate of termination is issued,⁵⁴ there is the possibility of applying for reinstatement within three years if the new nationality has not been acquired.⁵⁵ Still, it is easily arguable that this is a weak safeguard against statelessness, as the person could spend at least three years stateless in the case of Croatia and up to three years in the case of Hungary.

Subsequently, in Denmark and Sweden, release will be granted on the condition that the applicant acquires the other nationality within a certain time limit.⁵⁶ Nonetheless, it is not evident from these provisions what the length of the period of time mentioned would be.

On the other hand, the remaining Member States, Bulgaria,⁵⁷ Estonia,⁵⁸ Latvia,⁵⁹ Lithuania,⁶⁰ Luxembourg,⁶¹ Poland,⁶² Romania⁶³ and Slovakia,⁶⁴ allow for renunciation prior to the acquisition of the new nationality. Moreover, they have not included any safeguard in their laws in order to limit the time period of a possible situation of statelessness, meaning that the decision is final.

07/Deprivation%20of%20nationality%20and%20the%20prevention%20of%20statelessness%20in%20Europe%20FINAL.pdf> accessed 2 August 2023.

⁵³ Consolidated Version of the Act LV of 1993 on the Hungarian Nationality (*1993. évi LV. törvény a magyar állampolgárságról*) [2019], art 8(1)(a). See also Mária M. Kovács and Judit Tóth, 'Country report: Hungary' (2013) EUDO Citizenship Observatory 2013/18, 9 <<https://hdl.handle.net/1814/19616>> accessed 2 August 2023.

⁵⁴ Consolidated Version of the Act LV of 1993 on the Hungarian Nationality (*1993. évi LV. törvény a magyar állampolgárságról*) [2019], art 8(2).

⁵⁵ *ibid* art 8(4).

⁵⁶ In relation to Denmark, see Consolidated Version of the Act on Danish Nationality (*Lov om Dansk Indfødsret*) [2004], art 9(1) as well as Eva Ersbøll, 'Report on citizenship law: Denmark' (2015) EUDO Citizenship Observatory 2015/14, 16 <<https://hdl.handle.net/1814/36504>> accessed 2 August 2023. Regarding Sweden, see Consolidated Version of the Swedish Citizenship Act (*Lag (2001:82) om Svenskt Medborgarskap*) [2006], art 15 as well as Hedvig Lokrantz Bernitz, 'Country report: Sweden' (2012) EUDO Citizenship Observatory 2012/03, 16 <<https://hdl.handle.net/1814/60231>> accessed 2 August 2023.

⁵⁷ Consolidated Version of the Bulgarian Citizenship Act (*Закон за българското гражданство*) [2021], art 20.

⁵⁸ Consolidated Version of the Citizenship Act (*Kodakondsuse seadus*) [2020], arts 22, 26(1) and 29(1). Importantly, see art 23 in conjunction with Konsolideeritud Versioon: Kodakondsuse seaduses sätestatud menetluste esitatavate andmete ja dokumentide loetelu [2022], art 10(2). See also Priit Järve and Vadim Poleshchuk, 'Country report: Estonia' (2013) EUDO Citizenship Observatory 2013/6, 10-11 <<https://hdl.handle.net/1814/19611>> accessed 2 August 2023.

⁵⁹ Consolidated Version of the Citizenship Law (*Pilsonības likums*) [2022], art 23(1) and (6). See also Kristine Krūma, 'Country report on citizenship law: Latvia' (2015) EUDO Citizenship Observatory 2015/06, 19 <<https://hdl.handle.net/1814/34481>> accessed 2 August 2023.

⁶⁰ Consolidated Version of the Republic of Lithuania Law on Citizenship (*Lietuvos Respublikos Pilietybės Įstatymas*) [2016], arts 24(1) and (2) and 43(2)(3).

⁶¹ Loi du 8 mars 2017 sur la Nationalité Luxembourgeoise, arts 57 and 59(1)(3). See also Denis Scuto, 'Country report: Luxembourg' (2013) EUDO Citizenship Observatory 2013/14, 12 <<https://hdl.handle.net/1814/19623>> accessed 2 August 2023.

⁶² Law of 2 April 2009 on Polish Citizenship (*Ustawa z dnia 2 kwietnia 2009 r. o obywatelstwie polskim*) [2012], arts 46, 47(1) and 48(4)(3).

⁶³ Consolidated Version of the Act No. 21/1991 on Romanian Citizenship (*Lege nr. 21 din 1 martie 1991 Cetățeniei Române*) [2010], arts 24(b), 27(c) and 31(7).

⁶⁴ Consolidated Version of the Act No. 40/1993 Coll. on Nationality of the Slovak Republic (*Zákon Národnej rady Slovenskej republiky z 19. januára 1993 o štátnom občianstve Slovenskej republiky*) [2010], art 9(2), (6)(e), (9) and (11).

In conclusion, although the Member States of this second group offer less legal protection, both groups of Member States above-mentioned have provisions that allow for temporary statelessness. They regard the issuance of a guarantee of the granting of nationality as a sufficient safeguard.

3. Temporary loss of EU citizenship in light of Articles 20 and 21 TFEU

3.1. CJEU's case-law in the field of EU citizenship

3.1.1. Relationship between Member State nationality and EU citizenship

Article 20(1) TFEU establishes that every national of a Member State is also an EU citizen. EU citizenship is additional to holding Member State nationality and does not replace it.⁶⁵ Moreover, Article 20(2) TFEU refers to the rights attached to the status of EU citizenship, namely, the right to move and reside freely within the territory of the Member States, which is further stated in Article 21 TFEU and specified in Directive 2004/38.

The division of competences between the EU and its Member States is governed by the principle of conferral, present in Article 5 TEU, which limits the scope of application of EU citizenship.⁶⁶ Taking into account that Title I of the TFEU does not mention matters of nationality, it is accepted that the EU does not have competence in this field.⁶⁷ Additionally, it has been continuously mentioned by the CJEU that 'under international law, it is for each Member State, having due regard to [EU] law, to lay down the conditions for the acquisition and loss of nationality'.⁶⁸

Still, the rules set by Member States may affect the rights conferred in Article 20 TFEU⁶⁹ and EU citizenship has been defined by the CJEU as 'the fundamental status of nationals of the

⁶⁵ See also Consolidated Version of the Treaty on European Union [2012] OJ C326/13, art 9.

⁶⁶ See Dimitry Kochenov, 'EU Citizenship: Some Systemic Constitutional Implications' in Nathan Cambien, Dimitry Kochenov and Elise Muir (eds), *European Citizenship under Stress: Social Justice, Brexit and Other Challenges* (Brill/Nijhoff 2020) 14-15.

⁶⁷ In this regard, see Treaty on European Union - Declaration on nationality of a Member State [1992] OJ C191/98: 'the question whether an individual possesses the nationality of a Member State shall be settled solely by reference to the national law of the Member State concerned'. Although it was removed from the official treaty text with the entry into force of the Treaty of Lisbon, it has been referred to later on by the CJEU in Judgment of 2 March 2010, *Rottmann*, C-135/08, EU:C:2010:104, paragraph 3. See also Opinion of Advocate General Poiares Maduro, *Rottmann*, C-135/08, EU:C:2009:588, paragraph 17 and Anne Brekoo, 'Statelessness in the European Union: Exploring the Potential Value of Union Citizenship' (2020) 2(1) *Statelessness & Citizenship Review* 24, 40 and Koen Lenaerts and Piet Van Nuffel, *EU Constitutional Law* (Tim Corthout (ed), Oxford University Press 2021) 134-135.

⁶⁸ Judgment of 7 July 1992, *Micheletti and Others*, C-369/90, EU:C:1992:295, paragraph 10. See also Judgment of 18 January 2022, *JY v Wiener Landesregierung*, C-118/20, EU:C:2022:34, paragraph 37, Judgment of 12 March 2019, *Tjebbes and Others*, C-221/17, EU:C:2019:189, paragraph 30, Judgment of 2 March 2010, *Rottmann*, C-135/08, EU:C:2010:104, paragraphs 39 and 45 and Judgment of 19 October 2004, *Zhu and Chen*, C-200/02, EU:C:2004:639, paragraph 37. Regarding the mention of international law, see *Nottebohm (Liechtenstein v Guatemala)* (Merits) [1955] ICJ Rep 1995, 20 and 23 and Opinion of Advocate General Poiares Maduro, *Rottmann*, C-135/08, EU:C:2009:588, paragraph 18.

⁶⁹ See Ilaria Gambardella, 'JY v Wiener Landesregierung: Adding Another Stone to the Case Law Built Up by the CJEU on Nationality and EU Citizenship' [2022] 7(1) *European Papers* 399 (note), 401.

Member States'.⁷⁰ Indeed, the power of the Member States is subject to judicial review carried out in light of EU law in so far as it affects the rights conferred to EU citizens by the EU.⁷¹

3.1.2. EU's ability to limit the Member States' discretion in the field of nationality

3.1.2.1. Acquisition of nationality

Even if, as above-mentioned, the CJEU has made it clear that 'it is for each Member State, having due regard to [EU] law, to lay down the conditions for the acquisition [...] of nationality',⁷² there has been no case-law up to now on the acquisition of nationality. Thus, it means that there is no indication that the EU can limit the Member States' discretion to determine the criteria for acquisition of Member State nationality. Although it is arguable that *JY* was the first case before the CJEU on the acquisition of nationality, a view that seems to be supported by AG Szpunar⁷³ and by scholars,⁷⁴ the CJEU did not acknowledge this fact. EU law applied due to the result of permanent loss of nationality, which consequently led to the loss of EU citizenship.

Nonetheless, there are recent developments worth discussing regarding Member State Investor Citizenship Schemes, also known as 'golden passport' schemes. Bulgaria, Cyprus and Malta offered schemes granting nationality on the basis of a financial investment. On 20 October 2020, the European Commission issued letters of formal notice to Malta and Cyprus.⁷⁵ It was argued that granting EU citizenship in return for pre-determined payments or investments, where there is no genuine link to the Member State, is incompatible with the principle of sincere cooperation, pursuant to Article 4(3) TEU. Moreover, it undermines the essence of the status of EU citizenship, present in Article 20 TFEU.⁷⁶

⁷⁰ Judgment of 20 September 2001, *Grzelczyk*, C-184/99, EU:C:2001:458, paragraph 31. See also Judgment of 18 January 2022, *JY v Wiener Landesregierung*, C-118/20, EU:C:2022:34, paragraph 38, Judgment of 5 June 2018, *Coman and Others*, C-673/16, EU:C:2018:385, paragraph 30 and Judgment of 8 March 2011, *Ruiz Zambrano*, C-34/09, EU:C:2011:124, paragraph 41.

⁷¹ Judgment of 2 March 2010, *Rottmann*, C-135/08, EU:C:2010:104, paragraphs 45-48. See also Koen Lenaerts and Piet Van Nuffel, *EU Constitutional Law* (Tim Corthaut (ed), Oxford University Press 2021), 135.

⁷² Judgment of 7 July 1992, *Micheletti and Others*, C-369/90, EU:C:1992:295, paragraph 10.

⁷³ Opinion of Advocate General Szpunar, *JY v Wiener Landesregierung*, C-118/20, EU:C:2021:530, paragraphs 53-57.

⁷⁴ See David de Groot, 'CJEU asked to rule on acquisition of nationality in light of EU citizenship: The fundamental status on the horizon?' (*Global Citizenship Observatory*, 16 June 2020) <www.globalcit.eu/cjeu-asked-to-rule-on-acquisition-of-nationality-in-light-of-eu-citizenship-the-fundamental-status-on-the-horizon-c-118-20-jy-v-wiener-landesregierung/> accessed 1 August 2023.

⁷⁵ Thus, launching infringement procedures against these Member States, pursuant to Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/47, art 258.

⁷⁶ 'Investor citizenship schemes: European Commission opens infringements against Cyprus and Malta for "selling" EU citizenship' (*European Commission*, 20 October 2020) <https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1925> accessed 2 August 2023.

Following this letter, on 1 November 2020, Cyprus repealed its scheme and stopped receiving new applications,⁷⁷ as well as processing pending applications after having received a reasoned opinion by the European Commission on 9 June 2021.⁷⁸ The European Commission, after having sent, unsuccessfully, an additional letter of formal notice to Malta⁷⁹ and a reasoned opinion,⁸⁰ brought an infringement procedure against Malta on 21 March 2023.⁸¹ It was also in contact with Bulgaria⁸² and, on 24 March 2022, the Bulgarian Parliament approved an amendment to the Bulgarian Citizenship Act that aimed to end the Investor Citizenship Scheme.⁸³

The pending case in front of the CJEU on the infringement procedure brought by the European Commission over the Maltese Investor Citizenship Scheme⁸⁴ appears to be highly relevant. It could easily change the way the criteria for the granting of nationality are foreseen solely within the discretion of the Member States if the CJEU sides with the European Commission. Nonetheless, the fact that Cyprus repealed its scheme after the letter of formal notice had been sent and that Bulgaria put its scheme to an end already shows some recognition of the ability of the EU to limit the discretion of the Member States even in this regard.

Even so, it shall be noted that, in Cyprus and Malta, Russian nationals represent, respectively, over 50% and 40% of naturalisations granted on the basis of these schemes.⁸⁵ Following

⁷⁷ 'June infringements package: key decisions' (*European Commission*, 9 June 2021) <https://ec.europa.eu/commission/presscorner/detail/en/inf_21_2743> accessed 2 August 2023.

⁷⁸ 'Golden passport' schemes: Commission proceeds with infringement case against MALTA' (*European Commission*, 6 April 2022) <https://ec.europa.eu/commission/presscorner/detail/en.%C2%A0/ip_22_2068> accessed 2 August 2023.

⁷⁹ 'June infringements package: key decisions' (*European Commission*, 9 June 2021) <https://ec.europa.eu/commission/presscorner/detail/en/inf_21_2743> accessed 2 August 2023.

⁸⁰ 'Golden passport' schemes: Commission proceeds with infringement case against MALTA' (*European Commission*, 6 April 2022) <https://ec.europa.eu/commission/presscorner/detail/en.%C2%A0/ip_22_2068> accessed 2 August 2023.

⁸¹ Action brought on 21 March 2023, *Commission v Malta*, C-181/23. See also 'Investor citizenship scheme: Commission refers MALTA to the Court of Justice' (*European Commission*, 29 September 2022) <https://ec.europa.eu/commission/presscorner/detail/en/IP_22_5422> accessed 2 August 2023.

⁸² 'Investor citizenship schemes: European Commission opens infringements against Cyprus and Malta for "selling" EU citizenship' (*European Commission*, 20 October 2020) <https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1925> accessed 2 August 2023.

⁸³ David de Groot, 'Russia's war on Ukraine: Reassessing 'citizenship by investment' schemes' (*European Parliamentary Research Service*, April 2022) 1 <[https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/729385/EPRS_ATA\(2022\)729385_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/729385/EPRS_ATA(2022)729385_EN.pdf)> accessed 2 August 2023. See also 'The National Assembly finally abolished the possibility to acquire citizenship for investment' (*National Assembly of the Republic of Bulgaria*, 24 March 2022) <<https://www.parliament.bg/en/news/ID/5424>> accessed 2 August 2023.

⁸⁴ Action brought on 21 March 2023, *Commission v Malta*, C-181/23.

⁸⁵ Meenakshi Fernandes, Cecilia Navarra and David de Groot, 'Avenues for EU action on citizenship and residence by investment schemes – European Added Value Assessment' (*European Parliamentary Research Service*, 21 October 2021), 16 <[https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694217/EPRS_STU\(2021\)694217_EN.pdf#page=30](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694217/EPRS_STU(2021)694217_EN.pdf#page=30)> accessed 17 August 2023. See also David de Groot, 'Russia's war on Ukraine: Reassessing 'citizenship by investment' schemes' (*European Parliamentary Research Service*, April 2022), 1 <[https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/729385/EPRS_ATA\(2022\)729385_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/729385/EPRS_ATA(2022)729385_EN.pdf)> accessed 2 August 2023.

Russia's invasion of Ukraine, the European Commission and other Member States issued a joint statement on 26 February 2022. They committed to 'taking measures to limit the sale of citizenship—so called golden passports—that let wealthy Russians connected to the Russian government become [nationals] of [their] countries'.⁸⁶ Not long after, the Bulgarian Citizenship Act was amended to also require a review of previous naturalisations granted.⁸⁷ Moreover, Malta announced the suspension of the processing of applications from Russian and Belarussian nationals.⁸⁸

Then, after being called upon to act by the European Parliament,⁸⁹ the European Commission issued a recommendation on 28 March 2022. Besides urging Member States to repeal their Investor Citizenship Schemes,⁹⁰ it recommended those who had naturalised Russian or Belarussian nationals based on them to assess, in light of the CJEU's case-law on the loss of EU citizenship,⁹¹ whether these persons' naturalisations should be withdrawn. This would apply, namely, if they were subject to EU restrictive measures or significantly supported the war in Ukraine.⁹² The fact that many of the investors were Russians could be a strong reason behind the receptiveness of the Member States to follow the EU's recommendations. It could indeed have influenced Bulgaria and Cyprus to end their investment schemes, as well as Malta's measures, which only targeted Russians and Belarusians.

3.1.2.2. Loss of nationality

On the contrary, on the loss of EU citizenship, there are landmark judgments of the CJEU. The EU's ability to limit the Member States' discretion in this field is more straightforward, as,

⁸⁶ 'Joint Statement on further restrictive economic measures' (*European Commission*, 26 February 2022) <https://ec.europa.eu/commission/presscorner/detail/en/statement_22_1423> accessed 17 August 2023.

⁸⁷ David de Groot, 'Russia's war on Ukraine: Reassessing 'citizenship by investment' schemes' (*European Parliamentary Research Service*, April 2022), 1 <[https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/729385/EPRS_ATA\(2022\)729385_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/729385/EPRS_ATA(2022)729385_EN.pdf)> accessed 2 August 2023. See also 'The National Assembly finally abolished the possibility to acquire citizenship for investment' (*National Assembly of the Republic of Bulgaria*, 24 March 2022) <<https://www.parliament.bg/en/news/ID/5424>> accessed 2 August 2023.

⁸⁸ David de Groot, 'Russia's war on Ukraine: Reassessing 'citizenship by investment' schemes' (*European Parliamentary Research Service*, April 2022), 1 <[https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/729385/EPRS_ATA\(2022\)729385_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/729385/EPRS_ATA(2022)729385_EN.pdf)> accessed 2 August 2023.

⁸⁹ See European Parliament resolution of 9 March 2022 with proposals to the Commission on citizenship and residence by investment schemes [2022] OJ C347/97, para 23. See also David de Groot, 'Russia's war on Ukraine: Reassessing 'citizenship by investment' schemes' (*European Parliamentary Research Service*, April 2022), 1 <[https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/729385/EPRS_ATA\(2022\)729385_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/729385/EPRS_ATA(2022)729385_EN.pdf)> accessed 2 August 2023.

⁹⁰ Commission, 'Recommendation of 28.3.2022 on immediate steps in the context of the Russian invasion of Ukraine in relation to investor citizenship schemes and investor residence schemes' COM (2022) 2028 final, para 1.

⁹¹ Judgment of 2 March 2010, *Rottmann*, C-135/08, EU:C:2010:104 and Judgment of 12 March 2019, *Tjebbes and Others*, C-221/17, EU:C:2019:189.

⁹² Commission, 'Recommendation of 28.3.2022 on immediate steps in the context of the Russian invasion of Ukraine in relation to investor citizenship schemes and investor residence schemes' COM (2022) 2028 final, para 3.

pursuant to Article 20 TFEU, loss of nationality implies automatic loss of the status of EU citizenship.⁹³ Thus, it naturally falls within the scope of EU law.⁹⁴

In *Rottmann*,⁹⁵ the CJEU stated that the loss of EU citizenship due to the withdrawal of naturalisation, thus depriving him of 'the status [of EU citizen] conferred by Article [20 TFEU] and the rights attaching thereto falls, by reason of its nature and its consequences, within the ambit of [EU] law'.⁹⁶ Consequently, it required national courts to apply a proportionality test to determine whether the decision was justified,⁹⁷ considering the gravity of the offence committed by the person, the lapse of time between the naturalisation and withdrawal decisions and whether it is possible to recover the original nationality.⁹⁸ Therefore, Member States can still take such decisions if they are proportionate.⁹⁹ Moreover, AG Poiares Maduro determined EU citizenship to be autonomous. According to him, although the acquisition and loss of nationality are not in themselves governed by EU law, they must be compatible with EU rules and respect the rights of the EU citizen.¹⁰⁰

Later on, in *Tjebbes*,¹⁰¹ the CJEU stressed the importance of conducting an individual examination of the consequences of the loss of nationality.¹⁰² It provided more detailed

⁹³ A.P. van der Mei, 'Member State Nationality, EU Citizenship and Associate European Citizenship' in Nathan Cambien, Dimitry Kochenov and Elise Muir (eds), *European Citizenship under Stress: Social Justice, Brexit and Other Challenges* (Brill/Nijhoff 2020) 441. See also Judgment of 15 June 2023, *Silver and Others v Council*, C-499/21 P, EU:C:2023:479, paragraph 44 and Judgment of 9 June 2022, *Préfet du Gers and Institut national de la statistique et des études économiques*, C-673/20, EU:C:2022:449, paragraph 57.

⁹⁴ See Judgment of 12 March 2019, *Tjebbes and Others*, C-221/17, EU:C:2019:189, paragraph 32 and Judgment of 2 March 2010, *Rottmann*, C-135/08, EU:C:2010:104, paragraph 42.

⁹⁵ Judgment of 2 March 2010, *Rottmann*, C-135/08, EU:C:2010:104 on the deprivation of nationality leading to statelessness due to acquisition by deception.

⁹⁶ *ibid* paragraph 42.

⁹⁷ *ibid* paragraph 55. See also Maria Margarita Mentzelopoulou and Costica Dumbrava, 'Acquisition and loss of citizenship in EU Member States: Key trends and issues' (*European Parliamentary Research Service*, July 2018) 8 <[www.europarl.europa.eu/RegData/etudes/BRIE/2018/625116/EPRS_BRI\(2018\)625116_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625116/EPRS_BRI(2018)625116_EN.pdf)> accessed 1 August 2023.

⁹⁸ Judgment of 2 March 2010, *Rottmann*, C-135/08, EU:C:2010:104, paragraph 56. See also Catherine Barnard, 'Free Movement of natural persons and citizenship of the Union' in Catherine Barnard and Steve Peers (eds), *European Union Law* (Oxford University Press 2020), 401.

⁹⁹ See Martijn van den Brink, 'Is It Time to Abolish the Substance of EU Citizenship Rights Test?' (2021) 23(1) *European Journal of Migration* 13, 20. For further reading of a critical view of *Rottmann*, see Dimitry Kochenov, 'Two Sovereign States vs. a Human Being: ECJ as a Guardian of Arbitrariness in Citizenship Matters' in Jo Shaw (ed), *Has the European Court of Justice Challenged the Member State Sovereignty in Nationality Law?* (2011) 62 *EUI RSCAS Working Paper* 11, 13-15.

¹⁰⁰ Opinion of Advocate General Poiares Maduro, *Rottmann*, C-135/08, EU:C:2009:588, paragraph 23. See also Caroline Sawyer, 'Stateless in Europe: Legal Aspects of De Jure and De Facto Statelessness in the European Union' in Caroline Sawyer and Brad K. Blitz (eds), *Statelessness in the European Union: Displaced, Undocumented, Unwanted* (Cambridge University Press 2011), 104.

¹⁰¹ Judgment of 12 March 2019, *Tjebbes and Others*, C-221/17, EU:C:2019:189 on the loss of Member State nationality and EU citizenship by operation of law.

¹⁰² *ibid* paragraph 41. See also Vadim Poleshchuk, 'Statelessness, Proportionality and Access to (EU) Citizenship' (*Global Citizenship Observatory*, 15 June 2021) <<https://globalcit.eu/statelessness-proportionality-and-access-to-eu-citizenship/>> accessed 2 August 2023 and Katerina Kalaitzaki, 'EU Citizenship as a Means of Broadening the Application of EU Fundamental Rights: Developments and Limits' in Nathan Cambien, Dimitry Kochenov, and Elise Muir (eds), *European Citizenship under Stress: Social Justice, Brexit and Other Challenges* (Brill/Nijhoff 2020) 57.

information about the requirements of the proportionality assessment to be conducted, namely the need to have regard for fundamental rights.¹⁰³

More recently, in *JY*, the CJEU conducted the proportionality assessment itself, giving precise indications to the national authorities and clarifying that withdrawing the assurance of the acquisition of nationality did not seem to be a proportionate decision.¹⁰⁴ Arguably, it constitutes a step forward when compared to *Rottmann* and *Tjebbes*.¹⁰⁵ The criterion of the lapse of time between the issuing of the assurance and the decision was mentioned by AG Szpunar,¹⁰⁶ who found the length of time between those two decisions to be excessive, as she was stateless and, hence, deprived of the rights attaching to her status as an EU citizen.¹⁰⁷ Still, this point was left out by the CJEU.¹⁰⁸

3.2. Conformity of the prohibition of dual nationality with EU law

Some Member States reject dual nationality through a prohibition on naturalised nationals maintaining their original nationality.¹⁰⁹ Before assessing the compatibility with EU law of additionally demanding that the loss of the original nationality occur before the acquisition, it is relevant to analyse the compatibility of the prohibition of dual nationality. The position of the CJEU so far points towards its acceptance. In *JY*, by re-establishing its previous case-law,¹¹⁰ it affirmed that it is legitimate for a Member State to hold the belief that the consequences of one person holding various nationalities should be avoided.¹¹¹

While justifiable from the point of view of national and international law, such a requirement might be in conflict with the concept of EU citizenship and the idea of an ever-closer EU,¹¹² as it contradicts the very logic of integration. Holding the nationality of a particular Member State brings clear advantages in comparison with long-term residents. Nationals are entitled to the

¹⁰³ See Judgment of 12 March 2019, *Tjebbes and Others*, C-221/17, EU:C:2019:189, paragraph 44.

¹⁰⁴ Judgment of 18 January 2022, *JY v Wiener Landesregierung*, C-118/20, EU:C:2022:34, paragraphs 71 and 73.

¹⁰⁵ See Ilaria Gambardella, 'JY v Wiener Landesregierung: Adding Another Stone to the Case Law Built Up by the CJEU on Nationality and EU Citizenship' [2022] 7(1) *European Papers* 399 (note), 408.

¹⁰⁶ Opinion of Advocate General Szpunar, *JY v Wiener Landesregierung*, C-118/20, EU:C:2021:530, paragraphs 102, 114 and 115.

¹⁰⁷ *ibid* paragraph 115.

¹⁰⁸ Judgment of 18 January 2022, *JY v Wiener Landesregierung*, C-118/20, EU:C:2022:34, paragraph 60.

¹⁰⁹ Austria, Croatia, Estonia, Lithuania, the Netherlands, Slovenia and Spain.

¹¹⁰ Judgment of 12 March 2019, *Tjebbes and Others*, C-221/17, EU:C:2019:189, paragraph 33 and Judgment of 2 March 2010, *Rottmann*, C-135/08, EU:C:2010:104, paragraph 51.

¹¹¹ Judgment of 18 January 2022, *JY v Wiener Landesregierung*, C-118/20, EU:C:2022:34, paragraphs 52 and 54. See also Dimitry Vladimirovich Kochenov and David de Groot, 'Curing the Symptoms but not the Disease' (*Verfassungsblog*, 20 January 2022) <www.verfassungsblog.de/curing-the-symptoms-but-not-the-disease/> accessed 2 August 2023.

¹¹² See Dimitry Kochenov, 'Double Nationality in the EU: An Argument for Tolerance' (2011) 17(3) *ELJ* 323, 323. See also Consolidated Version of the Treaty on European Union [2012] OJ C326/13, art 1.

right to vote and stand for election in that Member State, access to civil service employment¹¹³ and unconditional access to its territory.¹¹⁴

Thus, this requirement ends up punishing those EU citizens who make use of their free movement rights, under Article 21(1) TFEU, and choose to naturalise to become more deeply integrated in the Member State's society. Consequently, it is 'contrary to the underlying logic of gradual integration'.¹¹⁵ They are forced to make a choice between maintaining their original nationality and taking fully part of the political life in the Member State where they reside,¹¹⁶ which results in a barrier to naturalisation in practice.¹¹⁷ Nonetheless, there is a growing acceptance of dual nationality within the EU, as more and more Member States are applying renunciation requirements solely to third-country nationals.¹¹⁸ Indeed, the increase of dual nationals within the EU 'is a direct consequence of European integration'.¹¹⁹

Even though it is true that the prohibition of dual nationality hinders the integration process in the Member State, it would be going too far to claim that such a restriction is incompatible with EU law. The requirement alone, as it exists in Member States such as the Netherlands,¹²⁰ is undesirable, considering that EU citizens are forced to make a choice after making use of free movement rights. Still, without imposing a period of temporary loss of EU citizenship, it seems to be within the discretion of each Member State to determine who their nationals are.¹²¹ It is here submitted that whether dual nationality should be allowed within the EU and whether the prohibition of dual nationality is incompatible with EU law are two different questions. The

¹¹³ See Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/47, art 45(4).

¹¹⁴ See Dimitry Kochenov, 'Double Nationality in the EU: An Argument for Tolerance' (2011) 17(3) ELJ 323, 333 and 339.

¹¹⁵ See Judgment of 14 November 2017, *Lounes*, C-165/16, EU:C:2017:862, paragraph 58. See also Opinion of Advocate General Szpunar, *JY v Wiener Landesregierung*, C-118/20, EU:C:2021:530, paragraph 74 and Opinion of Advocate General Bot, *Lounes*, C-165/16, EU:C:2017:407, paragraph 86.

¹¹⁶ Dimitry Kochenov, 'The Tjebbes Fail' (2019) 4(1) European Papers 319 (note), 335.

¹¹⁷ In this regard, see Ruth Rubio Marín, Irene Sobrino, Alberto Martín Pérez and Francisco Javier Moreno Fuentes, 'Country report on citizenship law: Spain' (2015) EUDO Citizenship Observatory 2015/04, 5 and 34 <<https://hdl.handle.net/1814/34480>> accessed 2 August 2023 and Migration Policy Group, 'Access to citizenship and its impact on immigrant integration: ACIT handbook for Estonia' (2013) EUDO Citizenship Observatory ACIT Handbooks, 8, 13 and 19 <<https://hdl.handle.net/1814/29772>> accessed 2 August 2023. See also Dimitry Kochenov, 'Double Nationality in the EU: An Argument for Tolerance' (2011) 17(3) ELJ 323, 338.

¹¹⁸ See Dimitry Kochenov, 'Double Nationality in the EU: An Argument for Tolerance' (2011) 17(3) ELJ 323, 325. For instance, Germany, pursuant to Consolidated Version of the Nationality Act (*Staatsangehörigkeitgesetz*) [2012], art 12(2), and Latvia, pursuant to Consolidated Version of the Citizenship Law (*Pilsonības likums*) [2022], art 9(2).

¹¹⁹ Dimitry Vladimirovich Kochenov and David de Groot, 'Curing the Symptoms but not the Disease' (*Verfassungsblog*, 20 January 2022) <www.verfassungsblog.de/curing-the-symptoms-but-not-the-disease/> accessed 2 August 2023.

¹²⁰ See, for instance, Consolidated Version of the Netherlands Nationality Act (*Rijkswet op het Nederlanderschap*) [2015], arts 9(1)(b) and 15(1)(d).

¹²¹ See, for instance, Judgment of 7 July 1992, *Micheletti and Others*, C-369/90, EU:C:1992:295, paragraph 10. See also Guido Bellenghi, 'The Court of Justice in *JY v. Wiener Landesregierung*: Could we expect more?' [2023] 30(1) Maastricht Journal of European and Comparative Law 83 (note), 89.

former is a normative question, whereas the latter is a legal one, and the answers would be, respectively, yes and no.

3.3. Assessing if temporary loss of EU citizenship is within the scope of EU law

3.3.1. Lessons from *JY* on the deprivation of EU citizenship under Article 20 TFEU

JY is the most important judgment to date on the temporary loss of EU citizenship, although that was not its focus. Taking *JY*'s example, for nearly two years after becoming stateless¹²² to fulfil the requirements to acquire Austrian nationality, no decision had been taken.¹²³ Consequently, she no longer had the status of EU citizen.¹²⁴ Even if she had acquired Austrian nationality, she would have always endured a considerable period of statelessness. It is known that the decision taken on 7 January 2020 by the agency for refugees and stateless persons declared that she was in Austria unlawfully. As a result, she held a residence permit on humanitarian grounds¹²⁵ and had to obtain a work permit from the employment agency before accessing the labour market.¹²⁶ There are no doubts that, between 2015 and 2017, she did not have any of the rights attached to her status as EU citizen, most importantly the right to move and reside freely.¹²⁷ Still, it remains unknown which rights she was granted in Austria to be able to reside and work during that period of temporary statelessness, before the decision on the revocation of the assurance was taken. For this reason, the view according to which she had been maintaining residence on humanitarian grounds since she first became stateless, back in 2015,¹²⁸ is not supported in this thesis.

The judgment of the CJEU has been greatly criticised for not condemning the practice of requiring renunciation prior to acquisition of the new Member State nationality,¹²⁹ not offering

¹²² In this regard, see Judgment of 18 January 2022, *JY v Wiener Landesregierung*, C-118/20, EU:C:2022:34, paragraphs 14-16.

¹²³ See, for instance, Opinion of Advocate General Szpunar, *JY v Wiener Landesregierung*, C-118/20, EU:C:2021:530, paragraph 114.

¹²⁴ Judgment of 18 January 2022, *JY v Wiener Landesregierung*, C-118/20, EU:C:2022:34, paragraphs 26 and 33.

¹²⁵ Consolidated Version of the Federal Act Concerning the Granting of Asylum 2005 (*Asylgesetz-Durchführungsverordnung 2005*) [2020], art 55(2).

¹²⁶ Opinion of Advocate General Szpunar, *JY v Wiener Landesregierung*, C-118/20, EU:C:2021:530, paragraph 120.

¹²⁷ *ibid* paragraph 115.

¹²⁸ Katarina Hyltén-Cavallius, 'Stateless Union Citizens in a Nationality Conundrum: EU Law Safeguarding Against Broken Promises: ECJ 18 January 2022, Case C-118/20, Wiener Landesregierung (Revocation of an assurance of naturalisation)', ECLI:EU:C:2022:34' [2022] 18(3) European Constitutional Law Review 556 (note), 570.

¹²⁹ Dimitry V. Kochenov and David de Groot, 'Helpful, Convoluted and Ignorant in Principle: EU Citizenship in the Hands of the Grand Chamber in *JY*' [2022] 47(5) European Law Review 699 (case), 706.

enough protection to future JYs¹³⁰ and perpetuating the use of proportionality assessments.¹³¹ Nonetheless, it is first important to reflect on what the CJEU did say that helps in the analysis. The CJEU affirmed that, in such a scenario, ‘the exercise and effectiveness of the rights which that [EU citizen] derives from Article 20 TFEU require that that person should not at any time be liable to lose the fundamental status of [EU citizen] by the mere fact of the implementation of that procedure’.¹³² Moreover, the CJEU admitted that any loss, even temporary, of the status of EU citizen meant that the person was deprived of the opportunity to enjoy all the rights conferred by it.¹³³

Still, as above-mentioned, the CJEU also accepted that the prohibition of dual nationality is legitimate.¹³⁴ Additionally, it claimed that the situation fell, by reason of its nature and its consequences, within the scope of EU law, where that assurance is revoked with the effect of preventing that person from recovering the status of EU citizen.¹³⁵ Thus, it did not refer to the temporary loss of EU citizenship. This is perhaps comprehensible, considering the focus of that judgment was whether the permanent loss of EU citizenship, due to a revocation of the assurance to grant nationality after JY had already renounced her former nationality, was within the scope of EU law. Additionally, if so, the CJEU was asked to assess whether the national authorities should establish if that decision was compatible with the principle of proportionality from the point of view of EU law.¹³⁶ For that reason, the view according to which the CJEU has ‘established that all the situations where a renunciation of a previous Member State nationality is required before naturalising in the Member State of residence fall unquestionably within the scope of EU law’¹³⁷ is not supported in this thesis, as that is not the reading taken away from the wording used by the CJEU. It did not say explicitly that renunciation requirements fall within the scope of EU law.

In fact, it is here submitted that AG Szpunar implicitly legitimised the imposition of renunciation requirements and the granting of assurances. AG Szpunar claimed that ‘[i]t is legitimate for a Member State to guarantee a right to the grant of nationality which [...] is conditional merely

¹³⁰ Guido Bellenghi, ‘The Court of Justice in *JY v. Wiener Landesregierung*: Could we expect more?’ [2023] 30(1) *Maastricht Journal of European and Comparative Law* 83 (note), 91.

¹³¹ See, for instance, Dmitry Vladimirovich Kochenov and David de Groot, ‘Curing the Symptoms but not the Disease’ (*Verfassungsblog*, 20 January 2022) <www.verfassungsblog.de/curing-the-symptoms-but-not-the-disease/> accessed 2 August 2023.

¹³² Judgment of 18 January 2022, *JY v Wiener Landesregierung*, C-118/20, EU:C:2022:34, paragraph 47.

¹³³ *ibid* paragraph 48.

¹³⁴ *ibid* paragraph 54.

¹³⁵ *ibid* paragraph 44. See also Opinion of Advocate General Szpunar, *JY v Wiener Landesregierung*, C-118/20, EU:C:2021:530, paragraphs 62, 66 and 128.

¹³⁶ Judgment of 18 January 2022, *JY v Wiener Landesregierung*, C-118/20, EU:C:2022:34, paragraph 28.

¹³⁷ *ibid*. See also Dmitry Vladimirovich Kochenov and David de Groot, ‘Curing the Symptoms but not the Disease’ (*Verfassungsblog*, 20 January 2022) <www.verfassungsblog.de/curing-the-symptoms-but-not-the-disease/> accessed 2 August 2023.

on proof that [nationality] of another Member State [...] has been relinquished. That is borne out, inter alia, by Article 1 [1963 Convention] and by the wording of Article 7(2) [1961 Convention]'.¹³⁸ The CJEU referred to this reasoning to state that the legitimacy of avoiding multiple nationalities is supported by Article 7(2) 1961 Convention, together with Article 15(b) ECN.¹³⁹ These provisions will be further scrutinised in Section 4. Moreover, AG Szpunar challenged the act of revoking the assurance,¹⁴⁰ but not the practice of giving one, and the CJEU did not challenge the granting of assurances either.¹⁴¹ It is arguable that AG Szpunar seems to agree with the legitimacy of prior renunciation where there is an assurance. Differently, the CJEU's reference to the reasoning of AG Szpunar is not sufficient to claim that it also implicitly legitimises the practice. Still, it is evident that it did not challenge it.¹⁴²

In addition, it should be kept in mind that the referring court presumed EU law to be inapplicable and did not ask about the compatibility of the renunciation requirement with EU law.¹⁴³ This fact, put together with the lack of competence of the EU in this field,¹⁴⁴ could have led the CJEU to avoid the topic. Furthermore, it did not treat *JY* as a case of acquisition of nationality, although some had hoped that it would and, thus, that the analysis would regard EU law in general instead of being limited to the principle of proportionality.¹⁴⁵ On this point, it has been claimed that the view according to which the acquisition and the loss of nationality are two sides of the same coin remained unconfirmed by the CJEU,¹⁴⁶ a reading that is followed in this thesis.

Importantly, the CJEU and AG Szpunar refused to consider that *JY* had voluntarily renounced her nationality.¹⁴⁷ On the contrary, the purpose of the application for renunciation of nationality

¹³⁸ Opinion of Advocate General Szpunar, *JY v Wiener Landesregierung*, C-118/20, EU:C:2021:530, paragraph 92.

¹³⁹ Judgment of 18 January 2022, *JY v Wiener Landesregierung*, C-118/20, EU:C:2022:34, paragraphs 54-55.

¹⁴⁰ Opinion of Advocate General Szpunar, *JY v Wiener Landesregierung*, C-118/20, EU:C:2021:530, paragraph 95.

¹⁴¹ Judgment of 18 January 2022, *JY v Wiener Landesregierung*, C-118/20, EU:C:2022:34, paragraphs 50-51.

¹⁴² See Katarina Hyltén-Cavallius, 'Stateless Union Citizens in a Nationality Conundrum: EU Law Safeguarding Against Broken Promises: ECJ 18 January 2022, Case C-118/20, Wiener Landesregierung (Revocation of an assurance of naturalisation)', ECLI:EU:C:2022:34' [2022] 18(3) European Constitutional Law Review 556 (note), 568.

¹⁴³ See Judgment of 18 January 2022, *JY v Wiener Landesregierung*, C-118/20, EU:C:2022:34, paragraphs 19 and 25-26. See also Dimitry V. Kochenov and David de Groot, 'Helpful, Convoluted and Ignorant in Principle: EU Citizenship in the Hands of the Grand Chamber in *JY*' [2022] 47(5) European Law Review 699 (case), 704.

¹⁴⁴ In this regard see Dimitry Vladimirovich Kochenov and David de Groot, 'Curing the Symptoms but not the Disease' (*Verfassungsblog*, 20 January 2022) <www.verfassungsblog.de/curing-the-symptoms-but-not-the-disease/> accessed 2 August 2023.

¹⁴⁵ David de Groot, 'CJEU asked to rule on acquisition of nationality in light of EU citizenship: The fundamental status on the horizon?' (*Global Citizenship Observatory*, 16 June 2020) <www.globalcit.eu/cjeu-asked-to-rule-on-acquisition-of-nationality-in-light-of-eu-citizenship-the-fundamental-status-on-the-horizon-c-118-20-jy-v-wiener-landesregierung/> accessed 1 August 2023.

¹⁴⁶ Dimitry V. Kochenov and David de Groot, 'Helpful, Convoluted and Ignorant in Principle: EU Citizenship in the Hands of the Grand Chamber in *JY*' [2022] 47(5) European Law Review 699 (case), 704.

¹⁴⁷ Judgment of 18 January 2022, *JY v Wiener Landesregierung*, C-118/20, EU:C:2022:34, paragraphs 35-36. Opinion of Advocate General Szpunar, *JY v Wiener Landesregierung*, C-118/20, EU:C:2021:530, paragraph 61.

was to enable her to fulfil a condition for the acquisition of Austrian nationality and, once obtained, to recover EU citizenship in order to continue to enjoy that status and the rights attaching thereto.¹⁴⁸ In reality, it was clear that JY wanted to retain her EU citizenship.¹⁴⁹

It is submitted that the temporary loss of EU citizenship should be within the scope of EU law, pursuant to Article 20 TFEU. This conclusion is primarily based on the CJEU's recognition that the temporary loss of EU citizenship leads to a deprivation of the enjoyment of the rights conferred by that status and has an impact on the effectiveness of Article 20 TFEU. It is not unreasonable to reach such a conclusion despite the fact that the CJEU did not challenge renunciation requirements, taking into account that the focus of the judgment was the result of the permanent loss of EU citizenship, and its temporary loss had already come to an end in JY's case.

3.3.1.1. Member States' responsibility to protect their nationals against temporary loss of EU citizenship

The CJEU went further and clarified that the duty of the Member States to exercise their powers in the sphere of nationality having due regard to EU law applies to the host Member State and to the Member State of origin.¹⁵⁰ This means that both Member States were jointly responsible for protecting JY against the loss of EU citizenship.¹⁵¹ In its view, 'the Member State of origin should not adopt, on the basis of an assurance given by that other Member State [...], a final decision concerning the deprivation of nationality without ensuring that that decision enters into force only once the new nationality has actually been acquired'.¹⁵² In this way, the temporary loss of EU citizenship would be avoided. Thus, it criticises those Member States that allow the renunciation to enter into force before the actual acquisition. Still, in cases where the Member States of origin adopted a final decision and the EU citizenship has already been temporarily lost, the 'obligation to ensure the effectiveness of Article 20 TFEU falls primarily on the [host] Member State'.¹⁵³ So, it was mainly referring to the withdrawal of assurances. On the contrary, AG Szpunar argued that Estonian law is consistent with EU

¹⁴⁸ Judgment of 18 January 2022, *JY v Wiener Landesregierung*, C-118/20, EU:C:2022:34, paragraph 36 and Opinion of Advocate General Szpunar, *JY v Wiener Landesregierung*, C-118/20, EU:C:2021:530, paragraph 61.

¹⁴⁹ Opinion of Advocate General Szpunar, *JY v Wiener Landesregierung*, C-118/20, EU:C:2021:530, paragraph 61.

¹⁵⁰ Judgment of 18 January 2022, *JY v Wiener Landesregierung*, C-118/20, EU:C:2022:34, paragraph 49. See, to that effect, judgment of 2 March 2010, *Rottmann*, C-135/08, EU:C:2010:104, paragraph 62.

¹⁵¹ See Katarina Hyltén-Cavallius, 'Stateless Union Citizens in a Nationality Conundrum: EU Law Safeguarding Against Broken Promises: ECJ 18 January 2022, Case C-118/20, Wiener Landesregierung (Revocation of an assurance of naturalisation), ECLI:EU:C:2022:34' [2022] 18(3) *European Constitutional Law Review* 556 (note), 568.

¹⁵² Judgment of 18 January 2022, *JY v Wiener Landesregierung*, C-118/20, EU:C:2022:34, paragraph 50.

¹⁵³ *ibid* paragraph 51.

law,¹⁵⁴ as there was an assurance, and the renunciation was an essential condition for the naturalisation to take place.¹⁵⁵

Hence, the CJEU did not challenge the practice of the host Member State of imposing renunciation requirements and issuing assurances. However, it did not consider it legitimate for the Member State of origin to take a decision allowing the EU citizen to renounce his or her nationality with immediate effects. As a consequence, it labelled the acceptance of renunciation requirements as more problematic than the renunciation requirements themselves. Moreover, even if the CJEU's finding that Estonia had failed to ensure JY protection from the risk of statelessness was without legal consequences,¹⁵⁶ the view that the CJEU did not directly challenge the Estonian decision to irreversibly remove her nationality¹⁵⁷ is not here supported. This recognition of the responsibility of the Member States of origin to protect their nationals against statelessness is very relevant, as that side of the coin is often overlooked.

3.3.1.2. Protection of EU citizens by means of a proportionality test

The proportionality test, which the CJEU has consistently made use of to decide on cases on the deprivation of EU citizenship, has often been criticised for being an insufficient protection. It arguably sends the message that the status of EU citizenship and the rights attached to it can be deprived as long as the decision is proportionate. For that reason, some have argued that 'proportionality is nothing but an assault on fundamental rights and the status of EU citizenship',¹⁵⁸ a view that is followed in this analysis. Still, the principle of proportionality could apply to this situation. Indeed, it remains relevant, as it is the most likely tool to be used by the CJEU in a future preliminary reference on the temporary loss of EU citizenship.

Although the result of permanent loss of EU citizenship is a more severe outcome, that does not mean that only this result can be disproportionate. Enduring one week of statelessness or two years is evidently different. In the first scenario, perhaps the result would not be too inconvenient and would not greatly disturb the naturalisation candidate's life. Differently, the second scenario should be seen as disproportionate, taking into account that the candidate

¹⁵⁴ Opinion of Advocate General Szpunar, *JY v Wiener Landesregierung*, C-118/20, EU:C:2021:530, paragraph 83.

¹⁵⁵ *ibid* paragraph 82. In footnote 59, AG Szpunar reminded that Estonia is not a Contracting Party to the ECN, meaning that it is not subject to the obligations laid down in its Article 8. See also paragraphs 78-79.

¹⁵⁶ Katarina Hyltén-Cavallius, 'Stateless Union Citizens in a Nationality Conundrum: EU Law Safeguarding Against Broken Promises: ECJ 18 January 2022, Case C-118/20, Wiener Landesregierung (Revocation of an assurance of naturalisation)', ECLI:EU:C:2022:34' [2022] 18(3) *European Constitutional Law Review* 556 (note), 569.

¹⁵⁷ *ibid* 568.

¹⁵⁸ Dimitry Vladimirovich Kochenov and David de Groot, 'Curing the Symptoms but not the Disease' (*Verfassungsblog*, 20 January 2022) <www.verfassungsblog.de/curing-the-symptoms-but-not-the-disease/> accessed 2 August 2023.

would lose all the rights attached to his or her status of EU citizen, namely the possibility to circulate freely, for a long period of time.

Nonetheless, more perspectives should be assessed, as AG Szpunar did in *JY*,¹⁵⁹ to make sure that all the legal arguments that could offer protection to such a result are sufficiently explored. This is particularly important when considering that this case is inserted 'in a large and complex web of different lines of case-law'.¹⁶⁰

3.3.2. Further case-law on Article 20 TFEU: deprivation of the genuine enjoyment of the substance of the rights conferred by EU citizenship

In a different context, there is the case-law on derived residence rights of family members of EU citizens who are third-country nationals, which stems from *Ruiz Zambrano*.¹⁶¹ This judgment builds on *Rottmann*.¹⁶² The CJEU ruled that Article 20 TFEU prevents Member States from taking measures that have the effect of 'depriving [EU citizens] of the genuine enjoyment of the substance of the rights conferred by virtue of their status as [EU citizens]'¹⁶³ and not simply measures that would deprive them of the status of EU citizenship.¹⁶⁴ Article 20 applies in this regard when the EU citizen has not made use of his or her free movement right¹⁶⁵ and this prohibition is applied as a self-standing test.¹⁶⁶

The CJEU's judgments following *Ruiz Zambrano* made it clear that the substance of rights test was limited in scope,¹⁶⁷ as 'not every limitation of a right will trigger the doctrine, but only its deprivation'.¹⁶⁸ Still, individuals who are deprived of their status as EU citizens, namely through

¹⁵⁹ Opinion of Advocate General Szpunar, *JY v Wiener Landesregierung*, C-118/20, EU:C:2021:530, paragraphs 68-75.

¹⁶⁰ David de Groot, 'CJEU asked to rule on acquisition of nationality in light of EU citizenship: The fundamental status on the horizon?' (*Global Citizenship Observatory*, 16 June 2020) <www.globalcit.eu/cjeu-asked-to-rule-on-acquisition-of-nationality-in-light-of-eu-citizenship-the-fundamental-status-on-the-horizon-c-118-20-jy-v-wiener-landesregierung/> accessed 1 August 2023.

¹⁶¹ Judgment of 8 March 2011, *Ruiz Zambrano*, C-34/09, EU:C:2011:124 on the enjoyment of a derived right of residence for the ascendants of minor children who are Member State nationals.

¹⁶² Martijn van den Brink, 'Is It Time to Abolish the Substance of EU Citizenship Rights Test?' (2021) 23(1) *European Journal of Migration* 13, 15.

¹⁶³ Judgment of 8 March 2011, *Ruiz Zambrano*, C-34/09, EU:C:2011:124, paragraph 42.

¹⁶⁴ Martijn van den Brink, 'Is It Time to Abolish the Substance of EU Citizenship Rights Test?' (2021) 23(1) *European Journal of Migration* 13, 15.

¹⁶⁵ See Opinion of Advocate General Szpunar, *JY v Wiener Landesregierung*, C-118/20, EU:C:2021:530, paragraph 68.

¹⁶⁶ Katerina Kalaitzaki, 'EU Citizenship as a Means of Broadening the Application of EU Fundamental Rights: Developments and Limits' in Nathan Cambien, Dmitry Kochenov, and Elise Muir (eds), *European Citizenship under Stress: Social Justice, Brexit and Other Challenges* (Brill/Nijhoff 2020) 55.

¹⁶⁷ Martijn van den Brink, 'Is It Time to Abolish the Substance of EU Citizenship Rights Test?' (2021) 23(1) *European Journal of Migration* 13, 16. In this regard, see Judgment of 5 May 2011, *McCarthy*, C- 434/09, EU:C:2011:277, paragraphs 52-53 and Judgment of 15 November 2011, *Dereci and Others*, C-256/11, EU:C:2011:734, paragraph 66.

¹⁶⁸ Katerina Kalaitzaki, 'EU Citizenship as a Means of Broadening the Application of EU Fundamental Rights: Developments and Limits' in Nathan Cambien, Dmitry Kochenov, and Elise Muir (eds), *European Citizenship under Stress: Social Justice, Brexit and Other Challenges* (Brill/Nijhoff 2020) 55-56. See also Koen Lenaerts, 'Civis Europaeus Sum': From the Cross-Border Link to the Status of Citizen of the Union' in Pascal Cardonnel, Allan

the withdrawal of their nationality, will consequently be deprived of the substance of the rights attached to that status.¹⁶⁹

In fact, AG Szpunar, in *JY*, compared JY's situation with that of Ruiz Zambrano. In his view, if the CJEU held that Ruiz Zambrano's situation fell within the scope of EU law, he failed to see how a situation in which the person 'was faced with the permanent loss of her [EU citizenship] and, therefore, not just the loss of *the substance of the rights* conferred by Article 20 TFEU but that of *all of those rights*', would not be covered by EU law. Also considering that, unlike Ruiz Zambrano's children, JY had exercised her right to free movement.¹⁷⁰ He did not assess the applicability of this case-law to the temporary loss of EU citizenship. Nonetheless, following that reasoning, it is arguable that EU citizens who are temporarily deprived of that status are being deprived of the genuine enjoyment of the rights attached to it. Thus, it should be deemed to be equally applicable, and it would be within the scope of EU law.¹⁷¹ Subsequently, as free movement rights are equally lost, it is now necessary to assess whether Article 21 TFEU could offer further protection in comparison to Article 20 TFEU.

3.3.3. Restriction to free movement rights: an analysis of Article 21 TFEU

In order for free movement provisions to apply, the EU citizen must have moved to another Member State.¹⁷² Consequently, these cannot apply to situations that are 'wholly internal to a Member State'.¹⁷³ An EU citizen exercises his or her freedom of movement and residence by settling in another Member State,¹⁷⁴ pursuant to Articles 7(1) or 16(1) Directive 2004/38.¹⁷⁵ The rights conferred by Article 21(1) TFEU are intended to promote the gradual integration in

Rosas and Nils Wahl (eds) *Constitutionalising the EU Judicial System: Essays in Honour of Pernilla Lindh* (Hart Publishing 2012), 231.

¹⁶⁹ See Eleanor Spaventa, 'Article 45 – Freedom of Movement and of Residence' in Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward (eds), *The EU Charter of Fundamental Rights: A Commentary* (Hart Publishing 2021), 1215.

¹⁷⁰ Opinion of Advocate General Szpunar, *JY v Wiener Landesregierung*, C-118/20, EU:C:2021:530, paragraph 69.

¹⁷¹ In this regard, see Dimitry Kochenov, 'The right to have what rights? EU citizenship in need of clarification' (2013) 19(4) *ELJ* 502, 507.

¹⁷² See Judgment of 20 September 2001, *Grzelczyk*, C-184/99, EU:C:2001:458, paragraph 32 and Judgment of 12 May 1998, *Martinez Sala v Freistaat Bayern*, C-85/96, EU:C:1998:217, paragraph 63. See also Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC [2004] OJ L158/77, art 3(1). For further reading, see Catherine Barnard, 'Free Movement of natural persons and citizenship of the Union' in Catherine Barnard and Steve Peers (eds), *European Union Law* (Oxford University Press 2020), 400.

¹⁷³ See Catherine Barnard, *The Substantive Law of the EU: The Four Freedoms* (6th edn, Oxford University Press 2019), 207. See also, for instance, Judgment of 15 December 1995, *Union royale belge des sociétés de football association and Others v Bosman and Others*, C-415/93, EU:C:1995:463, paragraph 89.

¹⁷⁴ Judgment of 18 January 2022, *JY v Wiener Landesregierung*, C-118/20, EU:C:2022:34, paragraph 41.

¹⁷⁵ See Opinion of Advocate General Szpunar, *JY v Wiener Landesregierung*, C-118/20, EU:C:2021:530, paragraph 73.

the society of that Member State,¹⁷⁶ to which naturalisation is the last step towards becoming permanently integrated there.¹⁷⁷ Thus, in *JY*, the CJEU considered that a situation in which a person is liable to lose her status of EU citizen, although she had sought to become more deeply integrated in the host Member State's society, falls within the scope of the TFEU provisions on EU citizenship.¹⁷⁸

Following the analysis of the case-law on Article 21 TFEU, AG Szpunar concluded that the situation fell, by reason of its nature and its consequences, within the scope of EU law.¹⁷⁹ The fact that the CJEU did not consider Article 21 TFEU further has been criticised,¹⁸⁰ also taking into account that it could have assessed renunciation requirements in its light.¹⁸¹ Still, what matters to conclude is that, although the CJEU and AG Szpunar did not solve the case with reference to Article 21 TFEU, they considered it clearly applicable.

The added value of Article 21 TFEU is that a person who has moved to another Member State, resided there for several years, and then initiated the naturalisation process is already within the scope of EU law. Any limitation imposed on the exercise of free movement rights by the Member States must be both necessary and appropriate to reach the objective pursued in order to be proportionate.¹⁸² Moreover, it must not deprive the movement and residence rights of their substance.¹⁸³ In the case of the temporary loss of EU citizenship, the free movement rights are completely lost for an indefinite period of time and their substance is absent. Consequently, the temporary loss of EU citizenship could be treated as a disproportionate restriction to free movement rights instead of a deprivation of EU citizenship.¹⁸⁴ As in the latter case, the period of time the EU citizen would be deprived of his or her free movement rights

¹⁷⁶ Judgment of 18 January 2022, *JY v Wiener Landesregierung*, C-118/20, EU:C:2022:34, paragraph 42. See also Judgment of 14 November 2017, *Lounes*, C-165/16, EU:C:2017:862, paragraph 56.

¹⁷⁷ See Opinion of Advocate General Szpunar, *JY v Wiener Landesregierung*, C-118/20, EU:C:2021:530, paragraph 73 and Judgment of 14 November 2017, *Lounes*, C-165/16, EU:C:2017:862, paragraph 57. See also David de Groot, 'CJEU asked to rule on acquisition of nationality in light of EU citizenship: The fundamental status on the horizon?' (*Global Citizenship Observatory*, 16 June 2020) <www.globalcit.eu/cjeu-asked-to-rule-on-acquisition-of-nationality-in-light-of-eu-citizenship-the-fundamental-status-on-the-horizon-c-118-20-jy-v-wiener-landesregierung/> accessed 1 August 2023.

¹⁷⁸ Judgment of 18 January 2022, *JY v Wiener Landesregierung*, C-118/20, EU:C:2022:34, paragraph 43.

¹⁷⁹ Opinion of Advocate General Szpunar, *JY v Wiener Landesregierung*, C-118/20, EU:C:2021:530, paragraph 75.

¹⁸⁰ Dimitry V. Kochenov and David de Groot, 'Helpful, Convoluted and Ignorant in Principle: EU Citizenship in the Hands of the Grand Chamber in *JY*' [2022] 47(5) *European Law Review* 699 (case), 704.

¹⁸¹ *ibid* 706.

¹⁸² See Judgment of 17 September 2002, *Baubast and R*, C-413/99, EU:C:2002:493, paragraph 91.

¹⁸³ Eleanor Spaventa, 'Article 45 – Freedom of Movement and of Residence' in Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward (eds), *The EU Charter of Fundamental Rights: A Commentary* (Hart Publishing 2021), 1214. In this regard, see, for instance, Judgment of 8 March 2011, *Ruiz Zambrano*, C-34/09, EU:C:2011:124, paragraph 42.

¹⁸⁴ In this regard, see Katarina Hyltén-Cavallius, 'Stateless Union Citizens in a Nationality Conundrum: EU Law Safeguarding Against Broken Promises: ECJ 18 January 2022, Case C-118/20, *Wiener Landesregierung* (Revocation of an assurance of naturalisation)', *ECLI:EU:C:2022:34* [2022] 18(3) *European Constitutional Law Review* 556 (note), 565.

should also be a determinant factor when conducting a proportionality test under Article 21 TFEU. Thus, the practice could be considered incompatible with Article 21 TFEU.

3.4. The choice of Article 20 over Article 21 TFEU

It has been argued that the CJEU's choice of Article 20 TFEU over Article 21 TFEU in *JY* recognises the order of events, as the enjoyment of EU citizenship rights depends on the prior acquisition of the status of EU citizenship. Consequently, first a person becomes an EU citizen and only after makes use of the free movement rights conferred by that status.¹⁸⁵

Coming back to the case-law on derived residence rights, the CJEU clarified in *McCarthy*¹⁸⁶ that national measures might have the effect of depriving an EU citizen 'of the genuine enjoyment of the substance of the rights associated with her status as [an EU citizen], or of impeding the exercise of her right to move and reside freely within the territory of the Member States'.¹⁸⁷ Thus, it made a clear distinction between Articles 20 and 21 TFEU.¹⁸⁸ Moreover, arguably, Article 21 TFEU is restricted to cross-border situations, but Article 20 TFEU is not.¹⁸⁹ The CJEU has consistently upheld that Article 20 TFEU is applied in very specific situations, where Article 21 TFEU could not be applied, and in which the effectiveness of EU citizenship would be undermined, in order to protect EU citizens against deprivations of their rights.¹⁹⁰

Thus, to declare Article 21(1) TFEU applicable in *JY* but then solve the case based solely on Article 20 TFEU did not fit with the residual nature of Article 20 TFEU that the CJEU has established in its case-law on derived residence rights.¹⁹¹ Temporary stateless EU citizens

¹⁸⁵ Katarina Hyltén-Cavallius, 'Stateless Union Citizens in a Nationality Conundrum: EU Law Safeguarding Against Broken Promises: ECJ 18 January 2022, Case C-118/20, Wiener Landesregierung (Revocation of an assurance of naturalisation), ECLI:EU:C:2022:34' [2022] 18(3) European Constitutional Law Review 556 (note), 565.

¹⁸⁶ Judgment of 5 May 2011, *McCarthy*, C- 434/09, EU:C:2011:277 on the possibility of a third-country national acquiring a right of residence under Directive 2004/38 as a spouse of a dual national EU citizen who has never exercised her right to move and reside.

¹⁸⁷ Judgment of 5 May 2011, *McCarthy*, C- 434/09, EU:C:2011:277, paragraph 49. See also Martijn van den Brink, 'Is It Time to Abolish the Substance of EU Citizenship Rights Test?' (2021) 23(1) European Journal of Migration 13, 22.

¹⁸⁸ See Peter Van Elsuwege, 'Court of Justice of the European Union European Union Citizenship and the Purely Internal Rule Revisited Decision of 5 May 2011, Case C-434/09 Shirley McCarthy v. Secretary of State for the Home Department' [2011] 7 European Constitutional Law Review 308 (note), 319. See also Martijn van den Brink, 'Is It Time to Abolish the Substance of EU Citizenship Rights Test?' (2021) 23(1) European Journal of Migration 13, 23.

¹⁸⁹ See Peter Van Elsuwege, 'Court of Justice of the European Union European Union Citizenship and the Purely Internal Rule Revisited Decision of 5 May 2011, Case C-434/09 Shirley McCarthy v. Secretary of State for the Home Department' [2011] 7 European Constitutional Law Review 308 (note), 319.

¹⁹⁰ Judgment of 13 September 2016, *Rendón Marín*, C-165/14, EU:C:2016:675, paragraph 74. See also Judgment of 10 October 2013, *Aloka and Moudoulou*, C-86/12, EU:C:2013:645, paragraph 32 and Judgment of 15 November 2011, *Dereci and Others*, C-256/11, EU:C:2011:734, paragraphs 66-67. For further reading, see Martijn van den Brink, 'Is It Time to Abolish the Substance of EU Citizenship Rights Test?' (2021) 23(1) European Journal of Migration 13, 22.

¹⁹¹ See Katarina Hyltén-Cavallius, 'Stateless Union Citizens in a Nationality Conundrum: EU Law Safeguarding Against Broken Promises: ECJ 18 January 2022, Case C-118/20, Wiener Landesregierung (Revocation of an assurance of naturalisation), ECLI:EU:C:2022:34' [2022] 18(3) European Constitutional Law Review 556 (note),

have necessarily made use of their free movement rights and, as a consequence, Article 21 TFEU is applicable to them. In this regard, the different lines of case-law, despite being interconnected, as demonstrated, show clear inconsistencies.

3.5. Protection under the Charter

Although the concepts of EU citizenship and fundamental rights are distinct,¹⁹² the latter is ‘an integral part of the status of [EU] citizenship’.¹⁹³ Pursuant to Article 51(1) Charter, where a situation is within the scope of EU law, the Charter is consequently applicable as well.¹⁹⁴ Thus, Charter rights are not free-standing¹⁹⁵ and have a ‘point of attachment to what lies within the competences of the [EU]’.¹⁹⁶ Nonetheless, as demonstrated above, the case at hand falls within the scope of EU law, and so it matters to assess potentially relevant Charter provisions.

On the one hand, there is Article 45 Charter, on the freedom of movement and of residence. Article 45(1) Charter reproduces Article 20(2)(a) TFEU.¹⁹⁷ The establishment of the link with EU law, in order for the Charter to apply, is created through the exercise of one of the free movement or EU citizenship rights found in the TFEU.¹⁹⁸ Based on Article 52(2) Charter, the Charter does not modify the system of rights conferred by the Treaties.¹⁹⁹ Therefore, a person

564-565. See also Martijn van den Brink, ‘Is It Time to Abolish the Substance of EU Citizenship Rights Test?’ (2021) 23(1) *European Journal of Migration* 13, 22.

¹⁹² See Martijn van den Brink, ‘Is It Time to Abolish the Substance of EU Citizenship Rights Test?’ (2021) 23(1) *European Journal of Migration* 13, 26.

¹⁹³ Opinion of Advocate General Ruiz-Jarabo Colomer, *Petersen*, C-228/07, EU:C:2008:281, paragraph 27. See also Niamh Nic Shuibhne, ‘The right to move and reside: disentangling the dual dynamics of fundamental rights in EU citizenship law’ in Sionaidh Douglas-Scott and Nicholas Hatzis (eds), *Research Handbook on EU Law and Human Rights* (Edward Elgar Publishing 2017), 103.

¹⁹⁴ In this regard, see Judgment of 26 February 2013, *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraphs 18-19 and Judgment of 6 March 2014, *Siragusa*, C-206/13, EU:C:2014:126, paragraph 25. See also Uliana Ermolaeva, Elisabeth Faltinat and Dārta Tentere, ‘The Concept of ‘Stateless Persons’ in European Union Law’ (*Amsterdam International Law Clinic*, 2017) <<https://euromedmonitor.org/uploads/reports/Stateless-EN.pdf>> accessed 2 August 2023, 39-40. For a more detailed reading on the application of the Charter and on the mentioned judgments, see Angela Ward, ‘Article 51 – Field of Application’ in Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward (eds), *The EU Charter of Fundamental Rights: A Commentary* (Hart Publishing 2021), 1576-1583.

¹⁹⁵ In this regard, see Eleanor Spaventa, ‘Article 45 – Freedom of Movement and of Residence’ in Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward (eds), *The EU Charter of Fundamental Rights: A Commentary* (Hart Publishing 2021), 1223.

¹⁹⁶ Opinion of Advocate General Sharpston, *O.*, C-456/12, and *S. and G.*, C-457/12, EU:C:2013:837, paragraph 60. To find a critical view on this topic, see Opinion of Advocate General Sharpston, *Ruiz Zambrano*, C-34/09, EU:C:2010:560, paragraph 170. For further reading, see Niamh Nic Shuibhne, ‘The right to move and reside: disentangling the dual dynamics of fundamental rights in EU citizenship law’ in Sionaidh Douglas-Scott and Nicholas Hatzis (eds), *Research Handbook on EU Law and Human Rights* (Edward Elgar Publishing 2017), 104.

¹⁹⁷ See Eleanor Spaventa, ‘Article 45 – Freedom of Movement and of Residence’ in Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward (eds), *The EU Charter of Fundamental Rights: A Commentary* (Hart Publishing 2021), 1213.

¹⁹⁸ *ibid* 1213-1214.

¹⁹⁹ Explanations relating to the Charter of Fundamental Rights [2007] OJ C 303, explanation on art 52. See Steve Peers and Sacha Prechal, ‘Article 52 – Scope and Interpretation of Rights and Principles’ in Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward (eds), *The EU Charter of Fundamental Rights: A Commentary* (Hart Publishing 2021), 1611-1612.

would rely directly on Article 21 TFEU since the Charter right does not add anything in relation to it.²⁰⁰

On the other hand, there is Article 7 Charter, on the respect for private and family life. As it will only apply if the situation is covered by EU law,²⁰¹ its application will be redundant in view of an infringement of EU citizenship rights having already been established.²⁰² The CJEU has argued in its case-law that, pursuant to Article 52(1) Charter, any limitation on the exercise of Charter rights must respect the essence of the fundamental right in question as well as be necessary and genuinely meet objectives of general interest recognised by the EU.²⁰³

In *JY*, Article 7 Charter was indeed mentioned by the CJEU,²⁰⁴ as well as by AG Szpunar.²⁰⁵ Still, it was approached only in relation to the proportionality test to be conducted due to the result of permanent loss of EU citizenship, as the decision should be consistent with the fundamental rights guaranteed by the Charter.²⁰⁶ There is no case-law suggesting that the Charter and, consequently, Article 7 apply also to a temporary loss of EU citizenship. Nonetheless, considering that nationality is governed by private life, a requirement to become stateless in order to acquire another nationality could potentially interfere disproportionately with the right to private and family life.²⁰⁷ Even so, taking into account the restrictive approach of the CJEU as to the application of Charter rights to matters concerning EU citizenship,²⁰⁸ it is not so evident that Article 7 Charter would be considered in every situation of temporary loss of EU citizenship. Perhaps it would be taken into consideration only where the condition of statelessness is disproportionately long.

²⁰⁰ See Eleanor Spaventa, 'Article 45 – Freedom of Movement and of Residence' in Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward (eds), *The EU Charter of Fundamental Rights: A Commentary* (Hart Publishing 2021), 1223.

²⁰¹ See Judgment of 15 November 2011, *Dereci and Others*, C-256/11, EU:C:2011:734, paragraphs 71-72.

²⁰² Anja Lansbergen, 'Case Summary and Comment: Case C-256/11, Dereci and others v Bundesministerium für Inneres' (*Global Citizenship Observatory*) 5 <<https://www.globalcit.eu/wp-content/uploads/2011/11/Dereci%20Case%20Summary%20and%20Comment.pdf>> accessed 2 August 2023. See also Miriam Kullmann, 'Article 7 – Family Life Aspects' in Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward (eds), *The EU Charter of Fundamental Rights: A Commentary* (Hart Publishing 2021), 224.

²⁰³ Judgment of 4 June 2013, *ZZ*, C-300/11, EU:C:2013:363, paragraph 51. See also Judgment of 18 July 2013, *Joined Cases C-584/10 P, C-593/10 P and C-595/10 P, Commission and Others v Kadi*, EU:C:2013:518, paragraph 101.

²⁰⁴ Judgment of 18 January 2022, *JY v Wiener Landesregierung*, C-118/20, EU:C:2022:34, paragraph 61.

²⁰⁵ Opinion of Advocate General Szpunar, *JY v Wiener Landesregierung*, C-118/20, EU:C:2021:530, paragraphs 119-122.

²⁰⁶ See judgment of 12 March 2019, *Tjebbes and Others*, C-221/17, EU:C:2019:189, paragraph 45. See also Judgment of 10 May 2017, *Chavez-Vilchez and Others*, C-133/15, EU:C:2017:354, paragraph 70.

²⁰⁷ In this regard, see David de Groot, 'CJEU asked to rule on acquisition of nationality in light of EU citizenship: The fundamental status on the horizon?' (*Global Citizenship Observatory*, 16 June 2020) <www.globalcit.eu/cjeu-asked-to-rule-on-acquisition-of-nationality-in-light-of-eu-citizenship-the-fundamental-status-on-the-horizon-c-118-20-jy-v-wiener-landesregierung/> accessed 1 August 2023.

²⁰⁸ See Miriam Kullmann, 'Article 7 – Family Life Aspects' in Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward (eds), *The EU Charter of Fundamental Rights: A Commentary* (Hart Publishing 2021), 230. For instance, see Judgment of 12 March 2019, *Tjebbes and Others*, C-221/17, EU:C:2019:189, paragraph 48 and Dimitry Kochenov, 'The Tjebbes Fail' (2019) 4(1) *European Papers* 319 (note), 324.

Finally, it shall be noted that, even if the CJEU were to find the subject outside the scope of EU law and, thus, the Charter non-applicable, Article 8(1) ECHR would still apply. It has the same meaning and scope as Article 7 Charter²⁰⁹ and the Member State's courts and authorities would have to consider it.²¹⁰

3.6. Reflecting on the compatibility of temporary loss of EU citizenship with EU law

When considering the case-law of the CJEU in relation to the loss of EU citizenship, the focus must be on the importance of taking into account the lapse of time that has passed between the acceptance of the renunciation of nationality and the acquisition of the new nationality. Moreover, it must be reminded that the CJEU found both the host Member State and the Member State of origin responsible. A proportionality test would apply, as it did in *JY*, *Tjebbes*, and *Rottmann*. If the condition lasts for a long period of time, it should be seen as disproportionate in light of Article 20 TFEU.

As regards the *Ruiz Zambrano* line of case-law, where EU citizenship is lost, even if temporarily, those citizens are undoubtedly deprived of the substance of the rights attached to that status. The same could be said about interpreting the situation as a restriction of free movement rights, as an EU citizen who has moved and resided in another Member State and aims to naturalise there is certainly covered. In relation to the Charter, although Article 45 is not helpful for the analysis, Article 7 may be, namely if it is considered in the proportionality assessment.

As demonstrated, there are many ways to consider the temporary loss of EU citizenship within the scope of EU law and, thus, to offer protection to these EU citizens. Still, it seems more likely that, if there were a preliminary reference on the topic, the CJEU would apply its case-law on the loss of EU citizenship and conduct a proportionality test under Article 20 TFEU. It should be kept in mind that AG Szpunar did consider these scenarios to declare that the situation was within the scope of EU law²¹¹ and then still followed the *Rottmann* and *Tjebbes* case-law.

Finally, it is worth considering that a lot could be avoided if it were not for the lack of basic coordination between the Member States' legislative frameworks in this field.²¹² It is true that

²⁰⁹ Judgment of 15 November 2011, *Dereci and Others*, C-256/11, EU:C:2011:734, paragraph 70. See also Judgment of 5 October 2010, *McB.*, C-400/10 PPU, EU:C:2010:582, paragraph 53.

²¹⁰ Judgment of 15 November 2011, *Dereci and Others*, C-256/11, EU:C:2011:734, paragraph 72.

²¹¹ Opinion of Advocate General Szpunar, *JY v Wiener Landesregierung*, C-118/20, EU:C:2021:530, paragraphs 68-75.

²¹² Dimitry V. Kochenov and David de Groot, 'Helpful, Convoluted and Ignorant in Principle: EU Citizenship in the Hands of the Grand Chamber in JY' [2022] 47(5) European Law Review 699 (case), 700-701 and Dimitry Kochenov, 'Court of Justice's Grand Chamber in JY: Othering Europeans is OK' (*EU Law Live*, 24 January 2022), 3 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4031066> accessed 2 August 2023.

it is within their discretion to determine who is a national and that they are under no legal obligation to coordinate. Nonetheless, if, by chance, the Member States with renunciation requirements prior to acquisition of nationality truly took into account whether those naturalisation candidates would lose their original nationality automatically upon acquisition of the new one,²¹³ the temporary loss of EU citizenship would be avoided all together in several cases.

²¹³ For instance, Austria could have considered that JY would have lost her Estonian nationality automatically upon acquisition of another nationality, pursuant to Consolidated Version of the Citizenship Act (*Kodakondsuse seadus*) [2020], arts 22(3) and 29(1).

4. Temporary loss of nationality through the lenses of international law

Now that the temporary loss of EU citizenship has been discussed, it is necessary to consider whether the temporary loss of nationality is permitted under international law. Although international law is clearly applicable in the EU legal order if international agreements to which the EU is a party are at stake,²¹⁴ it is relevant even if the EU is not a party to the treaty but the Member States are. In fact, the CJEU has already stated that the EU ‘must respect international law in the exercise of its powers’²¹⁵ and that it ‘draws inspiration [...] from the guidelines supplied by international instruments for the protection of human rights on which the Member States [...] are signatories’.²¹⁶

More specifically in regard to EU citizenship, in *Rottmann*, the CJEU highlighted the principle of international law according to which ‘the Member States have the power to lay down the conditions for the acquisition and loss of nationality’²¹⁷ and ‘the general principle of international law that no one is arbitrarily to be deprived of [his or her] nationality’.²¹⁸ *Rottmann* and its subsequent case-law equally referred to the 1961 Convention and the ECN.²¹⁹ Moreover, AG Szpunar in *JY* made it clear that the Member States are required to exercise their powers in the sphere of the acquisition and loss of nationality in compliance with both EU law and international law.²²⁰

4.1. 1954 Convention Relating to the Status of Stateless Persons

The 1954 Convention has been ratified by almost all the Member States,²²¹ with the exceptions of Cyprus, Estonia and Poland. It is relevant as regards terminology because it provides a

²¹⁴ Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/47, art 216(2).

²¹⁵ For instance, Judgment of 3 September of 2008, *Kadi and Al Barakaat International Foundation v Council and Commission*, Joined Cases C-402/05 P and C-415/05 P, EU:C:2008:461, paragraph 291, Judgment of 16 June 1998, *Racke v Hauptzollamt Mainz*, C-162/96, EU:C:1998:293, paragraph 45 and Judgment of 24 November 1992, *Anklagemindigheden v Poulsen and Diva Navigation*, C-286/90, EU:C:1992:453, paragraph 9.

²¹⁶ Judgment of 3 September of 2008, *Kadi and Al Barakaat International Foundation v Council and Commission*, Joined Cases C-402/05 P and C-415/05 P, EU:C:2008:461, paragraphs 283.

²¹⁷ Judgment of 2 March 2010, *Rottmann*, C-135/08, EU:C:2010:104, paragraph 48.

²¹⁸ *ibid* paragraph 53. See Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) art 15(2), according to which ‘no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality’.

²¹⁹ Judgment of 18 January 2022, *JY v Wiener Landesregierung*, C-118/20, EU:C:2022:34, paragraph 55, Judgment of 12 March 2019, *Tjebbes and Others*, C-221/17, EU:C:2019:189, paragraph 37 and Judgment of 2 March 2010, *Rottmann*, C-135/08, EU:C:2010:104, paragraphs 52-53.

²²⁰ Opinion of Advocate General Szpunar, *JY v Wiener Landesregierung*, C-118/20, EU:C:2021:530, paragraph 94.

²²¹ ‘3. Convention relating to the Status of Stateless Persons’ (*United Nations Treaty Collection*, 2 August 2023) <https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&clang=_en> accessed 2 August 2023. Austria, Belgium, Bulgaria, Croatia, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden are Contracting Parties.

definition of a stateless person. It shall be kept in mind that the duty to avoid statelessness is a ‘fundamental principle of international law’.²²²

Pursuant to Article 1(1) 1954 Convention, a stateless person is a ‘person who is not considered as a national by any State under the operation of its law’. Thus, a person who is taking part in a procedure to acquire nationality that has not yet been completed cannot be deemed to be a national.²²³ Additionally, voluntary renunciation of nationality is not excluded from the scope of Article 1(1) and the fulfilment of conditions for acquiring another nationality is a legitimate objective where the individual might only have expected a very short period of statelessness.²²⁴

Therefore, although the 1954 Convention itself does not impose any prohibition on the Contracting States, as its aim is to assure certain rights to those who are stateless, its guidelines²²⁵ still show that a person can be stateless even if it is a temporary condition.

4.2. 1961 Convention on the Reduction of Statelessness

The 1961 Convention is relevant for this analysis, taking into consideration that more than half of the Member States have ratified it, namely Austria, Croatia, Bulgaria, Denmark, Germany, Hungary, Latvia, Lithuania, Luxembourg, Romania, Slovakia and Sweden.²²⁶

Article 7(1)(a) 1961 Convention determines that renunciation of nationality cannot result in its loss unless the person concerned possesses or acquires another nationality. Consequently, a national of a Contracting State who seeks naturalisation in another State can only lose the nationality if he or she acquires or has been granted official, non-discretionary and

²²² United Nations Human Rights Council ‘Human rights and arbitrary deprivation of nationality: Report of the Secretary-General’ (2013) UN Doc A/HRC/25/28, 3. In connection to this topic, see ‘Statelessness and the Right to a Nationality in Europe: Progress, Challenges and Opportunities’ (*Council of Europe*, July 2022), para 28 <<https://rm.coe.int/cdcj-2022-12-statelessness-report-of-the-international-conference-and-1680a74cfa>> accessed 2 August 2023.

²²³ United Nations High Commissioner for Refugees ‘Guidelines on Statelessness No. 1: The definition of “Stateless Person” in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons’ (20 February 2012) UN Doc HCR/GS/12/01, para 43. See also United Nations High Commissioner for Refugees ‘Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons’ (Geneva 2014) para 50.

²²⁴ United Nations High Commissioner for Refugees ‘Guidelines on Statelessness No. 1: The definition of “Stateless Person” in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons’ (20 February 2012) UN Doc HCR/GS/12/01 para 44. See also United Nations High Commissioner for Refugees ‘Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons’ (Geneva 2014) paras 51 and 158. Although relating to the nationality of natural persons in relation to the succession of States, further support for this view is found in International Law Commission, ‘Report of the International Law Commission on the work of its fifty-first session’ (3 May-23 July 1999) UN Doc A/54/10 p 31-32. See also UNHRC ‘Human rights and arbitrary deprivation of nationality: Report of the Secretary-General’ (2009) UN Doc A/HRC/13/34 para 42 and 54.

²²⁵ *ibid.*

²²⁶ ‘4. Convention on the Reduction of Statelessness’ (*United Nations Treaty Collection*, 2 August 2023) <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&clang=_en> accessed 2 August 2023. Moreover, Belgium, the Czech Republic, Finland, Italy, Ireland, Portugal and Spain have ratified it. Contrarily, Cyprus, Estonia, France, Greece, Malta, Poland and Slovenia are not parties to the 1961 Convention.

unconditional assurance, in writing, that he or she will acquire the nationality of that other State imminently, pursuant to Article 7(2) and its supporting documents.²²⁷

It is straightforward that there is no incompatibility under international law if those criteria are met. However, one should consider that the acquisition of nationality should be certain and imminent.²²⁸ This means that States should not leave a person without a nationality for a prolonged period. Additionally, if there are significant delays in the naturalisation procedure, the former nationality should be automatically re-acquired or deemed to never have been lost.²²⁹ Moreover, the original nationality should be restored if the acquisition of the new nationality does not occur promptly after the other one is lost, for example, within one year.²³⁰ Thus, States should define a fixed period of time for the acquisition of the new nationality to take place, and if it does not, there should be a lapse of the renunciation.²³¹ States must make sure safeguards exist in national legislation wherever they provide for the withdrawal of nationality.²³²

Therefore, two conclusions can be drawn: (1) if the person only acquires the new nationality years after renouncing the previous one, the acquisition was not imminent and that is not allowed under the 1961 Convention; and (2) if such a situation takes place, then the State of origin is under the duty to protect those nationals by offering the re-acquisition of nationality or deeming that it was never lost. Thus, the practice of letting a naturalisation candidate remain stateless for two years or relying on an assurance to permanently deprive someone of a nationality without offering safeguards against statelessness is not compatible with Article 7(2) 1961 Convention. Still, the practice of making use of renunciation requirements and allowing

²²⁷ United Nations High Commissioner for Refugees 'Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness' (May 2020) UN Doc HCR/GS/20/05, para 25 and United Nations High Commissioner for Refugees 'Expert Meeting - Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality (Tunis 31 October-1 November 2013)' (March 2014) para 44-45.

²²⁸ United Nations High Commissioner for Refugees 'Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness' (May 2020) UN Doc HCR/GS/20/05, para 83.

²²⁹ *ibid* para 25. See also United Nations Human Rights Council 'Human rights and arbitrary deprivation of nationality: Report of the Secretary-General' (2013) UN Doc A/HRC/25/28, para 8.

²³⁰ United Nations High Commissioner for Refugees 'Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness' (May 2020) UN Doc HCR/GS/20/05, para 83 and United Nations High Commissioner for Refugees 'Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons' (Geneva 2014) para 155.

²³¹ United Nations High Commissioner for Refugees 'Expert Meeting - Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality (Tunis 31 October-1 November 2013)' (March 2014) para 42.

²³² United Nations High Commissioner for Refugees 'Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness' (May 2020) UN Doc HCR/GS/20/05, para 80.

renunciation of nationality to take place before the acquisition of a new one is not *per se* prohibited under the 1961 Convention.

4.3. Convention on the Reduction of Cases of Multiple Nationality

The 1963 Convention is based on the principle that dual nationality is undesirable and should be avoided.²³³ Although it counts with 10 ratifications from Member States,²³⁴ most of them have denounced Chapter I, on the reduction of cases of multiple nationality.²³⁵ As a result, Austria is the only relevant Member State to which these provisions are applicable.

Article 1(1) 1963 Convention determines that nationals of the Contracting Parties who acquire, by means of naturalisation, the nationality of another State must lose their former nationality and cannot be authorised to retain it. This rule is subject to few exceptions.²³⁶

Even though it does not refer to the possibility of renunciation before acquisition, it does not prohibit it either and it seems to be legitimised.²³⁷ Considering that the 1963 Convention advocates for limiting the acceptance of dual nationality, the practice of imposing temporary statelessness cannot be seen as incompatible with its provisions.²³⁸

²³³ See Council of Europe 'Explanatory Report to the Second Protocol amending the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality' (2 February 2023) ETS 149, 1.

²³⁴ 'Chart of signatures and ratifications of Treaty 043' (*Council of Europe*, 2 August 2023) <<https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatyNum=043>> accessed 2 August 2023. Austria, Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Spain and Sweden have ratified the 1963 Convention.

²³⁵ 'Reservations and Declarations for Treaty No.043 - Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality (ETS No. 043)' (*Council of Europe*, 2 August 2023) <www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=043&codeNature=0> accessed 2 August 2023. Belgium, Denmark, France, Ireland, Italy, Luxembourg, Spain and Sweden denounced Chapter I.

²³⁶ Most importantly, Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality 1963, annex para 3 and Second Protocol amending the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality 1995 art 1(5). However, note that none of them are applicable to Austria, as it made a reservation to the first one and did not ratify the second. In this regard, see, respectively, 'Reservations and Declarations for Treaty No.043 - Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality (ETS No. 043)' (*Council of Europe*, 2 August 2023) <www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=043&codeNature=0> accessed 2 August 2023 and 'Chart of signatures and ratifications of Treaty 149' (*Council of Europe*, 2 August 2023) <www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatyNum=149> accessed 2 August 2023, in conjunction with Second Protocol amending the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality 1995 art 3(2)(b).

²³⁷ In this regard, see Opinion of Advocate General Szpunar, *JY v Wiener Landesregierung*, C-118/20, EU:C:2021:530, paragraph 92.

²³⁸ In this regard, see Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 31(1): 'A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose'.

4.4. European Convention on Nationality

The ECN has been ratified by almost half of the Member States, namely Austria, Bulgaria, Denmark, Germany, Hungary, Luxembourg, Romania, Slovakia and Sweden.²³⁹ Thus, it is a pertinent piece of legislation for this analysis.

Regarding the rules on nationality, Article 4(b) ECN provides that these have to be based on the principle that statelessness must be avoided. It also recognises, in Article 7(1)(a), that State nationals may lose their nationality due to the voluntary acquisition of another nationality. However, pursuant to Article 8(1) ECN, the renunciation can only take place provided the person does not become stateless as a consequence. As to what concerns multiple nationality, Article 15 ECN clarifies that it is up to each State Party to determine whether dual nationality is allowed.²⁴⁰

In the Explanatory Report to the ECN, it is made clear that allowing the renunciation of nationality to take place prior to the acquisition of another nationality is contrary to Article 8.²⁴¹ Still, the scenario that it describes is that, where the person fails to acquire the nationality due to the unfulfillment of certain conditions, the State whose nationality had been renounced must allow him or her to recover it. Alternatively, it must consider that it was never lost to prevent statelessness from occurring.²⁴² Thus, it seems like a temporary loss of nationality is not tolerated by the ECN. However, in this last scenario, by making the State of origin responsible for preventing a possible condition of statelessness, it seems to implicitly assume that renunciation prior to acquisition could in fact occur.

4.5. Overall assessment of the compatibility of temporary loss of nationality with international law

There is no provision in the Conventions expressly prohibiting the practice of imposing or accepting temporary loss of nationality on naturalisation candidates, as they will, in principle, acquire another nationality and will not remain stateless. Nonetheless, the supporting documents to the 1961 Convention show that this practice is not tolerated unconditionally

²³⁹ 'Chart of signatures and ratifications of Treaty 166' (*Council of Europe*, 2 August 2023) <www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=166> accessed 2 August 2023. Furthermore, the Czech Republic, Finland and Portugal are Contracting Parties. Thus, Belgium, Croatia, Cyprus, Estonia, France, Greece, Italy, Ireland, Latvia, Lithuania, Malta, Poland, Slovenia and Spain are not parties to the ECN.

²⁴⁰ See Judgment of 18 January 2022, *JY v Wiener Landesregierung*, C-118/20, EU:C:2022:34, paragraph 55. Still, pursuant to European Convention on Nationality 1997 art 16, there is a prohibition against making the renunciation of another nationality a condition for the acquisition of nationality if that is not possible or cannot reasonably be required.

²⁴¹ Council of Europe 'Explanatory Report to the European Convention on Nationality' (6 November 1997) ETS 166 para 57.

²⁴² *ibid* para 79.

under international law, and the Explanatory Report to the ECN shows some evidence of the incompatibility of temporary loss of nationality with its provisions. Even if the conclusions and the guidelines relating to the Conventions constitute ‘soft law’, they contain useful guidance for the Member States.²⁴³ It only seems to be fully legitimised under the 1963 Convention, but as almost all Member States are not Contracting Parties, its provisions are of little relevance.

The conclusions of *JY* regarding the ECN and the 1961 Convention have been highly criticised on the grounds that temporary loss of nationality is a violation of international law.²⁴⁴ Still, the view according to which the Austrian practice of renunciation prior to acquisition was automatically a violation of international law²⁴⁵ is not here endorsed, mainly in regard to the 1961 Convention. Differently, it is agreed that causing ‘up to several years of statelessness even if the procedure runs smoothly’²⁴⁶ would be inconsistent with the 1961 Convention. In its light, the Estonian practice appears to be more problematic than the Austrian one, which would have been, in principle, acceptable if it had not taken so many years to issue a decision. Differently, pursuant to the ECN, both are possibly incompatible with it.

The evidence of the incompatibility of the practice of temporary loss of nationality with certain Conventions is highly relevant, as the provisions of international law are taken into consideration by the CJEU.²⁴⁷ Conducting a more thorough analysis of international law could help the CJEU give more importance to the lapse of time between the date of the renunciation of the original nationality and the acquisition of the new one. Moreover, it could lead the CJEU to further consider the loss, with immediate effects, of the nationality of the Member State of origin before the other one is actually acquired. Even if it does not result in the CJEU assessing the existence of renunciation requirements prior to the acquisition of nationality, it could give strength to the argument that the temporary loss of EU citizenship might be incompatible with EU law.

²⁴³ See Opinion of Advocate General Szpunar, *JY v Wiener Landesregierung*, C-118/20, EU:C:2021:530, paragraph 96.

²⁴⁴ Dimitry V. Kochenov and David de Groot, ‘Helpful, Convolved and Ignorant in Principle: EU Citizenship in the Hands of the Grand Chamber in *JY*’ [2022] 47(5) *European Law Review* 699 (case), 708 and Dimitry Vladimirovich Kochenov and David de Groot, ‘Curing the Symptoms but not the Disease’ (*Verfassungsblog*, 20 January 2022) <www.verfassungsblog.de/curing-the-symptoms-but-not-the-disease/> accessed 2 August 2023.

²⁴⁵ Dimitry Vladimirovich Kochenov and David de Groot, ‘Curing the Symptoms but not the Disease’ (*Verfassungsblog*, 20 January 2022) <www.verfassungsblog.de/curing-the-symptoms-but-not-the-disease/> accessed 2 August 2023.

²⁴⁶ *ibid.*

²⁴⁷ Judgment of 3 September of 2008, *Kadi and Al Barakaat International Foundation v Council and Commission*, Joined Cases C-402/05 P and C-415/05 P, EU:C:2008:461, paragraphs 283 and 291.

5. Conclusion

Firstly, it is now possible to conclude that indeed the temporary loss of EU citizenship, a topic that has not been given the necessary attention so far, is both a problem in practice and in legal terms. EU citizens move to another Member State, thus exercising their rights to free movement, and after long periods of residence, decide to naturalise there. This does not mean that they do not feel attached to their original nationality, but they are either way forced to make a choice.

Enforcing even temporary periods of statelessness has negative impacts on any individual, as these could potentially last from days to years. These once EU citizens are faced with uncertainty and lose the rights attached to their status as EU citizens, which they made use of to move and reside in another Member State in the first place. It must also be acknowledged that most EU citizens will not go to court for enduring short or medium periods of statelessness. Instead, it is more likely that they will fight for their rights once they have lost hope of getting back the rights that they once had.

Secondly, the legislation of the Member States that allows for temporary loss of EU citizenship to take place shows clearly which safeguards exist and, in some cases, it demonstrates loud and clear that these are absent. Still, in order to have a clearer view of how significant the issue is in each of the Member States requiring renunciation prior to acquisition singled out, there would be the need to go beyond legislation, translated case-law and reports, at times from a decade ago. Hopefully, an update of the country reports would help comprehend whether there have been developments in practice. Even so, the findings are as detailed as possible, given the language barrier and lack of in-depth knowledge of all the national jurisdictions, and prove the existence of such practices. Indeed, the national provisions are sufficient grounds to determine that these renunciation requirements do exist. Moreover, it remains unknown what kind of protection these EU citizens are offered at the national level.

Thirdly, although the CJEU has had the opportunity to condemn such a practice in *JY*, it should not be overlooked that there was no need to do so in order to protect her rights, as she had been rendered (permanently) stateless. In this way, the CJEU was able to restate its previous case-law from *Rottmann* and *Tjebbes* to offer her protection against the permanent loss of the status of EU citizenship through the application of a proportionality test. Furthermore, in such a manner, the CJEU did not have to get into the grey areas of a field that is not considered an EU competence. Still, as it has been shown, the EU's capacity to limit the Member States' discretion in the field of nationality is arguably developing, and *Commission v Malta*, if won, would be a landmark in this regard.

There is no clear confirmation from the CJEU that such a result is undoubtedly within the scope of Article 20 TFEU as to loss of EU citizenship. Even so, based on the reasoning of the CJEU and of AG Szpunar, it is then possible to claim confidently that, if Article 20 TFEU would not be deemed applicable, Article 21 TFEU would, and the case could be treated as a restriction of free movement rights. Moreover, the case-law of the CJEU regarding derived residence rights could be applied as well. This would lead to an analysis of whether the EU citizen has been deprived of the genuine enjoyment of the rights attached to that status, as AG Szpunar had assessed, and to the application of the substance of rights test to cases of temporary loss of EU citizenship. Nonetheless, following this line, Article 21 would be more likely to be applicable considering that the EU citizen would have always made use of free movement rights, given the residual character of Article 20 TFEU.

Furthermore, if temporary loss of EU citizenship is within the scope of EU law, then the Charter would apply. Still, as demonstrated, Article 45 adds nothing to the protection present in the Treaties besides the validation of the importance of free movement of persons.²⁴⁸ Differently, Article 7 could offer further protection if a proportionality test were to be conducted.

Nevertheless, it is reasonable to expect that, in a situation alike, the CJEU would follow its current case-law on the loss of EU citizenship, even if this case could also be treated as a matter of acquisition of nationality and, consequently, EU citizenship. For that reason, in all likelihood, not all situations of temporary loss of EU citizenship would be considered equally severe. A proportionality test could be applied to these situations to offer a minimum bar of protection in cases where the condition of statelessness has reached a point where it is visibly disproportionate. This would be the case if the naturalisation candidate had been stateless, for instance, for more than a year. Even so, as it has been repeatedly submitted by scholars, a proportionality test is insufficient to prohibit a practice. Instead, it would send the message that temporary statelessness is indeed allowed, but *in casu* it can be disproportionate. This is not a sufficient safeguard.

Therefore, considering all the elements presented, it would be imprudent to claim with all certainty that such provisions are incompatible with EU law. In this regard, it must be kept in mind that no CJEU judgment represents 'a final resting place for the [CJEU's case-law] on the evolving relationship between EU law and [Member State nationality], but rather they are just lines in an evolving and always challenging conversation'.²⁴⁹ Thus, the EU's ability to limit the

²⁴⁸ See Eleanor Spaventa, 'Article 45 – Freedom of Movement and of Residence' in Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward (eds), *The EU Charter of Fundamental Rights: A Commentary* (Hart Publishing 2021), 1225.

²⁴⁹ Jo Shaw, 'Concluding thoughts: Rottmann in context' in Jo Shaw (ed), *Has the European Court of Justice Challenged the Member State Sovereignty in Nationality Law?* (2011) 62 EUI RSCAS Working Paper 33, 37. See

Member States' discretion in the field of nationality keeps evolving, meaning that significant changes could be witnessed in the next few years. Nonetheless, as demonstrated throughout the analysis, the outcome of the temporary loss of EU citizenship is within the scope of EU law, and there are plenty of ways to protect these EU citizens from a long period of statelessness before the acquisition of the new nationality.

Fourthly, regarding the compatibility of the temporary loss of nationality with international law, the detailed assessment established that it is, for the most part, not true that this practice is unquestionably a violation of international law. Still, there is evidence of an incompatibility with the 1961 Convention and the ECN. In this regard, it should be taken into account the relevance given by the CJEU's case-law to international law. It is, thus, recommendable for the CJEU to consider the documents supporting the 1961 Convention and the ECN's interpretation, such as explanatory reports, the next time it assesses a similar issue. Different conclusions would have been reached, namely, if the element of imminence had not been disregarded. A more in-depth analysis of international law could have made a stronger argument for finding that there could be a more straightforward incompatibility with EU law.

As a last reflection, if the obligation to meet a renunciation requirement to naturalise keeps persisting in the above-mentioned Member States, the simpler solution to offer protection against temporary loss of EU citizenship would be for the Member States of origin to make their nationalities non-renounceable prior to the actual acquisition of a new nationality. All the Member States mentioned allow for the renunciation to take place after the acquisition of nationality if it is impossible, pursuant to the laws of the State of origin, to relinquish the previous nationality prior to acquisition. Still, this apparent easy solution would require legislative changes in several Member States, which is extremely unlikely in the near future. The most probable development is for a new preliminary reference to be made to the CJEU.

also Cristina J. Gortázar Rotaèche, 'Identity, Member States Nationality and EU Citizenship: Restitution of Former European Nationals v. Naturalisation of New European Residents?' in Elspeth Guild, Cristina J. Gortázar Rotaèche and Dora Kostakopoulou (eds) in *The Reconceptualization of European Union Citizenship* (Brill/Nijhoff 2014), 31.

Bibliography

1. Primary sources

1.1. Law

1.1.1. International Law

Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III))

Convention for the Protection of Human Rights and Fundamental Freedoms 1950

Convention relating to the Status of Stateless Persons (adopted 28 September 1954, entered into force 6 June 1960) 360 UNTS 117

Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality 1963

Convention on the Reduction of Statelessness (adopted 30 August 1961, entered into force 13 December 1975) 989 UNTS 175

Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331

Second Protocol amending the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality 1995

European Convention on Nationality 1997

1.1.2. EU Law

Treaty on European Union - Declaration on nationality of a Member State [1992] OJ C191/98

Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC [2004] OJ L158/77

Charter of Fundamental Rights of the European Union [2012] OJ C326/02

Consolidated Version of the Treaty on European Union [2012] OJ C326/13

Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/47

1.1.3. National Law

Consolidated Version of the Act on Danish Nationality (*Lov om Dansk Indfødsret*) [2004]

Consolidated Version of the Citizenship of the Republic of Slovenia Act (*Zakon o državljanstvu Republike Slovenije*) [2006]

Consolidated Version of the Civil Code (*Code Civil*) [2006]

Consolidated Version of the Swedish Citizenship Act (*Lag (2001:82) om Svenskt Medborgarskap*) [2006]

Consolidated Version of the Nationality Act (*Kansalaisuuslaki*) [2007]

Consolidated Version of the Act No. 21/1991 on Romanian Citizenship (*Lege nr. 21 din 1 martie 1991 Cetățeniei Române*) [2010]

Consolidated Version of the Act No. 40/1993 Coll. on Nationality of the Slovak Republic (*Zákon Národnej rady Slovenskej republiky z 19. januára 1993 o štátnom občianstve Slovenskej republiky*) [2010]

Consolidated Version of the Greek Citizenship Code (*Κώδικα της Ελληνικής Ιθαγένειας*) [2010]

Consolidated Version of the Law on Croatian Citizenship (*Zakon o Hrvatskom Državljanstvu*) [2011]

Consolidated Version of the Civil Registry Law of 2002 (*Ο Περί Αρχείου Πληθυσμού Νόμος του 2002*) [2012]

Consolidated Version of the Nationality Act (*Staatsangehörigkeitgesetz*) [2012]

Law of 2 April 2009 on Polish Citizenship (*Ustawa z dnia 2 kwietnia 2009 r. o obywatelstwie polskim*) [2012]

Act of July 11, 2013 on Citizenship of the Czech Republic and on the amendment of selected other laws (*Zákon č. 186/2013 Sb., Zákon o státním občanství České republiky a o změně některých zákonů*)

Consolidated Version of the Spanish Civil Code (Real Decreto de 24 de julio de 1889 por el que se publica el Código Civil) [2013]

Consolidated Version of the Netherlands Nationality Act (*Rijkswet op het Nederlanderschap*) [2015]

Consolidated Version of the Republic of Lithuania Law on Citizenship (*Lietuvos Respublikos Pilietybės Įstatymas*) [2016]

Loi du 8 mars 2017 sur la Nationalité Luxembourgeoise

Consolidated Version of the Act No. 91 of 5 February 1992 (*Legge 5 febbraio 1992, n. 91*) [2018]

Consolidated Version of the Act LV of 1993 on the Hungarian Nationality (*1993. évi LV. törvény a magyar állampolgárságról*) [2019]

Consolidated Version of the Citizenship Act (*Kodakondsuse seadus*) [2020]

Consolidated Version of the Federal Act Concerning the Granting of Asylum 2005 (*Asylgesetz-Durchführungsverordnung 2005*) [2020]

Consolidated Version of the Maltese Citizenship Act [2020]

Lietuvos Respublikos pilietybės įstatymo Nr. XI-1196 2, 7, 12, 15, 16, 18, 21, 23, 24, 26, 27, 33, 37, 40, 41, 41-1 ir 42 straipsnių pakeitimo ir įstatymo papildymo 21-1 straipsniu įstatymas [2020]

Versão Consolidada da Lei n.º 37/81, de 03 de Outubro (Lei da Nacionalidade) [2020]

Versión Consolidada del Real Decreto 1004/2015, de 6 de noviembre, por el que se aprueba el Reglamento por el que se regula el procedimiento para la adquisición de la nacionalidad española por residencia [2020]

Consolidated Version of the Bulgarian Citizenship Act (*Закон за българското гражданство*) [2021]

Consolidated Version of the Federal Law concerning Austrian Nationality, 1985 Nationality Act (*Staatsbürgerschaftsgesetz 1985*) [2021]

Consolidated Version of the Citizenship Law (*Pilsonības likums*) [2022]

Convenio de nacionalidad entre el Reino de España y la República Francesa [2022]

Geconsolideerde regelgeving van de Rijkswet op het Nederlanderschap [2022]

Konsolideeritud Versioon: Kodakondsuse seaduses sätestatud menetlustes esitatavate andmete ja dokumentide loetelu [2022]

Version Consolidée de la Code de la Nationalité Belge [2022]

Bundesrecht konsolidiert: Allgemeines Verwaltungsverfahrensgesetz 1991 [2023]

Consolidated Version of the Irish Nationality and Citizenship Act, 1956 [2023]

1.2. Case-law

1.2.1. International Case-law

Nottebohm (Liechtenstein v Guatemala) (Merits) [1955] ICJ Rep 1995

1.2.2. Case-law from the CJEU

Judgment of 7 July 1992, *Micheletti and Others*, C-369/90, EU:C:1992:295

Judgment of 24 November 1992, *Anklagemindigheden v Poulsen and Diva Navigation*, C-286/90, EU:C:1992:453

Judgment of 15 December 1995, *Union royale belge des sociétés de football association and Others v Bosman and Others*, C-415/93, EU:C:1995:463

Judgment of 12 May 1998, *Martínez Sala v Freistaat Bayern*, C-85/96, EU:C:1998:217

Judgment of 16 June 1998, *Racke v Hauptzollamt Mainz*, C-162/96, EU:C:1998:293

Judgment of 20 September 2001, *Grzelczyk*, C-184/99, EU:C:2001:458

Judgment of 17 September 2002, *Baumbast and R*, C-413/99, EU:C:2002:493

Judgment of 19 October 2004, *Zhu and Chen*, C-200/02, EU:C:2004:639

Judgment of 3 September of 2008, *Kadi and Al Barakaat International Foundation v Council and Commission*, Joined Cases C-402/05 P and C-415/05 P, EU:C:2008:461

Judgment of 2 March 2010, *Rottmann*, C-135/08, EU:C:2010:104

Judgment of 5 October 2010, *McB.*, C-400/10 PPU, EU:C:2010:582

Judgment of 8 March 2011, *Ruiz Zambrano*, C-34/09, EU:C:2011:124

Judgment of 5 May 2011, *McCarthy*, C- 434/09, EU:C:2011:277

Judgment of 15 November 2011, *Dereci and Others*, C-256/11, EU:C:2011:734

Judgment of 21 December 2011, *Air Transport Association of America and Others*, C-366/10, EU:C:2011:864

Judgment of 26 February 2013, *Åkerberg Fransson*, C-617/10, EU:C:2013:105

Judgment of 4 June 2013, *ZZ*, C-300/11, EU:C:2013:363

Judgment of 18 July 2013, Joined Cases C-584/10 P, C-593/10 P and C-595/10, *Commission and Others v Kadi*, EU:C:2013:518

Judgment of 10 October 2013, *Alokpa and Moudoulou*, C-86/12, EU:C:2013:645

Judgment of 6 March 2014, *Siragusa*, C-206/13, EU:C:2014:126

Judgment of 13 September 2016, *Rendón Marín*, C-165/14, EU:C:2016:675

Judgment of 10 May 2017, *Chavez-Vilchez and Others*, C-133/15, EU:C:2017:354

Judgment of 14 November 2017, *Lounes*, C-165/16, EU:C:2017:862

Judgment of 5 June 2018, *Coman and Others*, C-673/16, EU:C:2018:385, paragraph 30

Judgment of 12 March 2019, *Tjebbes and Others*, C-221/17, EU:C:2019:189

Judgment of 18 January 2022, *JY v Wiener Landesregierung*, C-118/20, EU:C:2022:34

Judgment of 9 June 2022, *Préfet du Gers and Institut national de la statistique et des études économiques*, C-673/20, EU:C:2022:449

Action brought on 21 March 2023, *Commission v Malta*, C-181/23

Judgment of 15 June 2023, *Silver and Others v Council*, C-499/21 P, EU:C:2023:479

1.2.3. Opinions of Advocates General of the CJEU

Opinion of Advocate General Ruiz-Jarabo Colomer, *Petersen*, C-228/07, EU:C:2008:281

Opinion of Advocate General Poiares Maduro, *Rottmann*, C-135/08, EU:C:2009:588

Opinion of Advocate General Sharpston, *Ruiz Zambrano*, C-34/09, EU:C:2010:560

Opinion of Advocate General Sharpston, *O.*, C-456/12, and *S. and G.*, C-457/12, EU:C:2013:837

Opinion of Advocate General Bot, *Lounes*, C-165/16, EU:C:2017:407

Opinion of Advocate General Mengozzi, *Tjebbes and Others*, C-221/17, EU:C:2018:572

Opinion of Advocate General Szpunar, *JY v Wiener Landesregierung*, C-118/20, EU:C:2021:530

1.2.4. National Case-law

Council of State (*Raad van State*) 18 August 2004, 200306971/1

Constitutional Court of Austria 29 September 2011 (*Verfassungsgerichtshof*), G154/10-8, 19516

Supreme Administrative Court of Lithuania (*Lietuvos Vyriausiosios Administracinis Teismas*) 26 March 2015, A-1424-602/2015

Administrative Court of Split (*Upravni sud u Splitu*) 31 March 2017, UsI-293/15-6

Vienna Administrative Court (*Verwaltungsgericht Wien*) 23 January 2018

Constitutional Court of Austria (*Verfassungsgerichtshof*) 13 March 2019, E4081/2018

1.3. Soft Law

1.3.1. International Level

Council of Europe 'Explanatory Report to the European Convention on Nationality' (6 November 1997) ETS 166

International Law Commission, 'Report of the International Law Commission on the work of its fifty-first session' (3 May-23 July 1999) UN Doc A/54/10

United Nations Human Rights Council 'Human rights and arbitrary deprivation of nationality: Report of the Secretary-General' (2009) UN Doc A/HRC/13/34

United Nations High Commissioner for Refugees 'Guidelines on Statelessness No. 1: The definition of "Stateless Person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons' (20 February 2012) UN Doc HCR/GS/12/01

United Nations Human Rights Council 'Human rights and arbitrary deprivation of nationality: Report of the Secretary-General' (2013) UN Doc A/HRC/25/28

United Nations High Commissioner for Refugees 'Expert Meeting - Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality (Tunis 31 October-1 November 2013)' (March 2014)

United Nations High Commissioner for Refugees 'Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons' (Geneva 2014)

United Nations High Commissioner for Refugees 'Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness' (May 2020) UN Doc HCR/GS/20/05

Council of Europe 'Explanatory Report to the Second Protocol amending the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality' (2 February 2023) ETS 149

1.3.2. EU Level

Explanations relating to the Charter of Fundamental Rights [2007] OJ C 303

European Parliament resolution of 9 March 2022 with proposals to the Commission on citizenship and residence by investment schemes [2022] OJ C347/97

Commission, 'Recommendation of 28.3.2022 on immediate steps in the context of the Russian invasion of Ukraine in relation to investor citizenship schemes and investor residence schemes' COM (2022) 2028 final

1.3.3. National Level

Geconsolideerde regelgeving van de Handleiding Rijkswet op het Nederlanderschap 2003 [2023]

2. Secondary Sources

2.1. Books

Barnard C, 'Free Movement of natural persons and citizenship of the Union' in Catherine Barnard and Steve Peers (eds), *European Union Law* (Oxford University Press 2020)

— The Substantive Law of the EU: The Four Freedoms (6th edn, Oxford University Press 2019)

Gortázar Rotaecche CJ, 'Identity, Member States Nationality and EU Citizenship: Restitution of Former European Nationals v. Naturalisation of New European Residents?' in Elspeth Guild, Cristina J. Gortázar Rotaecche and Dora Kostakopoulou (eds) in *The Reconceptualization of European Union Citizenship* (Brill/Nijhoff 2014)

Kalaitzaki K, 'EU Citizenship as a Means of Broadening the Application of EU Fundamental Rights: Developments and Limits' in Nathan Cambien, Dimitry Kochenov, and Elise Muir (eds), *European Citizenship under Stress: Social Justice, Brexit and Other Challenges* (Brill/Nijhoff 2020)

— 'EU Citizenship: Some Systemic Constitutional Implications' in Nathan Cambien, Dimitry Kochenov and Elise Muir (eds), *European Citizenship under Stress: Social Justice, Brexit and Other Challenges* (Brill/Nijhoff 2020)

Kullmann M, 'Article 7 – Family Life Aspects' in Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward (eds), *The EU Charter of Fundamental Rights: A Commentary* (Hart Publishing 2021)

Lenaerts K, '“Civis Europaeus Sum”: From the Cross-Border Link to the Status of Citizen of the Union' in Pascal Cardonnel, Allan Rosas and Nils Wahl (eds) *Constitutionalising the EU Judicial System: Essays in Honour of Pernilla Lindh* (Hart Publishing 2012)

— and Van Nuffel P, *EU Constitutional Law* (Tim Corthaut (ed), Oxford University Press 2021)

Nic Shuibhne N, 'The right to move and reside: disentangling the dual dynamics of fundamental rights in EU citizenship law' in Sionaidh Douglas-Scott and Nicholas Hatzis (eds), *Research Handbook on EU Law and Human Rights* (Edward Elgar Publishing 2017)

Peers S and Prechal S, 'Article 52 – Scope and Interpretation of Rights and Principles' in Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward (eds), *The EU Charter of Fundamental Rights: A Commentary* (Hart Publishing 2021)

Sawyer C, 'Stateless in Europe: Legal Aspects of De Jure and De Facto Statelessness in the European Union' in Caroline Sawyer and Brad K. Blitz (eds), *Statelessness in the European Union: Displaced, Undocumented, Unwanted* (Cambridge University Press 2011)

Spaventa E, 'Article 45 – Freedom of Movement and of Residence' in Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward (eds), *The EU Charter of Fundamental Rights: A Commentary* (Hart Publishing 2021)

Ward A, 'Article 51 – Field of Application' in Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward (eds), *The EU Charter of Fundamental Rights: A Commentary* (Hart Publishing 2021)

van der Mei AP, 'Member State Nationality, EU Citizenship and Associate European Citizenship' in Nathan Cambien, Dimitry Kochenov and Elise Muir (eds), *European Citizenship under Stress: Social Justice, Brexit and Other Challenges* (Brill/Nijhoff 2020)

2.2. Journal Articles

Bellenghi G, 'The Court of Justice in JY v. Wiener Landesregierung: Could we expect more?' [2023] 30(1) Maastricht Journal of European and Comparative Law 83 (note)

Brekoo A, 'Statelessness in the European Union: Exploring the Potential Value of Union Citizenship' (2020) 2(1) Statelessness & Citizenship Review 24

Gambardella I, 'JY v Wiener Landesregierung: Adding Another Stone to the Case Law Built Up by the CJEU on Nationality and EU Citizenship' [2022] 7(1) European Papers 399 (note)

Hyltén-Cavallius K, 'Stateless Union Citizens in a Nationality Conundrum: EU Law Safeguarding Against Broken Promises: ECJ 18 January 2022, Case C-118/20, Wiener Landesregierung (Revocation of an assurance of naturalisation), ECLI:EU:C:2022:34' [2022] 18(3) European Constitutional Law Review 556 (note)

Kochenov D, 'Double Nationality in the EU: An Argument for Tolerance' (2011) 17(3) ELJ 323

— ‘Two Sovereign States vs. a Human Being: ECJ as a Guardian of Arbitrariness in Citizenship Matters’ in Jo Shaw (ed), *Has the European Court of Justice Challenged the Member State Sovereignty in Nationality Law?* (2011) 62 EUI RSCAS Working Paper 11

— ‘The right to have what rights? EU citizenship in need of clarification’ (2013) 19(4) ELJ 502

— ‘The Tjebbes Fail’ [2019] 4(1) European Papers 319 (note)

— and de Groot D, ‘Helpful, Convolutd and Ignorant in Principle: EU Citizenship in the Hands of the Grand Chamber in JY’ [2022] 47(5) European Law Review 699 (case)

Show J, ‘Concluding thoughts: Rottmann in context’ in Jo Shaw (ed), *Has the European Court of Justice Challenged the Member State Sovereignty in Nationality Law?* (2011) 62 EUI RSCAS Working Paper 33

van den Brink M, ‘Is It Time to Abolish the Substance of EU Citizenship Rights Test?’ (2021) 23(1) European Journal of Migration 13

Van Elsuwege P, ‘Court of Justice of the European Union European Union Citizenship and the Purely Internal Rule Revisited Decision of 5 May 2011, Case C-434/09 Shirley McCarthy v. Secretary of State for the Home Department’ [2011] 7 European Constitutional Law Review 308 (note)

2.3. Reports

— ‘Pathways to citizenship for third-country nationals in the EU Member States: Estonian National Report’ (2019) European Migration Network <https://home-affairs.ec.europa.eu/system/files/2020-01/08_estonia_citizenship_study_en.pdf> accessed 2 August 2023

— ‘Pathways to citizenship for third-country nationals in the EU Member States: National Report 2019 - EMN Croatia’ (2019) European Migration Network <https://home-affairs.ec.europa.eu/system/files/2019-12/04_croatia_pathways_to_citizenship_en.pdf> accessed 2 August 2023

— ‘Pathways to citizenship for third-country nationals in the EU Member States: National Report 2019 - EMN Slovak Republic’ (2019) European Migration Network <https://home-affairs.ec.europa.eu/system/files/2022-08/emn-sk_study_on_pathways_to_citizenship_sr_en.pdf> accessed 14 August 2023

— 'Pathways to citizenship for third-country nationals in the Republic of Lithuania' (2022) European Migration Network <https://home-affairs.ec.europa.eu/system/files/2022-03/Lithuania_pathways_to_citizenship_en.pdf> accessed 2 August 2023

Böcker A and van Oers R, 'Naturalisations procedures for immigrants: Netherlands' (2013) EUDO Citizenship Observatory NP 2013/26 <<https://hdl.handle.net/1814/29792>> accessed 2 August 2023

Buttigieg E and DeBono D, 'Country report on citizenship law: Malta' (2015) EUDO Citizenship Observatory 2015/05 <<https://hdl.handle.net/1814/34482>> accessed 2 August 2023

Ersbøll E, 'Report on citizenship law: Denmark' (2015) EUDO Citizenship Observatory 2015/14 <<https://hdl.handle.net/1814/36504>> accessed 2 August 2023

Farahat A and Hailbronner K, 'Report on citizenship law: Germany' (2020) GLOBALCIT 2020/05 <<https://hdl.handle.net/1814/66430>> accessed 2 August 2023

Foblets M-C and Yanasmayan Z, 'Country report: Belgium' (2013) EUDO Citizenship Observatory 2013/27 <<https://hdl.handle.net/1814/19603>> accessed 2 August 2023

Gil AR and Piçarra N, 'Report on citizenship law: Portugal' (2020) GLOBALCIT 2020/01 <<https://hdl.handle.net/1814/66204>> accessed 2 August 2023

Handoll J, 'Country report: Ireland' (2012) EUDO Citizenship Observatory 2012/02 <<https://hdl.handle.net/1814/19618>> accessed 2 August 2023

Järve P and Poleshchuk V, 'Country report: Estonia' (2013) EUDO Citizenship Observatory 2013/6 <<https://hdl.handle.net/1814/19611>> accessed 2 August 2023

Kovács MM and Tóth J, 'Country report: Hungary' (2013) EUDO Citizenship Observatory 2013/18 <<https://hdl.handle.net/1814/19616>> accessed 2 August 2023

Kovič Dine M, 'Naturalisations procedures for immigrants: Slovenia' (2013) EUDO Citizenship Observatory NP 2013/33 <<https://hdl.handle.net/1814/29797>> accessed 2 August 2023

Krūma K, 'Country report on citizenship law: Latvia' (2015) EUDO Citizenship Observatory 2015/06 <<https://hdl.handle.net/1814/34481>> accessed 2 August 2023

Martín Pérez A and Moreno Fuentes F, 'Naturalisations procedures for immigrants: Spain' (2013) EUDO Citizenship Observatory NP 2013/19 <<https://hdl.handle.net/1814/29798>> accessed 2 August 2023

Medved F, 'Country Report: Slovenia' (2013) EUDO Citizenship Observatory 2013/24 <<https://hdl.handle.net/1814/19636>> accessed 2 August 2023

Migration Policy Group, 'Access to citizenship and its impact on immigrant integration: ACIT handbook for Austria' (2013) EUDO Citizenship Observatory ACIT Handbooks <<https://hdl.handle.net/1814/29766>> accessed 2 August 2023

— 'Access to citizenship and its impact on immigrant integration: ACIT handbook for Estonia' (2013) EUDO Citizenship Observatory ACIT Handbooks <<https://hdl.handle.net/1814/29772>> accessed 2 August 2023

Poleshchuk V, 'Naturalisations procedures for immigrants: Estonia' (2013) EUDO Citizenship Observatory NP 2013/08 <<https://hdl.handle.net/1814/29780>> accessed 2 August 2023

Rubio Marín R, Sobrino I, Martín Pérez A and Moreno Fuentes FJ, 'Country report on citizenship law: Spain' (2015) EUDO Citizenship Observatory 2015/04 <<https://hdl.handle.net/1814/34480>> accessed 2 August 2023

Ruškyte R, 'Naturalisations procedures for immigrants: Lithuania' (2013) EUDO Citizenship Observatory NP 2013/29 <<https://hdl.handle.net/1814/29789>> accessed 2 August 2023

Sajfert J, 'Naturalisations procedures for immigrants: Croatia' (2013) EUDO Citizenship Observatory NP 2013/10 <<https://hdl.handle.net/1814/29776>> accessed 2 August 2023

Scuto D, 'Country report: Luxembourg' (2013) EUDO Citizenship Observatory 2013/14 <<https://hdl.handle.net/1814/19623>> accessed 2 August 2023

Stern J and Valchars G, 'Country Report: Austria' (2013) EUDO Citizenship Observatory 2013/28 <<https://hdl.handle.net/1814/60232>> accessed 2 August 2023

— 'Naturalisations procedures for immigrants: Austria' (2013) EUDO Citizenship Observatory NP 2013/04 <<https://hdl.handle.net/1814/29773>> accessed 2 August 2023

Stiller M, 'Pathways to Citizenship for Foreigners in Austria' (2019) European Migration Network <https://home-affairs.ec.europa.eu/system/files/2022-09/emn-national-report-2019_-citizenship.pdf> accessed 2 August 2023

Trimikliniotis N, 'Country report on citizenship law: Cyprus' (2015) EUDO Citizenship Observatory 2015/01 <<https://hdl.handle.net/1814/34479>> accessed 2 August 2023

van Oers R, de Hart B and Groenendijk K, 'Country report: the Netherlands' (2013) EUDO Citizenship Observatory 2013/1 <<https://hdl.handle.net/1814/19629>> accessed 2 August 2023

2.3.1. Other sources

- ‘3. Convention relating to the Status of Stateless Persons’ (*United Nations Treaty Collection*, 26 July 2023) <https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&clang=_en> accessed 2 August 2023
- ‘4. Convention on the Reduction of Statelessness’ (*United Nations Treaty Collection*, 7 April 2023) <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&clang=_en> accessed 2 August 2023
- ‘Acquisition of citizenship by age group, sex and former citizenship’ (*Eurostat*, 24 March 2023) <https://ec.europa.eu/eurostat/databrowser/view/MIGR_ACQ__custom_7041066/default/table?lang=en> accessed 1 August 2023
- ‘Case Law Search’ (*Statelessness Case Law Database*) <<https://caselaw.statelessness.eu/caselaw-search>> accessed 2 August 2023
- ‘Chart of signatures and ratifications of Treaty 043’ (*Council of Europe*, 2 August 2023) <<https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=043>> accessed 2 August 2023
- ‘Chart of signatures and ratifications of Treaty 149’ (*Council of Europe*, 2 August 2023) <www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=149> accessed 2 August 2023
- ‘Chart of signatures and ratifications of Treaty 166’ (*Council of Europe*, 2 August 2023) <www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=166> accessed 2 August 2023
- ‘Citizenship Case Law’ (*Global Citizenship Observatory*) <<https://globalcit.eu/citizenship-case-law/>> accessed 2 August 2023
- ‘Citizenship granted to 827 000 people in 2021’ (*Eurostat*, 1 March 2023) <<https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20230301-1>> accessed 1 August 2023
- ‘Deprivation of nationality and the prevention of statelessness in Europe’ (*Statelessness Index*, July 2021) <<https://www.statelessness.eu/sites/default/files/2021-07/Deprivation%20of%20nationality%20and%20the%20prevention%20of%20statelessness%20in%20Europe%20FINAL.pdf>> accessed 2 August 2023

— ‘Dual citizenship’ (*Government of the Netherlands*) <www.government.nl/topics/dutch-citizenship/dual-citizenship> accessed 2 August 2023

— ‘Dual Citizenship’ (*oesterreich.gv.at*, 21 February 2023) <https://www.oesterreich.gv.at/en/themen/leben_in_oesterreich/staatsbuergerschaft/Seite.260430.html> accessed 2 August 2023

— ‘Global Nationality Laws Database’ (*Global Citizenship Observatory*) <<https://globalcit.eu/national-citizenship-laws/>> accessed 2 August 2023

— ‘GLOBALCIT Citizenship Law Dataset – Modes of Loss of Citizenship’ (*Global Citizenship Observatory*, 2021) <<https://globalcit.eu/modes-loss-citizenship/>> accessed 2 August 2023

— ‘Golden passport’ schemes: Commission proceeds with infringement case against MALTA’ (*European Commission*, 6 April 2022) <https://ec.europa.eu/commission/presscorner/detail/en.%C2%A0ip_22_2068> accessed 2 August 2023

— ‘Investor citizenship scheme: Commission refers MALTA to the Court of Justice’ (*European Commission*, 29 September 2022) <https://ec.europa.eu/commission/presscorner/detail/en/IP_22_5422> accessed 2 August 2023

— ‘Investor citizenship schemes: European Commission opens infringements against Cyprus and Malta for “selling” EU citizenship’ (*European Commission*, 20 October 2020) <https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1925> accessed 2 August 2023

— ‘Joint Statement on further restrictive economic measures’ (*European Commission*, 26 February 2022) <https://ec.europa.eu/commission/presscorner/detail/en/statement_22_1423> accessed 17 August 2023

— ‘June infringements package: key decisions’ (*European Commission*, 9 June 2021) <https://ec.europa.eu/commission/presscorner/detail/en/inf_21_2743> accessed 2 August 2023

— ‘Nationality and Statelessness: Handbook for Parliamentarians No 22’ (*Inter-Parliamentary Union and UN Refugee Agency*, July 2014) <<https://www.unhcr.org/protection/statelessness/53d8ddab6/nationality-statelessness-handbook-parliamentarians-22.html>> accessed 2 August 2023

— ‘Renouncing your nationality’ (*IND*, 23 May 2022) <<https://ind.nl/en/renouncing-your-nationality#renouncing-your-nationality-how-does-it-work>> accessed 2 August 2023

— ‘Reservations and Declarations for Treaty No.043 - Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality (ETS No. 043)’ (*Council of Europe*, 2 August 2023) <www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=043&codeNature=0> accessed 2 August 2023

— ‘Statelessness and the Right to a Nationality in Europe: Progress, Challenges and Opportunities’ (*Council of Europe*, July 2022) <<https://rm.coe.int/cdcj-2022-12-statelessness-report-of-the-international-conference-and-/1680a74cfa>> accessed 2 August 2023

— ‘The National Assembly finally abolished the possibility to acquire citizenship for investment’ (*National Assembly of the Republic of Bulgaria*, 24 March 2022) <<https://www.parliament.bg/en/news/ID/5424>> accessed 2 August 2023

— ‘Oath of Allegiance to the Republic of Lithuania’ (*Migration Law Center*) <<https://www.migration.lt/oath-of-allegiance-to-the-republic-of-lithuania>> accessed 17 August 2023

de Groot D, ‘CJEU asked to rule on acquisition of nationality in light of EU citizenship: The fundamental status on the horizon?’ (*Global Citizenship Observatory*, 16 June 2020) <www.globalcit.eu/cjeu-asked-to-rule-on-acquisition-of-nationality-in-light-of-eu-citizenship-the-fundamental-status-on-the-horizon-c-118-20-jy-v-wiener-landesregierung/> accessed 1 August 2023

— ‘Russia's war on Ukraine: Reassessing 'citizenship by investment' schemes’ (*European Parliamentary Research Service*, April 2022) <[https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/729385/EPRS_ATA\(2022\)729385_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/729385/EPRS_ATA(2022)729385_EN.pdf)> accessed 2 August 2023

Ermolaeva U, Elisabeth Faltinat and Dārta Tentere, ‘The Concept of ‘Stateless Persons’ in European Union Law’ (*Amsterdam International Law Clinic*, 2017) <<https://euromedmonitor.org/uploads/reports/Stateless-EN.pdf>> accessed 2 August 2023

Fernandes M, Navarra C and de Groot D, ‘Avenues for EU action on citizenship and residence by investment schemes – European Added Value Assessment’ (*European Parliamentary Research Service*, 21 October 2021) <[https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694217/EPRS_STU\(2021\)694217_EN.pdf#page=30](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694217/EPRS_STU(2021)694217_EN.pdf#page=30)> accessed 17 August 2023

Kochenov D, 'Court of Justice's Grand Chamber in JY: Othering Europeans is OK' (*EU Law Live*, 24 January 2022) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4031066> accessed 2 August 2023

— and de Groot D, 'Curing the Symptoms but not the Disease' (*Verfassungsblog*, 20 January 2022) <www.verfassungsblog.de/curing-the-symptoms-but-not-the-disease/> accessed 2 August 2023

Lansbergen A, 'Case Summary and Comment: Case C-256/11, Dereci and others v Bundesministerium für Inneres' (*Global Citizenship Observatory*) <<https://www.globalcit.eu/wp-content/uploads/2011/11/Dereci%20Case%20Summary%20and%20Comment.pdf>> accessed 2 August 2023

Mentzelopoulou MM and Dumbrava C, 'Acquisition and loss of citizenship in EU Member States: Key trends and issues' (*European Parliamentary Research Service*, July 2018) <[www.europarl.europa.eu/RegData/etudes/BRIE/2018/625116/EPRS_BRI\(2018\)625116_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625116/EPRS_BRI(2018)625116_EN.pdf)> accessed 1 August 2023

Poleshchuk V, 'Statelessness, Proportionality and Access to (EU) Citizenship' (*Global Citizenship Observatory*, 15 June 2021) <<https://globalcit.eu/statelessness-proportionality-and-access-to-eu-citizenship/>> accessed 2 August 2023

Vink M, van der Baaren L, Bauböck R, Džankić J, Honohan I and Manby B, 'GLOBALCIT Citizenship Law Dataset – Modes of Acquisition of Citizenship' (*Global Citizenship Observatory*, 2021) <<https://globalcit.eu/modes-acquisition-citizenship/>> accessed 2 August 2023