

## 7 DUAL CITIZENSHIP IN THE FORCE FIELD OF THE EUROPEAN UNION

Laura Gyeney\*

### 7.1 INTRODUCTION

The issues of dual and multiple citizenship have always presented significant challenges to the enforcement of law. While dual citizens concurrently obey the rules of different countries, it may occur that they cannot exercise their rights in different life situations. Judit Tóth draws the attention to this problem by raising the question whether dual citizens bear a twofold burden of costs while they are entitled to less enjoyment of rights?<sup>1</sup>

The above mentioned question has remarkable relevance in the European Union (EU) since the institution of EU citizenship and the connected right to free movement and the right to freedom of residence aim to facilitate the consecutive, ad absurdum simultaneous exercise of rights in the Member States.

Moreover, due to the rapidly growing number of dual citizens within the EU the question has particular relevance. In general, the institution of dual citizenship<sup>2</sup> has become highly accepted in the majority of the Member States conforming to common liberalisation trends.<sup>3</sup> Citizenship is rooted in the idea of the sovereign state; consequently any change in such an idea involves alterations in the concept of citizenship. As Franck points out, 'today the thought of dual citizenship is not considered an extraordinary phenomenon anymore.'<sup>4</sup> This is particularly true with respect to cases where the person concerned

---

\* Associate professor, Péter Pázmány Catholic University, Faculty of Law; Director of the De Gasperi Institute. E-mail: gyeney.laura@jak.ppke.hu.

1 J. Tóth, 'Miért nem lehet, ha szabad? A többes állampolgárság a nemzetközi és az európai közösségi jog felől', [www.kettosallampolgarsag.mtaki.hu/tanulmanyok/tan\\_03.html](http://www.kettosallampolgarsag.mtaki.hu/tanulmanyok/tan_03.html).

2 R. Bauböck et al. (Eds.), *Acquisition and Loss of Nationality. Volume 1: Comparative Analysis*, Amsterdam, Amsterdam University Press, 2006. This trend seems to refute the resistance of European states towards the institution of dual citizenship. The Strasbourg Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality concluded in 1963 under the auspices of the Council of Europe is a good example for the general opposition of the Member States. The European Convention on Nationality adopted in 1997 reflects a more balanced approach.

3 M.M. Howard, 'Variation in Dual Citizenship Policies in the Countries of the EU', 39/3 *International Migration Review* (2005), pp. 697-720.

4 T.M. Franck, *The Empowered Self, Law and Society in the Age of Individualism*, Oxford University Press, 1999, p. 62.

LAURA GYENÉY

acquires dual citizenship by birth, either because their parents are citizens of two different states or as a result of the combination of the principles of *ius soli* and *ius sanguinis*.

Acquisition of citizenship through the naturalisation procedure covers more sensitive issues, in respect of which we may witness a reverse process in certain relations. Namely, a more restrictive approach is applied to dual citizenship acquired through naturalisation. For instance, expanding Hungarian citizenship to Hungarian nationals living in Romania and Slovakia through a simplified naturalisation process resulted in serious political tensions.<sup>5</sup> Moreover, several Member States require the renunciation of previous citizenship as a mandatory condition to be met for the acquisition of a new citizenship.<sup>6</sup>

As a result of the above-described trends, it seems extremely urgent to resolve the currently existing and escalating tensions at the EU level. Is the EU prepared for adequately managing these highly sensitive issues?

This study intends to analyse the most topical questions raised in relation to dual citizenship in the framework of the EU, while also acknowledging the complexity of the problem.<sup>7</sup> Moreover, the situation has become even more complex, for the issue of dual citizenship may be considered from two different perspectives, namely in the context of intra-EU and extra-EU relations.

We consider the intra-EU context when the citizen concerned possesses at least two different citizenships of Member States. By contrast, we speak of an extra-EU context in case dual citizenship comprises a 'EU citizenship' and the citizenship of a third country. However, in both relations the interaction between dual citizenship itself and EU citizenship deriving from the citizenship of a Member State prompts questions. In the latter context, further tensions may occur as a consequence of exercising the wide range of rights deriving from EU citizenship.

---

5 C. Iordachi, 'Dual Citizenship in Post-Communist Central and Eastern Europe: Regional Integration and inter-Ethnic Tensions', in O. Ieda (Ed.), *Reconstruction and Interaction of Salvic Eurasia and Its Neighboring Worlds*, Sapporo, Slavic European Studies, 2006, p. 10. About the roots of the problems, see: Z. Kántor, 'The Status Law Syndrome and Regional/ National Identity, Hungary, Hungarians in Romania, and Romania', [http://src-h.slav.hokudai.ac.jp/coe21/publish/no10\\_ses/06\\_kantor.pdf](http://src-h.slav.hokudai.ac.jp/coe21/publish/no10_ses/06_kantor.pdf).

For more on this issue, see: R. Bauböck, 'Dual Citizenship for Transborder Minorities? How to Respond to the Hungarian-Slovak Tit-for-Tat?', *EUI Working Paper RSCAS 2010/75*, <http://eudo-citizenship.eu/citizenship-news/322-dual-citizenship-for-transborder-minorities-how-to-respond-to-the-hungarian-slovak-tit-for-tat>.

6 J. Nissen et al., 'Migration Integration Policy Index', Brussels, British Council and Migration Policy Group, in *Dual Citizenship: Policy Trends and Political Participation in EU Member States*, [www.europarl.europa.eu/committees/en/afco/studiesdownload.html?languageDocument=EN&file=29659](http://www.europarl.europa.eu/committees/en/afco/studiesdownload.html?languageDocument=EN&file=29659).

7 At this point, it is worth mentioning Peter J. Spiro's remarkable conclusion of his study on dual citizenship. According to Spiro, 'In dealing with the challenges of minorities in Central Europe over the long run, dual citizenship could be part of the answer rather than part of the problem.' P.J. Spiro, 'Accepting and (Protecting) Dual Citizenship for Transborder Minorities', *EUI Working Paper RSCAS 2010/75.8*.

## 7 DUAL CITIZENSHIP IN THE FORCE FIELD OF THE EUROPEAN UNION

In the following, I shall examine the aspects of dual citizenship from the perspective of intra-EU and extra-EU relations, with special respect to Slovakia's response to Hungary's Dual Citizenship Law.

## 7.2 INTRA-EU CONTEXT

7.2.1 *EU Aspects of Dual Citizenship in the Light of Contractual Goals and Fundamental Values*

In respect of the intra-EU context, we may ask whether the supranational character of EU citizenship can eliminate the questions surrounding dual citizenship, silencing the ongoing dispute.<sup>8</sup> In the case of EU citizenship, the important factor is the existence of a Member State citizenship itself, and it is merely a secondary question which Member States granted citizenship to the person concerned. According to this concept, dual citizenship constitutes two pillars by providing a precise and reliable foundation to EU citizens.

From a theoretical perspective, this approach is highly tempting but we should take into account the practice of Member States, which definitely differs from this idealistic concept. Certain Member States still require the renunciation of the previous citizenship in the course of the naturalisation process,<sup>9</sup> while unfortunately other Member States go even further by prescribing the deprivation of the previous citizenship in case of the acquisition of the citizenship of another Member State. For instance, in Slovakia, the citizen is *ex lege* deprived from their citizenship as a consequence of the naturalisation process.

These conditions or results could hardly be considered to be in compliance with the legal perspective of integration, particularly the principle of equal treatment, according to which EU citizens enjoy similar economic and social rights across the territory of Member States. As a result of integration, the Member State citizenship has begun to gradually lose significance.<sup>10</sup> The content of Member State citizenship has basically been reduced to the

8 EU citizenship as the 'catalyst of the integration' emerges in several studies: D. Kostakopoulou, *European Union Citizenship: Writing the Future*, p. 642; Shaw: Citizenship: Contrasting Dynamics at the Interface of Integration and Constitutionalism, p. 8.

9 Austria, Denmark, Estonia, Latvia, Lithuania, Luxembourg, The Netherlands, Slovenia, Spain. In Bauböck's view: 'Although many countries still insist on renunciation as a condition for naturalisation of immigrants, this has become a largely anachronistic policy.' R. Bauböck, 'Dual Citizenship for Transborder Minorities? How to Respond to the Hungarian-Slovak Tit-for-Tat?', *EUI Working Paper RSCAS 2010/75*. 2.

10 D. Kochenov, 'Rounding up the Circle, the Mutation of Member States' Nationalities under Pressure from EU Citizenship', *EUI Working Papers RSCAS 2010/23*, p. 29; M. Szabó: 'International Law and European Law Aspects of External Voting with Special Regard to Dual Citizenship' (unpublished). The study has been published in the volume issued in 2013 following the conference on 'Trends and Directions of Kin-State Policies in Europe and Across the Globe', jointly organised by the National Policy Research Institute and the University of Szeged Faculty of Law and Political Sciences, Department of European Studies.

LAURA GYENÉY

right to participate at the national elections and the right to be employed in public administration. It is reasonable if we evaluate the previous renunciation requirement regarding citizenship in the course of the naturalisation process and the deprivation of citizenship as a consequence of acquiring the citizenship of another Member State. These restrictive conditions may essentially pursue two practical goals, firstly, to ensure that the Member State citizen is prevented from participating at the national elections; secondly the citizen is excluded from filling prominent positions in the public administration. Nevertheless, these two underlying considerations are clearly not compatible with the integrative goals according to which a more stringent unity must be established between the peoples of Europe,<sup>11</sup> moreover these approaches also jeopardize the enforcement of the democracy requirement set out in Article 2 of the Treaty on the European Union.<sup>12</sup> Pursuant to EU law, EU citizens have the right to free movement and may freely enter the territory of another Member State while they shall be treated equally to the citizens of the host state. This guarantees that the newcomers are given the opportunity to participate in the social life of the host state, which recently became their place of residence.<sup>13</sup> The state concerned cannot but accept this new reality, particularly in light of the fact that all Member States are founded on the same fundamental political values, furthermore, each and every one of them joining the EU in order to realise the same set of goals.

Besides the difficulties inherent in the theoretical approach, we must anticipate practical hindrances, namely that certain Member States do not ensure the renunciation of citizenship at all. Thus, for instance if a Greek citizen intends to acquire Latvian citizenship through an explicit naturalisation process, the effects of renunciation could not be applied considering the fact that the renunciation of such citizenship is not possible by law.

### 7.2.2 *EU Aspects of Dual Citizenship in the Light of the Case-Law of the Court of Justice of the European Union*

The case-law of the Court of Justice of the European Union (CJEU) in respect of dual citizenship also raises several different questions, especially if we focus on private international law aspects. We must be aware of the fact that the case-law of the judicial forum in Luxem-

11 See: Art. 1 of the Treaty on the European Union: 'This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and closely as possible to the citizen.'

12 See: Art. 2 of the Treaty on the European Union: 'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.'

13 See: Art. 21 of the Treaty on the European Union: 'Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give it effect.'

## 7 DUAL CITIZENSHIP IN THE FORCE FIELD OF THE EUROPEAN UNION

bourg regarding dual citizenship significantly affects the traditional mind-set of the Member States in resolving the conflict of laws by means of private international law. How does the CJEU achieve such change?

The novel approach of the CJEU undoubtedly overrides the traditional private international law practice of Member States through the modern concept of disallowing the automatic application of citizenship of the forum concerned in respect of dual citizens who are citizens of more than one Member State. How does this concept work in practice and what does it mean exactly?

Member States enjoy complete sovereignty in deciding who are to be considered their citizens. However, the case-law of the CJEU explicitly forbids the proceeding forum not to take into account the citizenship of another Member State in the course of the assessment of the case. In other words, the relevant case-law of the CJEU establishes wider limits regarding the private international law components of citizenship.<sup>14</sup>

The well-known judgement of the CJEU adopted in the *Garcia Avello* case<sup>15</sup> is a prominent example, according to which the mere fact that the children possess Spanish-Belgian dual citizenship, obliges Belgium, the state where the children were actually born and resided since birth, to take into consideration the Spanish citizenship of the children in the course of assessing the case.

The judgement of the CJEU passed in the *Hadadi* case,<sup>16</sup> containing Hungarian aspects, also illustrates well this point.<sup>17</sup> The case is rooted in the divorce of a Hungarian couple that immigrated to France and acquired French citizenship. In the framework of the preliminary ruling, the referring court asked the CJEU whether Regulation No. 2201/2003 must be interpreted as meaning that, where spouses both hold the nationality of the Member State of the court seized by the case and that of the same other Member State, the court of the State in which proceedings are brought must give precedence to the nationality of the Member State to which it belongs, since this nationality expresses real connection. The habitual residence of the spouses was France and irrespective of the existence of the Hungarian citizenship, no other real, stringent connections to Hungary were discernable.

The Luxembourg court decided in its preliminary ruling that in case of dual citizenship, even if the parties concerned refer to the citizenship that expresses more stringent relations

14 O. Vonk, *Dual Nationality in the European Union. A Study on Changing Norms in Public and Private International Law and in the Municipal Laws of Four Member States*, Leiden-Boston, Martinus Nijhoff Publishers, 2012. pp. 153-156.

15 The CJEU adopted its judgement on 2 October 2003 regarding the C-148/02, *Garcia Avello v. Belgium* case (ECR 2003, p. I-11613).

16 The CJEU adopted its judgement on 16 July 2009 regarding the C-168/08, *Hadadi* case (ECR 2009, p. I-6871).

17 Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No. 1347/2000.

LAURA GYENÉY

between them and the Member State, such reference shall not serve as a basis to establish a ranking between Member States' citizenships. Consequently, a mere reference made by a dual citizen to the closer ties between the dual citizen and the state shall not serve as the basis to declare the priority of this nationality.<sup>18</sup> In this respect, Advocate-General Kokott mentioned Recital 1 of the regulation's preamble in her opinion, according to which the EU 'contributes towards creating an area of freedom, security and justice, in which the free movement of persons is ensured.'<sup>19</sup>

Thus, the main purpose of the regulation is to consider the interests of the participants involved in the proceedings and to provide for flexible regulation that responds to the mobility of persons. These aims predicate that persons exercising their right to free movement may freely choose between jurisdictions. It is obviously easier for these persons to turn to the court of their habitual of residence. Nevertheless, it could be possible that the persons concerned intend to turn to the court of their native country for instance because they speak the language of that state better or are more familiar with its judicial system and legal order.<sup>20</sup> Based on the above, we may say that the principle of more stringent connection would result in an undesirable hierarchy of jurisdiction. Such a hierarchy would be contrary to the goals set out in the regulation, namely, the creation of an area of freedom, security and justice in which the free movement of persons is ensured.

As is apparent, according to the relevant case-law of the CJEU, the Member State concerned has limited power to control its own citizens if they are simultaneously citizens of another Member State.<sup>21</sup>

Moving on from private law aspects, in respect of the scope of acquisition and renunciation of citizenship the CJEU certainly moves forward with deliberate steps. The *Rottman* case,<sup>22</sup> where the focus was explicitly placed on the issue of the renunciation of citizenship,<sup>23</sup>

18 Zs. Wopera, A Hadadi ügy, JEMA, 2010/1. 75. It cannot be deducted from regulation 2201/2003//EC, nor its context that in the course of the application of law and in the context of dual citizenship, only the citizenship that expresses the closer relationship may be considered.

19 See: Section 56 of the Advocate-General opinion set out in the *Hadidi* case.

20 See: Section 58 *ibid*.

21 Vonk *ibid*. 160.

22 The CJEU adopted its judgement on 2 March 2010 regarding the C-135/08, *Janko Rottman v. Freistaat Bayern* case. See more: L. Gyeney, 'Unió polgárság, a piacorientált szemlélettől való elszakadás göröngyös útjai', 2 IAS (2012), 2.

23 Rottman lost his Austrian citizenship at the time when he acquired German citizenship, and then he lost his German citizenship since he previously acquired it through a fraudulent procedure and the German authorities deprived him of his newly obtained citizenship. Consequently, he also lost his European citizenship. A preliminary ruling procedure was conducted in the case to answer the question whether it is contrary to EU law if a Member State withdraws citizenship due to the fact that the person concerned acquired it by intentional deception and such withdrawal has the effect of causing the person concerned to become stateless. The CJEU acknowledged that regulating citizenship belongs exclusively to the competence of Member States, but as the situation also falls under EU law, therefore, national provisions must take into account and respect EU law. Consequently, Member State rules on the withdrawal of citizenship must be compatible with EU law, i.e. necessary and proportionate. Regarding the principle of necessity the protection of common interest

constitutes another milestone in the continuous reinforcement of the status of union citizenship.

The case involved the renunciation of a citizenship previously obtained through misrepresentation. The central question was whether such a decision was compatible with EU law, where the person concerned loses his EU citizenship as a consequence of misrepresented acquisition.

The judgement adopted in the *Rottman* case has particular relevance since this was the first time the CJEU clarified that although Member States have the competence to lay down the conditions for the acquisition and loss of citizenship, at the same time they must consider whether their decision affects the rights conferred and protected by the legal order of the EU and pertaining under the effect of EU law. These aspects must be considered in the course of the application of domestic law and the judicial review carried out in the light of EU law.<sup>24</sup>

In respect of the context of union citizenship it was declared that Member States do not enjoy unlimited freedom regarding the renunciation of citizenship. In the *Rottman* case, the CJEU assessed the competence of the Member States in relation to the renunciation of citizenship for the very first time.

It is of great significance that in the case the CJEU placed the focus on the future consequences of the loss of union citizenship rather than on the assessment of past facts in relation to free movement. Consequently, the connection point is not the element of movement that had occurred in the past but the future exercise of rights derived from EU citizenship.

At this point it is worth examining the recent issue of the Slovak amendment of nationality law as a response to the recently adopted Hungarian naturalisation process,<sup>25</sup> assessing it in the light of the *Rottmann* case.

On 26 May 2010 the National Council of the Slovak Republic amended act nr. Tt. 40/1993 on the citizenship of the Slovak Republic. According to the act currently in effect, in case someone voluntarily, 'pursuant to their explicit will' requests the citizenship of another state and successfully acquires it, the person concerned shall lose their Slovak citizenship. It is important to emphasise that the loss of Slovak citizenship merely occurs if someone acquires the citizenship of another state pursuant their explicit will and request, therefore citizenship gained by birth does not fall under this category. The act imposes a € 33 fine as a sanction on those who omit to inform the authorities regarding the acquisition

---

needs to be proven, while in the course of the assessment whether the measure was proportionate or not, intentional deception needs to be evaluated.

24 I. Vörös, 'Néhány gondolat az uniós polgárság intézményéről', <http://jesz.ajk.elte.hu/voros50.pdf>.

25 As is known, according to Art. 4 of Act LV of 1993 on Hungarian nationality, those persons are also entitled to request Hungarian citizenship who are Hungarian nationals living outside of the borders and have not moved to Hungary or established a workplace in Hungary but continue to stay in their country of origin, being linked to Hungary by their nationality and not by their livelihood or residence.

of the citizenship of another state and fail to surrender their national identification card. Besides the obligation to pay a fine, by obtaining the new citizenship, the public service relationship of the persons concerned is terminated *ex lege*.<sup>26</sup>

Before all, the question arises whether the Slovak amendment is in compliance with the requirement of solidarity between the Member States. Besides it being morally questionable,<sup>27</sup> the amendment in question suffers from several legal defects and discrepancies.<sup>28</sup> In addition to the supposedly unconstitutional character of the amendment (the Slovak Constitutional Court is currently examining its compatibility with the Constitution), it is also questionable both from the international law<sup>29</sup> and European law aspects.<sup>30</sup>

26 Since the amendment of the disputed act, the Slovak authorities imposed fines several times in cases concerning dual citizenship and for instance in the case of László Gubík, whose name has become well-known by the time, as a paramount example. The Slovak police force called upon László Gubík to submit his identification card following the acquisition of his Hungarian citizenship. The young man from Levice did not comply since he believes that the act on the basis of which he was deprived from his Slovak citizenship is unconstitutional. The Slovak authorities imposed a € 33 fine for failure to submit his Slovak identification card.

27 As Stavilá points out ‘Slovakia’s retaliation by passing an amendment to its own citizenship law, according to which every Hungarian ethnic applying for Hungarian citizenship will be automatically stripped of Slovak citizenship, may be justified in a Machiavellian perspective on politics – but it can not be morally defended.’ A. Stavilá, ‘Paving the Road to Heaven with Bad Intentions. A Moral Point of View’, *EUI Working Paper RSCAS 2010/75*.12. He also emphasises the illiberal character of the amendment: ‘The Slovak amendment is clearly an illiberal one, and its consequences are more far-reaching than the bilateral relationship between Hungary and Slovakia. Not only Hungarian ethnics but also every person who acquires another country’s citizenship will automatically lose Slovak citizenship.’ A. Stavilá *ibid.* 10.

28 It is worth noting that the Slovak legal system also acknowledges the institution of simplified naturalisation. Slovakia provided Slovak citizenship between 1997 and 2005 pursuant to the same conditions Hungary currently ensures. The previous Slovak regulation affected approximately 10,000 persons in Romania and Serbia who could take up Slovak citizenship on the basis of their Slovak origin. T. Wetzel, ‘Sólyom ügy az Európai Bíróságon c. előadása’, *Magyar Jogász Egylet*, 22 January 2013.

29 As Spiro emphasizes ‘recent developments point to the emergence of an international norm under which habitual residents can not be denied access to citizenship. Slovakia’s denationalization of those Slovaks who acquire Hungarian citizenship poses an unreasonable burden on that access.’ P.J. Spiro, ‘Accepting and (Protecting) Dual Citizenship for Transborder Minorities’, *EUI Working Paper RSCAS 2010/75*.8. At this point it is worth mentioning that the act does not prescribe that the renunciation of the previous citizenship is mandatory in the course of requesting Slovak citizenship. Consequently, the person deprived from his Slovak citizenship can basically reapply for the Slovak citizenship.

30 The present study strives not to move beyond the framework of the assessment of the case from the European law aspect, thus it does not take into account the aspects of national or international law. However, it is necessary to point out that the act does not have implementing rules; therefore the way of execution actually followed varies. From a procedural law perspective, the regulation is incompatible with the 1997 European Convention on Nationality, since no resolution or reasoning is devoted to the loss of citizenship; moreover the possibility for judicial review is not provided. At the time of announcement the authorities do not assess identity, therefore they do not evaluate whether the person concerned actually acquired the new citizenship, raising the problem of possible statelessness. Moreover, pursuant to the proposal amending the draft legislation if someone moves to the state the citizenship of which he recently took up he will not lose his previous citizenship. Therefore, a paradoxical situation occurs according to which those persons lose their previous citizenship who intend to live in their country of origin. It is also necessary to mention that proceedings were opened before the Strasbourg Court in the case. See: Appl. Nos. 14927/12 and 30415/12 *István FEHÉR against Slovakia* and *Erzsébet DOLNÍK against Slovakia*.



If we assess the Slovak amendment in light of the *Rottmann* case, we can state that the Slovak rules according to which the person is *ex lege* deprived from their citizenship if they voluntarily acquires the citizenship of another Member State is incompatible with the requirements set out in EU law. The *ex lege* withdrawal of citizenship does not fulfil the conditions prescribed in EU law by nature, since such decisions fail to contain reasons, furthermore, the requirement of judicial review is not provided for either.<sup>31</sup> As Edit Bauer, Member of the European Parliament expressed in her question for written answer to the European Commission: ‘the judgment shows that European law – and especially the provisions concerning EU citizenship as the fundamental status of the Member States – requires that, when citizenship is withdrawn, the values protected by the Union’s legal order be taken into account, in particular in cases where such provisions entail the withdrawal of Union citizenship. In such cases, Community law requires judicial review and respect of the legal principle of proportionality.’<sup>32</sup> This infringement is considered to be particularly grave in cases where a Slovak citizen wishes to take up the citizenship of a third country and thereby loses their Union citizenship *ex lege* with total disregard to the legal principle of proportionality or the possibility of judicial review.

What is more, the abovementioned Slovak amendment may have a deterrent effect on the exercise of the right to free movement and finding employment in the Hungarian public service.

Finally, the amendment concerned is not merely a serious challenge for those persons who intend to exercise their right to free movement. Citizens who lose their Slovak citizenship by acquiring the Hungarian one, in case they stay in Slovakia and do not cross the borders, fall under the scope of Directive 2004/38/EC on the right of the citizens of the Union and their family members to move and reside freely within the territory of the Member States (the ‘*Free Movement Directive*’), taking into account that they reside in the territory of a Member State other than the Member State of citizenship.<sup>33</sup> The question immediately emerges: when do these persons obtain the right of permanent residence provided by the Free Movement Directive? According to the Free Movement Directive, EU citizens shall have the right of residence on the territory of another Member State for a period of up to three months without any conditions or any formalities other than the

31 *Ex lege* deprivation of citizenship by nature fails to fulfil the requirements set forth under EU law. Failure to provide adequate reasoning (C-222/84, *Johnston* case [ECR 1986, p. 1651]); lack of effective judicial review (C-222/86 *Heylens* case adopted on 15 October 1987 [ECR 1987, p. 4097]); finally the breach of the principle of actual enforcement (C-432/05, *Unibet* case adopted on 13 March 2007 [ECR 2007, p. I-2271]).

32 P-005994/2011.

33 The fact that those Slovak citizens who acquire Hungarian citizenship *ex lege* lose their Slovak citizenship at the time when they acquire the Hungarian citizenship, results in a situation where they do not stay in Slovakia as Slovak citizens anymore, but much rather in their status of Hungarian citizens (and union citizens). They do not fall under the provisions of international law providing the right to residence, but much rather under the scope of EU law, namely Art. 21 of the Treaty on the Functioning of the European Union and the Free Movement Directive.

LAURA GYENY

requirement to hold a valid identity card or passport. In case of residence for more than three months, EU citizens shall register pursuant to the requirements set out in the Free Movement Directive. Contrary to this, a more beneficial situation could be established for Hungarian citizens if they acquire the right of permanent residence following residence in Slovakia spanning at least five years, for pursuant to Section 4 of Article 16 of the Free Movement Directive, once acquired, the right of permanent residence shall be lost only through absence from the host Member State for a period exceeding two consecutive years.<sup>34</sup>

The judgement of the CJEU adopted in the *Ziolkowski and Szeja* case<sup>35</sup> could provide an answer to the question, even if the facts of the two cases differ in certain aspects. In the abovementioned case, the CJEU declared that the period of time the person concerned resided in the particular Member State as a non-EU citizen could be included into the period of 5 years of lawful residence required for acquiring permanent residence. Therefore, the person residing in the particular Member State may gain permanent residence if he complies with the other requirements set out in the Free Movement Directive, even in case the person does not fall under the scope of the Free Movement Directive.<sup>36</sup>

As a conclusion, we must agree with Bauböck's view, who in his study on the issue clearly establishes that there is a need to constrain the power of states to denaturalise ethnic and national minorities as long as their members reside permanently in the territory, even when they voluntarily acquire the citizenship of another state.<sup>37</sup>

### 7.3 EXTRA-EU CONTEXT

For the sake of completeness, I would mention briefly the extra-EU context as well, namely when dual citizenship stems from a combination of EU citizenship and citizenship of a third state. Such situations raise issues in connection with the interrelationship between the domestic citizenship giving rise to European citizenship as well as the citizenship of the third state.

As is well known, Member State citizenship, through the institution of EU citizenship, endows those who possess such citizenship with supplementary rights, while at the same time Member States enjoy entire freedom to determine who could be the beneficiaries of

34 Á. Tóttós, 'A szabad mozgás és tartózkodás jogának egyes aspektusai az Európai Unió Bíróságának esetjogában', *Migráció és Társadalom* (electronic periodical, under publication). The study was presented at the conference organised on 13 May 2013 by the European Migration Network.

35 Judgement of the CJEU adopted in the C- 424/10 and C-425/10 *Ziolkowski and Szeja* joined cases (not yet published in ECR).

36 Pursuant to the Free Movement Directive, EU citizens who intend to exercise their right to free movement are required to register themselves in the state concerned. In this respect, Slovak authorities indicate the settlement where the person concerned has always been living as the last foreign place of residence.

37 R. Bauböck *ibid.* 37.

these extra rights. Serious tensions could occur in situations where persons originally possessing the citizenship of a third state and by residing in the territory of the EU citizenship acquire Member State citizenship due to the liberal national naturalisation provisions.<sup>38</sup> This tension was partly resolved by the CJEU in the *Micheletti* case.<sup>39</sup> In the case concerned, the CJEU assessed whether the Italian and Spanish dual citizen, Mr. Micheletti could establish a company pursuant to the freedom of establishment or not, moreover, what the relevance of dual citizenship was. According to the Spanish Civil Code, merely the Argentinian citizenship could be taken into account as his last place of residence was in Argentina. Referring to this circumstance, the right to reside in Spain was denied. Pursuant to the principle of effective nationality, Micheletti had real and tight relationship with Argentina; however, he was Italian citizen as well.

The CJEU declared in its judgement that in situations where someone possessed both European and third state citizenship, Article 52 of the Treaty Establishing the European Community shall not be interpreted in a way that habitual residence would determine whether the person concerned may exercise their rights derived from European citizenship, including the freedom of residence. In other words, the exercise of rights stemming from European citizenship shall not be denied if the dual citizen intends to exercise such rights in another Member State.

Undoubtedly, it is not rare that descendants of Italian emigrants previously settled in Argentina and Brasilia wish to reside either in Union Member States such as Spain or Portugal. Similarly, 'a large number of European States offer citizenship on the basis of descent or identifying identification with a particular nation, often with considerable impact on bilateral relations'.<sup>40</sup> The case of the Moldavian-Romanian dual citizens resulted in a more severe conflict as many Moldavian citizens who recently acquired Romanian citizenship decided to exercise their rights as EU citizens and chose to reside in Italy instead of Romania.<sup>41</sup> The situation is similar in Bulgaria where many Macedonian and Moldavian descendants have taken up Bulgarian citizenship solely to acquire a Bulgarian passport, which entitles them to move and reside freely within the territory of the EU.<sup>42</sup> Moreover, according to a Bulgarian legislative proposal, domestic citizenship (and with it, also European citizenship) could be acquired on a purely financial basis.<sup>43</sup> Following indepen-

38 The writing published with the title of 'New wave of migrants acquire rights to over flow the United Kingdom' warns the British population that almost half a million Ukrainian and Serbian citizen could gain rights to live, work, request and receive benefits in the United Kingdom. See: TÖTTÖS *ibid.*

39 The judgement adopted by the CJEU in the C-360/90 *Micheletti* case (ECR 1992, p. I-4239).

40 Florian Bieber, 'Dual Citizenship Can Be a Solution, Not a Problem', *EUI Working Paper RSCAS 2010/75.19.*

41 Szabó *ibid.*, O. Vonk *ibid.*, pp. 336-337.

42 Bulgaria principally provided citizenship en mass to Macedonians. Currently, almost half a million Macedonian own a Bulgarian passport, [www.kettosallampolgarsag.mtaki.hu/sajto/MFketosI.pdf](http://www.kettosallampolgarsag.mtaki.hu/sajto/MFketosI.pdf).

43 If a foreigner invests at least LEV 600,000 in Bulgaria in order to boost the economy, the state affords citizenship in return.

LAURA GYENÉY

dence, Croatia immediately provided citizenship to its compatriots living outside the Croatian borders.

As we see, several European countries ensure citizenship on the basis of ethnicity, what is more, it is not inconceivable that in some countries, citizenship may even be bought for a decent sum of money.<sup>44</sup> In light of the above-mentioned facts, it seems that providing citizenship on the grounds of ethnicity is justifiable, taking into account the fact that pursuant to Section 2 of Article 4 of the Treaty on the European Union, the EU is based on the respect for the national identities of the Member States.

Certain preferences and provisions regarding dual citizenship may lead to noteworthy results. To mention an extreme example, according to the Spanish 'Historical Memory Law', the grandsons and granddaughters of those who defected between 1936 and 1955, moreover those, whose mother or father had been a Spanish citizen could acquire Spanish citizenship. Eligible persons could submit their request at the Spanish consulates and were not required to renounce their previous citizenship. Following the day when the Historical Memory Law came into effect, hundreds of people lined up in front of the Spanish embassy in Havana.

It seems almost every Member State has adopted rules that could be worrisome for other Member States affected due their liberal approaches. Putting aside these real or perceived concerns, Member States should rather consider the question how such liberal provisions could be assessed in the light of those conservative and strict national provisions that are applied to third country citizens who have no privileged status, while at the same time, they actively participated in the social and economic life of the Member State for decades.<sup>45</sup>

#### 7.4 CONCLUSION

It is evident that Member States do not easily give up their remaining autonomy in regulating citizenship. Citizenship as such symbolises one of the main pillars of state independence. It seems highly probable, however, that with time the Member States recognize the expediency of laying down minimum standards regarding certain aspects of citizenship rules, for instance in the ambit of naturalisation. As Bauböck states, it is time to start a

<sup>44</sup> A large number of European states.

<sup>45</sup> It is worth highlighting the situation of third country family members of EU citizens, who often exercise the right to free movement between Member States in order to acquire an autonomous status later on. Judit Tóth points out more sharply: '[...] The parallel development of the legal and social dimension of EU citizenship excludes those who are third country citizens according to the terminology of EU law, even though they have been living and paying taxes in the EU for decades', <http://beszelo.c3.hu/03/10/03toth.htm>.

serious discussion about minimum standards and good as well as bad practices in matters of citizenship.<sup>46</sup>

However, Minimum standards may only be laid down if Member States can retain their general competence to regulate citizenship. The permanent residence status in respect of third country citizens is a good example illustrating legal harmonisation that resulted in a unified status.

Minimum harmonisation would not terminate national citizenship in any way and Member States would not be forced into a federal Europe. Member State citizenship would establish the relationship between the individual and the state; therefore, the problem indicated above would be partially resolved. It is clear, however, that this can only be a long-term goal. Rectifying the current tensions deriving from the features of dual citizenship is more pressing and it is up to the EU to take certain steps.

As I mentioned earlier, the issue of Moldavians residing in Italy generated serious resentment on the Member State level and the Italian minister responsible for European affairs requested that the European Commission assess the case. In this situation Romania could effectively refer to Section 2 of Article 4 of the Treaty on the European Union according to which ‘the Union shall respect the equality of Member States before the Treaties as well as their national identities [...]’.<sup>47</sup> However, we cannot overstate that Member States can purely exercise their rights by taking into account EU law. In case Member States do not fulfil their obligation to comply with EU law the European Commission needs to take the necessary steps in order to eliminate existing discrepancies. The Slovak amendment of the nationality law is also calling for certain measures. To quote Judit Tóth’s metaphor, it is a great challenge to unravel the ‘tangled lines of national identity, European citizenship and human rights’. Nevertheless, in each situation, particularly in cases such as those described above, we must consider that the EU is based on the principles of rule of law, democracy and non-discrimination. The lack of certain steps taken by the European Commission to protect and maintain these fundamental values could be interpreted as a *de facto* denial of common European principles clearly destroying the solidarity between European peoples and the chance to resolve national conflicts between the Member States.

---

46 R. Bauböck, ‘Dual Citizenship for Transborder Minorities? How to Respond to the Hungarian-Slovak Tit-for-Tat?’, *EUI Working Paper RSCAS 2010/75.4*.

47 See more about this issue: Alejandro Saiz Arnaiz and Carina Alcobero Llivina, *National Constitutional Identity and European Integration*, *Intersentia*, Cambridge, 2013.