

Having multiple nationalities – an advantage or disadvantage in the context of the Cyprus Investment Programme for third-country nationals?

A dissertation submitted to the University of Central Lancashire, Cyprus in part satisfaction of the requirement for the degree of LLM in the Law School of UCLan Cyprus.

No portion of the work referred to in the dissertation has been submitted in support of an application for another degree or qualification of this or any University or institute of learning.

The author is using a proofreading service strictly for language corrections.

I would like to thank my supervisor, Prof. Stephanie Laulhé Shaelou, for the guidance and advice she has provided to me.

LA4095LLM Dissertation

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Abstract

Citizenship by investment is a relatively new and fast-developing trend during the last 10 years. It has raised a number of discussions and concerns regarding the ethics behind selling citizenship, the legality behind the way it is being done and whether it is a threat to the sovereignty of countries, particularly in the context of the European Union (EU hereinafter) where investors gain access to all 28 Member States.

Meanwhile, however, there are wealthy people who seek opportunities for a better and safer life, for the possibility of getting better education for their children, doing international business and owning property abroad. The main driver behind these endeavours is the unequal treatment of passports – an EU national, for example, has more opportunities than someone from a small African country or a war-damaged country.

In her thesis the author will aim to answer and address possible scenarios revolving around the question of whether investors who are third-country nationals (hereinafter TCN) receive full citizenship, along with the status and rights associated with it, when obtaining additional citizenship from Cyprus, and if so, how can these be safeguarded. Or whether additional Cyprus citizenship is simply an expensive visa for free travelling, with the possibility and risk of having it revoked.

The author finds the most suitable methodology for this particular case to be empirical research. Despite the fact that it is time consuming, this method has the potential to give the best outcome, as it is a combination of comparative law, case law study, prominent academics' views on the matter, together with the author's personal experience while working in the industry.

It is revealed and discussed in Section I that the EU status and rights can be obtained through the nationality of any Member State. But it is important to activate that status through physical presence

in any other Member State. While living just in one Member State, solely that country's national rights will apply.

An interesting fact is that status and rights of an EU national can be separated. In practice, there is even a case where rights are obtained without having status.

Cyprus offers one of two official Citizenship by Investment programmes within the EU. Full citizenship can be obtained in exchange of significant investment in the Cyprus economy within just over six months. But there exists a revised discrimination between citizens having the same status. While investors within the first generation can avoid military service, they are obligated to have expensive private property forever. Other citizens have an obligation to attend military service, but are not required to own any property.

Both Cyprus and the EU accept the concept of multiple nationalities, but as research shows it is not always an advantage. Some rights, like diplomatic protection for example, can be weakened. Individuals with multiple nationalities may result in having duties to more than one country. Also, it is unclear as to which country will truly care for and defend the investors' rights and protect them.

Naturalised persons can also be deprived of their nationality under certain conditions. Investment programmes provide a naturalisation process under special rules. Deprivation of citizenship can even lead to individuals being left stateless. Cyprus national law does not have provisions of statelessness in case of such deprivation of citizenship, nor does it adopt relevant international or the EU law. Therefore, the author can only speculate possible outcomes if a case develop to that extent.

To conclude, research has raised a number of questions that at this stage cannot be answered due to a lack of legal cases. It is even unclear whether national law or EU law will apply, because even small details can amend the bigger picture. There is thus no clear answer to the question at hand within this thesis, just assumptions and topics for further research.

The Author

The author is a Latvian national in the process of obtaining Cyprus nationality as a second nationality. She lives, works and is studying in Cyprus. This LLM is her second Master's degree, following her MBA, also from UCLan Cyprus. Her current professional experience involves cases associated with citizenship by investment as well as business advisory on doing business in Cyprus, whereas her previous experience was in the field of banking.

As the author lives and works in Cyprus, she decided to research the case of obtaining citizenship in the context of the Cyprus Investment Programme, which is one of two official programmes within the EU.

The author has provided a short summary of her experience and education, as her own opinion is used as part of the research methodology.

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Record of supervision sessions: (to be placed within the progress portfolio)

Student Liene Vitola - Evele

Supervisor Prof. Stephanie Lauthé Shaelou

Date of session	Comments and observations	Action to be taken in readiness for next session
17.05.2019	Discussion on thesis Literature to be overviewed Timeline	Participation in conference Literature overview
5.07.2019	Email exchange regarding the scope and issues researched within the thesis	Literature overview ASAP
6.07.2019	Email exchange regarding compliance of the Module Handbook	To go through once more the Module Handbook and other materials regarding the dissertation on Blackboard regarding structure
22.07.2019	Email to supervisor with Methodology and literature overview	Further work on final draft
04.08.2019	Emailed final draft	Completion of thesis according to supervisor's comments

07.08.2019	Meeting for final comments on draft	Structure should be revised, explained actuality, thesis question should be rephrased and more focus on it.
08.08.2019	Requested extension of three additional days	Extension confirmed, work on thesis as per supervisor's comments and suggestions
14.08.2019	Submission through blackboard and in paper form at the UCLan Cyprus	Successful graduation

Portfolio of progress

A. Supervisory sessions

Date	Supervisory session	Attendance: Yes/no	Signature of supervisor
17.05.2019	Supervisory session	yes	
07.08.2019	Supervisory session	yes	

B. Appraisal by supervisor *(please delete the four categories which do not apply)*

I Prof. Stephanie Laulhé Shaelou, being the supervisor of Liene Vitola – Evele confirm that his/her adherence to our agreed regime of supervisory sessions has been:

- **Excellent**
- **Good**
- **Satisfactory**
- **Poor**
- **Unacceptable**

Date 12.08.2019

Signature of supervisor.....

Lancashire Law School

Dissertation Submission Declaration

I hereby declare as follows:

- I accept that it is my responsibility to ensure that this submission is an original and authentic piece of work written by me in conformance with the University of Central Lancashire's academic regulations regarding plagiarism and collusion and in conformance with the relevant course regulations.
- I have fully referenced and acknowledged all sources in accordance with a widely-accepted system of referencing, e.g. footnotes, or Harvard-style endnotes and citing sources using the Oxford Standard for Citation of Legal Resources.
- I have kept at least one paper copy and at least one electronic copy (as a Word file) of this submission, which I shall retain until after the University of Central Lancashire has published the results. I shall make them available upon request in pursuance of any appropriate aspect of the marking and moderation of the work within the University of Central Lancashire's academic regulations.
- I acknowledge that this submission will not be marked without the inclusion of this declaration duly signed and dated by me.
- I permit digital copies of this work to be placed in a learning space in Blackboard for access by Lancashire Law School only.

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System of referencing used: Oxford Standard for Citation of Legal Authorities, fourth edition

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Table of Cases

CJEU cases:

ECLI:EU:C:1992:295, CJEU, 1992, C-369/90 *Micheletti and Others v Delegacion del Gobierno en Cantabria*

ECLI:EU:C:2001:458, CJEU, 2001, Case C-184/99 *Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve*

ECLI:EU:C:2006:545, CJEU, 2006, Case C-300/04, *Eman and Sevinger v College van burgemeester en wethouders van Den Haag*

ECLI:EU:C:2010:104, CJEU, 2010, Case C-135/08 *Rottman v Freistaat Bayern*

ECLI:EU:C:2011:124, CJEU, 2011, Case C-34/09 *Zambrano v Office national de l'emploi*

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EctHR cases:

Beldjoudi v France App no 12083/86 (EctHR, 26 March 1992)

Ramadan v Malta App no 76136/12 (ECtHR, 21 June 2016)

Table of Legislation

International Conventions:

1954 Convention relating to the Status of Stateless Persons

1961 Convention on the Reduction of Statelessness

The European Union Law:

Consolidated versions of the Treaty on European Union [2016] OJ C202/1 (hereinafter TEU)

Treaty on the Functioning of the European Union (Consolidated version 2016) [2016] OJ C202 (hereinafter TFEU)

The European Convention on Nationality 1997

Parliamentary Assembly, `Access to nationality and the effective implementation of the European Convention on Nationality` (2014)¹ Resolution 1989

European Commission, `Investor Citizenship and Residence Schemes in the European Union` (2019) Report COM (2019) 12 final

Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms

Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the rights of citizens of the European Union and their family members to move and reside freely within the territory of the Member States [2004] OJ L158/77

The Republic of Cyprus National Legislation:

The Civil Registry Law of 2002 N. 141(I)/2002

Minutes of the Council of Ministers' meeting dated 23/05/2014, No. Decision: 76.973

Cyprus Investment Programme on the basis of subsection (2) of section 111A of the Civil Registry Laws of 2002-2019

Introduction

Globalisation has created a lot of changes in different areas, and migration is no exception to this change. Many people migrate to work and study for a better life, while refugees travel to seek asylum and to benefit from better social welfare in most cases. This thesis will discuss the free movement of TCN for a better life in the context of study, work and to do business. But it may not be such a simple process as their passports may have various restrictions with respect to the amount of time they can spend in specific countries or the visas they would need to obtain to get there. They therefore seek other ways to be able to enjoy the freedom of movement – they apply for additional citizenship. There are also countries with political instability, so citizens of those regions often choose to leave their country for a better life with safety, under a stable political system that respects and recognises the rights of those citizens.

During the last 10 years all this movement has given rise to a newly developed industry – Citizenship by Investment where governments create exceptional rules for naturalisation. What does this mean? It is the possibility for investors to obtain additional citizenship in exchange of investments in a country offering such a programme. In addition to investment, governments may also accept a significant donation but there are rules to follow, which often involve the ownership of a property in that country, as well as proven main residency for many years. Within the EU there are two official investment programmes, but similar programmes exist in more countries around the world.

The European investment programmes are very attractive as they give access to all 28 Member States as well as the EU supranational status, rights and freedom of movement outside the EU. Thus, there are numerous discussions on the European level regarding whether such programmes are legal and ethical. From case law, it is observed that nationality based on national laws competence at some point switches to EU law.

It is essential to understand the reasons behind TCN deciding to have multiple nationalities and specifically through the Cyprus Investment Programme. This understanding will help to choose the most appropriate cases to analyse in order to address the thesis question.

The author will analyse case law regarding nationality issues within the EU. There is also an extensive overview of prominent academics' views on investment citizenship and nationality issues. Reference to legislation will be inserted throughout the text where needed to explain, raise questions or argue.

Section I of the thesis describes and discusses the status and rights of EU nationals that TCN desire to obtain for a better life, and how these can in turn be obtained but also lost. There are numerous active debates about investment programmes between academics. On the one hand, Professor Dmitry Kochenov¹ writes about the status and rights of EU nationals, the ways that the EU citizenship can be obtained, and strongly defends the view that obtaining citizenship by investment is both legally and ethically correct. The same view is shared by Christian Kalin² in his recent book. Meanwhile, on the other hand, the European Commission suspects European investment programmes are incomplete and a threat to other Member States³.

In Section II, the author describes the Cyprus Investment Programme and its advantages for investors. It is a simple and straightforward programme, which can be actioned quite quickly. It was significantly revised in response to the 2013 Cyprus bail-in deal which severely damaged the island's economy following its banking crisis. Initially, investors who lost more than 3 million euro, were given the option to receive citizenship. Following this, an official programme was established as a

¹ Dmitry Kochenov, 'Ius Tractum of Many Faces: European Citizenship and the Difficult Relationship between Status and Rights' [2009] CJEL 169

Dmitry Kochenov, 'The Essence of EU citizenship emerging from the last ten years of academic debate: Beyond the Cherry blossoms and the Moon?' (2014) University of Groningen Faculty of Law Research Paper Series No. 02/2014 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2374901> accessed 16 July 2019

² Christian H. Kalin, *Ius Doni in International Law and EU Law* (Brill/Nijhoff, 2019)

³ European Commission, 'Investor Citizenship and Residence Schemes in the European Union' (2019) Report COM(2019) 12 final

conditional naturalisation procedure within national law. The Cypriot economy is now recovering and most importantly, the country's reputation has improved massively and the Cyprus Investment Programme is a milestone towards this recovery.

There is also an analysis of the Cyprus Investment Programme for investors, as it is one of the two EU investment programmes which are increasingly popular among TCN. There will also be a discussion regarding whether the conditions that investors need to fulfil on a 'forever' basis violate the EU law.

The author also explores the concept of multiple nationalities, whether that is dual citizenship, or having multiple or an additional citizenship. Increasingly more countries are currently accepting this, but it could bring both positive and negative effects for investors. On the one hand, having multiple passports offers the freedom to travel as well as an additional safety net in case of political instability in the individuals' countries of origin or to do business in different countries around the world under the same conditions.

As foreigners in a country, TCN may not be allowed to do business or have the same attractive business and living conditions as nationals. Some countries have different taxes on property and income for their nationals and foreigners, while others do not allow foreigners to own any land. On the other hand, however, having multiple nationalities can cause confusion with the individual's nationality and which country they are truly linked to. In the case of diplomatic and consular protection, the individual could lose the assistance from either one or both countries involved. Protection may be minimal even when the individual has citizenship of one country but is more connected to another country.

It is also crucially important for investors to check whether their country of citizenship allows them to hold a second passport from another country. Would they need to report or renounce any previous

citizenship? And what could be the consequences if they do not? The author explores this option further because of three reasons:

- Firstly, an ethical question arises when a person knows that they are not allowed to have multiple citizenships or when the country issuing the additional citizenship is aware that the applicant's current country of nationality does not support multiple passports.
- Secondly, it is important to understand whether the person is aware of any procedures they would need to follow during their application for additional citizenship; for example, whether they would need to inform their country of their application, whether they would need to renounce any previous citizenships and whether they understand what consequences may follow.
- Thirdly, the author discusses these issues as a step towards safeguarding newly obtained citizenship.

Section III looks into the situation where a passport can be revoked under certain conditions and how to potentially avoid this. This can be a particularly serious situation if, as a result of citizenship deprivation, a person is left stateless.

The deprivation of a passport could lead to statelessness, because naturalised persons' citizenship can also be revoked along with their passport. Both international⁴ and EU legislation⁵ suggest ways to avoid statelessness, but there are exceptions. Those exceptions are also fixed in existing case law where persons lost their citizenship, after obtaining it fraudulently⁶. As a result, these individuals were left stateless.

⁴ 1054 Convention relating to the Status of Stateless Persons
1961 Convention on the Reduction of Statelessness

⁵ The European Convention on Nationality 1997

⁶ ECLI:EU:C:2010:104, CJEU, 2010, Case C-135/08 *Rottman v Freistaat Bayern*
Ramadan v Malta App no 76136/12 (ECtHR, 21 June 2016)

Major questions arise if investors who are TCN receive full citizenship, along with the status and rights associated with it, when obtaining additional citizenship from Cyprus, and if so, how these can be safeguarded. Or whether additional Cyprus citizenship is simply an expensive visa for free travelling, with the possibility and risk of having it revoked. Persons have the right to have rights.

Reasons for Obtaining Citizenship by Investment

Globalisation gives rise to migration, sanctions limit or forbid access to international business, while unequal opportunities motivate relocation. Today, citizens' connection with the State is different to the traditional sense of belonging to a community. There may be an economical connection through business and investments where a person can remain in the country they studied or worked for a specified continuous period of time.

Dean Vincent Rougeau points out that a person often comes from a country where their citizenship has no significant value on a global scale. It simply identifies their place of birth. Furthermore, Professor Dmitry Kochenov admits that people are accepted differently depending on the passport they hold. He compares his experience of being a Russian national and later a Dutch national.⁷ A ceiling on opportunities follows people from small, poor and war-suffering countries, while having the European citizenship grants a higher status from birth and gives significantly more opportunities to travel, study and do business.

For example, the EU supranational citizenship status and rights are not connected to citizen State relations. There are no even borders within the Schengen zone. Having citizenship of one Member State means that a person can enjoy the same rights in 28 countries along with easy and accessible travelling to numerous other countries outside the EU without requiring a visa or by conveniently obtaining one on arrival. It provides the freedom and flexibility of movement while also saving both time and money with respect to the visa requirements. For today's investors these benefits are crucial and imperative as time is money. They wish to ensure a better future for their children through having the EU citizenship that will give them access to good universities and job opportunities.

⁷ 'Citizens Unbound Rethinking our place in the world' *Boston College Law School Magazine* (Boston, Summer 2019) <<http://lawmagazine.bc.edu/2019/06/citizens-unbound/>> accessed 21 July 2019

Inequality can also be discussed in the context of the various resources or possibilities which countries can use to their advantage in order to attract investors from all over the world. Small countries without resources need to find and create ways to attract investments. While some countries are in abundance of such resources, others are lacking.

Ayelet Shachar discusses that a money transfer to a new country does not make an investor equal to their fellow citizens.⁸ It is likely that investors represent different religions and races, with different cultures and habits. But existing fellow citizens could benefit from newly naturalised citizens through the country's consequent economic development, creating a fruitful and prosperous community, as immigrants who move looking for a better life are most likely to take up employment and enjoy social benefits.

The author finds irrelevant the concerns with regards to investors gaining access to all Member States when they invest in one Member State. Citizenship by Investment is a luxury that mainly wealthy people can afford, so other Member States stand to benefit from this wealth too. New EU citizens are likely to travel across the Member States spending money, while their children may be studying at universities across the EU and paying tuition fees. Investors may even establish businesses in one or several Member States that will subsequently employ people and pay taxes. It is therefore a common benefit. And it is likely that the Member State issuing the citizenship in exchange of the initial investment, may in fact benefit less in the long run compared to the other Member States where the investor will eventually establish their business and get their family settled.

Citizenship is a personal choice; it is a resource for mobility. *Ius tractum* or *Ius Doni* or *residence-based naturalisation* is more transparent in comparison with other types of citizenship acquisition, like *ius sanguinis* or *ius soli*. *Ius tractum* or *Ius Doni*, investors are obliged to invest in or donate to the country where they aim to become citizens, whereas *ius sanguinis* or *ius soli*, individuals may

⁸Ayelet Shachar and Rainer Baubock, 'Should Citizenship be for Sale?' (2014) EUI Working Paper RSCAS 2014/01 <<http://cadmus.eui.eu/handle/1814/29318>> accessed 16 July 2019

become socially independent from the country at some point. Here the author is referring to the principles of distant ancestry, co-ethnic identity and immigration.

Citizenship in exchange of investment is often criticised as unfair. However, the way new citizens acquire citizenship has no bearing on existing citizens in a specific country. The author would agree that it is unfair to financially underprivileged individuals who cannot afford to invest and receive a passport in return which could give them access to more opportunities in life or better standards of living. But such are the unpredictable fortunes of life – while some are in the financially fortunate situation to be able to afford expensive luxuries, others are less fortunate. And society does not dictate whether rich people are allowed to have exclusive lifestyles or not. The world is changing and society has to accept that and ideally learn to benefit from it. Citizenship by Investment programmes could be a good example of the drive towards such benefits.

Rainer Baubock discusses the political rights of citizenship – the right to vote.⁹ He also links citizenship for sale to selling the right to vote. The author, however, will argue against this claim. As discussed previously in this thesis, while a passport gives the freedom of movement, there are also a number of political and economic benefits that develop as a result. In order to elect the ‘right political force’ there needs to be a significant number of votes. It is wrong to think that somebody will spend so much money in order to create a compelling number of new citizens so as to have political influence. There are other ways to do that. Moreover, often individuals need to have an additional passport in order to safeguard themselves from political affairs. Kristian Surak also points out that in a number of countries which offer Citizenship by Investment programmes, new citizens have an obligation to maintain physical presence in the country in order to vote. Cyprus and Malta

⁹Ayelet Shachar and Rainer Baubock, ‘Should Citizenship be for Sale?’ (2014) EUI Working Paper RSCAS 2014/01 <<http://cadmus.eui.eu/handle/1814/29318>> accessed 16 July 2019

are two of these countries.¹⁰ According to Cyprus national law, in order for a person to vote, they should have established their residence in Cyprus at least six months prior to the date of acquiring their electoral qualification.¹¹ As investors are not obliged to reside in Cyprus, having the privilege to vote is not a given, particularly if they do not essentially become a part of the local community by residing in Cyprus.

Another important reason to have a second citizenship is the current need for substance. Let's say an investor's business headquarters are in Cyprus. At some point they are asked to also have a key presence. Or the investor may have their headquarters elsewhere in Europe and they are asked to have substance in that specific country. They would be forced to find the fastest route to achieve this as a matter of substance. If they therefore choose Cyprus or Malta, then that country will benefit from investment and the investor will now be compliant with the requirements of the country, where the business is. It is beneficial for all parties.

While the investor lives in the EU, their whole family will spend money on living expenses there, including housing, food, healthcare, school and/or university fees and taxes. The benefits are many, but the idea is that it is beneficial for the greater community and as such, can prove to be more of an economic benefit as opposed to a political threat.

¹⁰ Kristin Surak, 'Global Citizenship 2.0 The growth of Citizenship by Investment Programs' (2016) IMC Working Paper IMC-RP 2016/3 <<https://investmentmigration.org/download/global-citizenship-2-0-growth-citizenship-investment-programs/>> accessed 20 July 2019

¹¹ The Civil Registry Law of 2002 N. 141(I)/2002

Literature Review

An extensive number of articles regarding nationality issues are available. There are also numerous discussions regarding immigrants, such as refugees and asylum seekers, seeking safety and social benefits. These articles often relate to the issues of human rights.

But the author has chosen to concentrate in particular on issues regarding the European citizenship and the status and rights that are given as a result of special naturalisation programmes within the EU. There are also articles on the ongoing trend of investment programmes which offer the opportunity to receive citizenship in exchange of investment in specific countries. This developing phenomenon has raised a number of discussions regarding the ethics behind such programmes and the potential threats they pose to sovereignty. Some academics argue in favour of investment programmes, while others say that they are wrong.

Professor Kochenov, through various articles, defends the act of obtaining citizenship in exchange of investments, criticising the equality of EU citizen rights and emphasising that the EU national status may not necessarily lead to these rights. There is an extensive analysis of this in his article “*Ius Tractum* of many faces”.¹²

In the article “Double Nationality in the EU: An Argument for Tolerance”¹³, Professor Kochenov discusses the concept of dual citizenship within the EU and the ways to obtain it. He stresses that it is under the national law’s competence to decide on nationality matters and outlines possible ways on how to improve nationality issues within the EU.

In his article “The essence of EU Citizenship from the last ten Years of Academic debate: Beyond the Cherry and the Moon?” Professor Konchenov discusses and puts together different scholar

¹² Dimitry Kochenov, ‘Ius Tractum of Many Faces: European Citizenship and the Difficult Relationship between Status and Rights’ [2009] CJEL 169

¹³ Dimitry Kochenov, ‘Double Nationality in the EU: An Argument for Tolerance’ (2011) 17(3) ELJ 323

arguments on the EU citizenship.¹⁴ But he still prevails in his arguments over others. He also actively examines and criticises articles on cases relating to the EU citizenship and analyses judgements.¹⁵

He has thoroughly explained arguments with respect to the European Commission report on investment programmes within the EU in his article “Kochenov: EU Report on Investor Citizenship and Residence – When the Commission Misleads”.¹⁶

A number of academics have also discussed whether citizenship should be for sale in the context of Malta’s Investment Programme. Ayelet Shachar concludes that putting a price tag on citizenship is incorrect, there should be also ties to specific country and on a global scale it is discriminatory to others who cannot afford it. Dmitry Kochenov, however, does not find Shachar’s arguments convincing. Hannes Swoboda concludes that fast-track naturalisation is discriminatory to those who already live and work in the EU, but have to follow the standard naturalisation rules. Paulina Ochoaargus argues that there are common values within a community and these cannot be bought or acquired with money. Rainer Baubock equals selling citizenship with bribery to politicians and argues against it.¹⁷

EU competence versus national law was discussed by a forum of academics and analysed further by Jo Shaw in the context of the *Rottmann* case¹⁸. Gareth Davies refers to the case as important guidance for national courts particularly in the context of proportionality – the connection of a person with a specific country. Professor Kochenov stresses the supremacy on the national law in cases regarding nationality while Oxana Golynger highlights the difference between the EU national

¹⁴ Dmitry Kochenov, ‘The Essence of EU citizenship emerging from the last ten years of academic debate: Beyond the Cherry blossoms and the Moon?’ (2014) University of Groningen Faculty of Law Research Paper Series No. 02/2014 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2374901> accessed 16 July 2019

¹⁵ ECLI:EU:C:2010:104, CJEU, 2010, Case C-135/08 *Rottman v Freistaat Bayern*
ECLI:EU:C:2019:189, CJEU, 2019, Case C-221/17 *Tjebbes v Minister van Buitenlandse Zaken*

¹⁶ Dmitry Kochenov, *Kochenov: EU Report on Investor Citizenship and Residence – When the Commission Misleads* (January 23, 2019) < <https://www.imidaily.com/opinion/kochenov-eu-report-on-investor-citizenship-and-residence-when-the-commission-misleads/> > accessed 11 August 2019

¹⁷ Ayelet Shachar and Rainer Baubock, ‘Should Citizenship be for Sale?’ (2014) EUI Working Paper RSCAS 2014/01 <<http://cadmus.eui.eu/handle/1814/29318>> accessed 16 July 2019

¹⁸ ECLI:EU:C:2010:104, CJEU, 2010, Case C-135/08 *Rottman v Freistaat Bayern*

status and rights. This was also discussed by Professor Kochenov. Dora Kostakopoulou draws attention to the issue of statelessness that should be prevented and continues the discussion on the EU rights that a person can continue to enjoy.¹⁹ EU competence is also discussed by Daniel Sarmiento²⁰ who suggests to improve treaties and argues for the harmonisation of national law among Member States. Meanwhile, Kristin Surak writes about the growing trend of Citizenship by Investment programmes and the transformation of citizenship as a result of geopolitical inequalities.²¹ Sofya Kudryashova, in turn, raises the question about violation of EU law in the context of freedom of movement of capital.²²

The author has gathered a selection of the available literature as the issue of nationality is a very wide topic which can be discussed from a variety of angles. The author concentrates specifically on EU nationality, how to obtain it and how it could be lost, as well as the rights that can be obtained through investment citizenship programmes available within the EU. The author will also reference any relevant academics in order to support or show conflict of arguments and the hypotheses.

¹⁹ Jo Shaw, 'Has the European Court of Justice challenged Member States Sovereignty in Nationality Law?' (2011) EUI Working Paper RSCAS 2011/62 <https://cadmus.eui.eu/handle/1814/19654>> accessed 23 July 2019

²⁰ Daniel Sarmiento, 'EU Competence and the Attribution of Nationality in Member States' (2019) IMC Working Paper IMC-RP 2019/2 <https://investmentmigration.org/download/eu-competence-attribution-nationality-member-states-imc-rp-2019-2/>> accessed 20 July 2019

²¹ Kristin Surak, 'Global Citizenship 2.0 The growth of Citizenship by Investment Programs' (2016) IMC Working Paper IMC-RP 2016/3 <<https://investmentmigration.org/download/global-citizenship-2-0-growth-citizenship-investment-programs/>> accessed 20 July 2019

²² Sofya Kudryashova, 'The Sale of Conditional EU Citizenship: The Cyprus Investment Programme under the Lens of EU Law' (2019) IMC Working Paper IMC-RP 2019/ <https://investmentmigration.org/download/the-sale-of-conditional-eu-citizenship-the-cyprus-investment-programme-under-the-lens-of-eu-law-imc-rp-2019-3/>> accessed 21 July 2019

Case Law Review

The author has located a number of cases from the Court of Justice of the European Union (hereinafter CJEU) case law library relating to EU nationality. The cases below are outlined in chronological order starting with the earliest cases.

Micheletti case²³ judgement issued in July 7, 1992

Mr. Micheletti had Argentinian and Italian citizenships. The Italian citizenship he obtained later under special rules from one of his parent who was Italian. However, he was denied permanent residency in Spain, because under Spanish law he was treated as Argentinian and not Italian.

The Court ruled out a Member State denying residency to a national of another Member State, who at the same time possesses nationality of a third country, as an entitlement of freedom of establishment. Despite that the national law of the host Member State would treat him as a TCN.

The author finds this case and its judgement extremely relevant to her research, because it demonstrates a case where EU nationality is accepted even though a person holds nationality of a third country.

It also shows that the EU law prevail national law with respect to EU nationals' rights.

Grzelczyk case²⁴ judgement issued in September 20, 2001

Mr. Grzelczyk was a French national, who studied and resided in Belgium and applied for a non-contributory social benefit.

²³ ECLI:EU:C:1992:295, CJEU, 1992, C-369/90 *Micheletti and Others v Delegacion del Gobierno en Cantabria*

²⁴ ECLI:EU:C:2001:458, CJEU, 2001, Case C-184/99 *Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve*

The Court precluded his entitlement to this non-contributory social benefit.

This case shows that in order to be able to have social benefits in other Member States a person should be economically active. This case outcome will be important when discussing the EU national status and rights.

*Eman case*²⁵ judgement issued in September 12, 2006

Mr. Eman and Mr. Sevinger were both Dutch nationals residing in Aruba. Their application to enrol in the electoral register for the European Parliament elections on 10/06/2004 was rejected.

The Court decided that persons with nationality of a Member State but living in overseas territories may call upon their EU rights.

The author considers this an important case with respect to the protection of EU national rights, as voting is one of the basic rights that EU citizens can enjoy.

*Rottmann case*²⁶ judgement issued in February 2, 2010

Mr. Rottman who was living in Germany, obtained German citizenship by naturalisation but lost his original Austrian citizenship as a result of having another citizenship. At that time, multiple citizenships in Austria was not permitted. The Court decided that it is not contrary to EU law, in particular to Article 17 of EC treaty²⁷ now Article 20 of the Treaty on European Union (TEU

²⁵ ECLI:EU:C:2006:545, CJEU, Case C-300/04, *Eman and Sevinger v College van burgemeester en wethouders van Den Haag*

²⁶ ECLI:EU:C:2010:104, CJEU, 2010, Case C-135/08 *Rottman v Freistaat Bayern*

²⁷ TEU Article 20 (ex Article 17 TEC)

1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship.

hereinafter), to withdraw citizenship from the citizens of the EU and leave them stateless when nationality was originally obtained through naturalisation by deception. But it is important under the condition that the principle of proportionality is taken into consideration.

This case confirms that citizenship acquired by naturalisation can be deprived, as a result of deception, misrepresentation and fraud, as it can be treated as a public interest.

There are a number of questions left open. Why did Germany not check if he had ongoing proceedings in his country of origin? Why is Austria not willing to re-establish his citizenship if they want to judge him?

Zambrano case²⁸ judgement issued in March 8, 2011

Mr. Zambrano is a Columbian national with three children two of whom have Belgian nationality by *ius soli*.

His unemployment benefit was rejected under Belgian law.

The Court concluded that his children, as EU nationals, would be deprived of the enjoyment of their EU rights, so the parents were granted working permits.

This case is important as it is a great example of how persons can have EU national rights without having a Member State's nationality themselves.

2. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.

²⁸ ECLI:EU:C:2011:124, CJEU, 2011, Case C-34/09 *Zambrano v Office national de l'emploi*

Tjebbes case²⁹ judgement issued in March 12, 2019

Ms Tjebbes was born in Canada, with both Canadian and Dutch nationalities from birth.

Ms Koopman was born in the Netherlands and also acquired Swiss nationality as a result of her marriage to a Swiss national.

Ms Saleh Abady was Iranian by birth and acquired Dutch nationality by Royal Decree.

Ms Duboux who was born in Switzerland, obtained Dutch nationality by birth from her mother's dual nationality.

National law prevailed for all the above mentioned individuals, with the Dutch nationality being cancelled, apart from Ms Duboux who had dual citizenship from her mother.

The principle of proportionality, already mentioned in the Court's judgement in the *Rottmann* case, played a major role. Yes, the ladies had their nationalities of the EU Member States, but they were residing outside the EU. Only Ms Duboux was linked to the Netherlands through her mother. It is not clear why Ms Tjebbes's nationality was cancelled, but the case also does not specify how she obtained the Dutch nationality in the first place. In any case, there should be a link to the country whose nationality the person holds.

This case also confirms that the EU nationality should be activated by moving, working or studying within the EU. Then EU law could be applied in order to protect the rights of EU nationals, like in the *Micheletti* case³⁰.

The *Micheletti* case,³¹ in combination with the *Tjebbes* case,³² show a contrast, where TCN receive EU nationality and the protection associated with it. In the *Eman* case,³³ the EU national rights to

²⁹ ECLI:EU:C:2019:189, CJEU, 2019, Case C-221/17 *Tjebbes and Others v Minister van Buitenlandse Zaken*

³⁰ ECLI:EU:C:1992:295, CJEU, 1992, C-369/90 *Micheletti and Others v Delegacion del Gobierno en Cantabria*

vote were admitted. The *Grzelczyk* case³⁴ confirms that in order to have EU rights, the person should be economically active. The *Zambrano* case³⁵ confirms the phenomenon within the EU where rights can be obtained without status. All these cases confirm that the EU protects and grants rights. But it is important to remember the *Rottmann* case³⁶ that it is easy to lose these rights and even be left stateless if fraud is involved. Each case is significantly different, but judgements are important to future cases and are useful to the author for her thesis.

³¹ ECLI:EU:C:1992:295, CJEU, 1992, C-369/90 *Micheletti and Others v Delegacion del Gobierno en Cantabria*

³² ECLI:EU:C:2019:189, CJEU, 2019, Case C-221/17 *Tjebbes and Others v Minister van Buitenlandse Zaken*

³³ ECLI:EU:C:2006:545, CJEU, Case C-300/04, *Eman and Sevinger v College van burgemeester en wethouders van Den Haag*

³⁴ ECLI:EU:C:2001:458, CJEU, 2001, Case C-184/99 *Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve*

³⁵ ECLI:EU:C:2011:124, CJEU, 2011, Case C-34/09 *Zambrano v Office national de l'emploi*

³⁶ ECLI:EU:C:2010:104, CJEU, 2010, Case C-135/08 *Rottman v Freistaat Bayern*

Methodology

In order to address the thesis question we need to consider whether investors who are TCN receive full citizenship, along with the status and rights associated with it, through additional citizenship from Cyprus, and if so, how these can be safeguarded. Or whether additional Cyprus citizenship is simply an expensive visa for free travelling, with the possibility and risk of having it revoked. The author will use an empirical approach that will combine existing case law, comparative law, academics' views and the author's personal experience from working in the industry. Within empirical research frames, the author will be able to make some ethical considerations that may arise with respect to sensitive topics such as nationality obtained in exchange of investment.

Before starting, the author compiled possible reasons why TCN may desire to obtain multiple nationalities and specifically the Cyprus nationality. These gave guidance on the relevant articles to research. Reading those articles, the author realised the scope of the discussion, discovering arguments for and against, and identifying gaps in those arguments that were not addressed. This thesis will try to fill some of these gaps.

The Literature Review highlighted possible cases and legislation that the author has taken into consideration. The author decided to concentrate specifically on cases by the CJEU, as they are binding and are used as case law. These cases relate to EU nationality and its granted rights. It is important to pay attention to how, and under what conditions, EU nationality can also be lost. The author uses comparative law during the main discussion within this thesis to examine how practice in both national and EU law will prevail in nationality issues.

The author is also calling upon her personal experience. She has attended numerous international conferences hosted by leading players within the Citizenship by Investment industry. These conferences have brought together a number of academics researching and discussing Citizenship by Investment, prominent representatives of governments offering such programmes and other

professionals from the industry, like lawyers, advisors and due diligence specialists. The idea behind these conferences is to discuss the legal issues concerning the industry, to educate society on what these programmes entail and what their benefits are to governments, to highlight the importance of due diligence and to create common standards that will improve the industry's reputation. Real estate developers also participate in representing their projects and explain the positive effects on economic growth in those countries. The author had the opportunity to witness these professionals present their ideas, expertise and arguments, while also having several casual discussions with participants to hear their personal opinion on the matter. The author also had the opportunity to join several closed academic debates. From an academic perspective, discussions were mostly about the legality and ethicality of giving passports in exchange of investment. There is a lack of strong arguments against Citizenship by Investment, but nevertheless it is something new which is attracting significant attention and has raised numerous discussions.

There are arguments that Citizenship by Investment programmes could be a danger towards the EU Member States' sovereignty and that citizenship should not be for sale. It is an expensive luxury to obtain citizenship in exchange of investment, so the actual number of applicants for this kind of citizenship is not large. In comparison to this kind of citizenship, there are significantly more naturalised persons as a result of being family members and workers or as a result of special programmes available to specific ethnic groups.

Being part of that personal communication, helped the author to understand the industry better, identify problems, recognise what is already being discussed, and locate prominent academics to rely on. There were also ongoing debates on some of the cases the author is reviewing.

The author is of Latvian nationality but is currently residing in Cyprus. She is in the process of also obtaining Cyprus nationality and becoming a person with dual citizenship within the EU. This experience is important when analysing the reasons behind seeking multiple citizenships and

understanding how it works and what concerns investors could have before making the decision to apply for multiple citizenship.

Cyprus is offering one of the most attractive Citizenship by Investment programmes. The author has personally supervised the whole process of obtaining Cyprus citizenship based on investments for several clients and their families. Because of data protection regulations, the author cannot cite any details of the cases, but her clients typically chose to apply for Cyprus passports for two main reasons:

- 1) to have freedom of movement within the EU and the option to introduce their businesses to the EU market (as Europeans they will be have more opportunities than if they remain TCN, even the possibility to open bank accounts more easily);
- 2) to have a place to turn to for security, in case the political situation in their country worsens.

The experience of going through the whole process itself – starting from the decision-making stage and studying the possible countries to choose for citizenship, followed by the collection of papers, the preparation of the information regarding the investors' experience, source of funds and answering the questions of why they chose Cyprus and how they will interact there, and finally completing the process with the receipt of a passport – helps to identify the reasons for wanting to obtain Cyprus citizenship which has significantly aided in the development of the thesis question. This process revealed what investors are truly concerned about. They are not simply buying a visa.

The Cyprus Government checks the source of funds as well as the profile of each investor in detail, while banks perform their own background checks prior to as well once the investment amount is transferred to Cyprus. The author's professional and personal experience has proven to be a great complementary support when analysing the literature. With this experience, the author builds an argument that the programme is for investors who are interested in becoming a part of the EU

community and will respect it, while the Cyprus Government and banks are doing their job in order to safeguard the community's interests too.

This thesis includes extensive discussion specifically on the subject of EU nationality. When and how it can be obtained, as well as how it can be lost. There is also a debate about whether nationality issues are within EU law competence as recent case law shows, or whether they remain a matter of national laws. Case law also identifies cases where the EU national rights and status can be obtained without being a citizen of any Member State. Each of these cases seek to understand what law applies through existing cases and possible outcomes in each specific case. But there is still ongoing discussion on whether it should be national law or EU law.

The author finds this way of gathering information across different sources combined with personal experience as the most relevant and powerful research. Empirical research allows us to identify any gaps and discuss possible scenarios. This is essential as Citizenship by Investment is a rather new phenomenon and there are no specific cases on this yet. This is why when comparing laws and cases, academics and scholars can build possible scenarios in the context of real life. Case studies give empirical evidence to rely on.

Section I The European Nationality

The European Union Nationality

The phenomenon of the EU citizenship is established in Part II of the TEU³⁷. It can be obtained through being a national of one of the Member States.³⁸ The EU nationality is additional and does not supersede the nationality of any Member State. It provides access to rights and status deriving from the EU nationality. It was stated in the *Grzelczyk* case that: 'Union citizenship is destined to be the fundamental status of nationals of the Member States'.³⁹

Article 20 of the Treaty on the Functioning of the European Union (hereinafter TFEU)⁴⁰ enumerates the rights of the citizens of the EU, which include: the right of movement, the right of residence, the right to vote and stand as candidates in European and Municipal elections, and the right to have diplomatic and consular protection and equal treatment of EU Nationals.

The rights of European citizens are also declared in the TEU, but not limited to those included in Part II. Article 20 of the TEU refers to any rights mentioned within the Treaty.⁴¹ It is important to understand that rights are granted directly by the Union through the status of the EU citizenship. The national rights, however, differ in each Member State.⁴²

Extraordinary issues arose with regards to voting rights in the *Eman and Sevinger* case⁴³ where EU nationals residing outside the EU were exempted from voting, despite the fact that the TEU does not make any reference to residency in Article 20. Nevertheless, residency is important in terms of

³⁷Consolidated versions of the Treaty on European Union [2016] OJ C202/1 (hereinafter TEU)

³⁸Daniel Sarmiento, 'EU Competence and the Attribution of Nationality in Member States' (2019) IMC Working Paper IMC-RP 2019/2 <https://investmentmigration.org/download/eu-competence-attribution-nationality-member-states-imc-rp-2019-2/> accessed 20 July 2019

³⁹ ECLI:EU:C:2001:458, CJEU, 2001, Case C-184/99 *Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve*

⁴⁰ Treaty on the Functioning of the European Union (Consolidated version 2016) [2016] OJ C202 (hereinafter TFEU)

⁴¹ Consolidated versions of the Treaty on European Union [2016] OJ C202/1 (hereinafter TEU)

⁴² Dimitry Kochenov, 'Double Nationality in the EU: An Argument for Tolerance' (2011) 17(3) ELJ 323

⁴³ ECLI:EU:C:2006:545, CJEU, Case C-300/04, *Eman and Sevinger v College van burgemeester en wethouders van Den Haag*

voting. Cyprus and Malta, being often criticised of easily giving TCN access to the EU citizenship that may result to a threat to the sovereignty of all Member States, both require citizens to reside in the country in order to vote. Simply having the citizenship is not enough.⁴⁴

Status and Rights of European Union Nationals

Granting citizenship in each Member State is under the national law's competence as the two most common ways of obtaining it are *ius sanguinis* or *ius soli* or, in other words, through blood or soil. Children have their parents' nationality passed on to them or there are countries where nationality is given by place of birth, despite the fact that parents may have a different nationality and there may be no link to that country. However, in today's globalised world *ius tractum (derived)* sounds more appropriate particularly in the context of supranational European citizenship.⁴⁵ Now there are two official programmes for obtaining specific EU Member State nationalities that consequently open up the road towards EU citizenship.

According to the TEU Article 20, every citizen holding nationality of the Member State shall be granted citizenship of the Union.⁴⁶ Access to the status of EU citizenship is gained via the nationality of the Member State.⁴⁷ As a result, each Member State grants citizenship under rules that differ from country to country. But the status they receive and the rights declared in the TEU are the same. There is the opinion that it is unfair to other EU Member States, that Cyprus, for example, offers citizenship in exchange of investment in just over six months' time. Meanwhile other Member States require individuals to establish a true link with the country, by living and working there for five years or

⁴⁴ Kristin Surak, 'Global Citizenship 2.0 The growth of Citizenship by Investment Programs' (2016) IMC Working Paper IMC-RP 2016/3 <<https://investmentmigration.org/download/global-citizenship-2-0-growth-citizenship-investment-programs/>> accessed 20 July 2019

⁴⁵ Dimitry Kochenov, 'Ius Tractum of Many Faces: European Citizenship and the Difficult Relationship between Status and Rights'[2009] Volume 15, Issue 2 CJEL 169

⁴⁶ Consolidated versions of the Treaty on European Union [2016] OJ C202/1 (hereinafter TEU)

⁴⁷ Dmitry Kochenov, 'The Essence of EU citizenship emerging from the last ten years of academic debate: Beyond the Cherry blossoms and the Moon?' (2014) University of Groningen Faculty of Law Research Paper Series No. 02/2014 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2374901> accessed 16 July 2019

even more in order to be able to apply for naturalisation so as to obtain nationality. It is important to remember that investors do not obtain the EU nationality immediately. They need to activate it by moving to or establishing formal activities in another Member State. Being TCN with the nationality of an EU Member State, does not guarantee they have EU rights protection. This was confirmed in the *Tjebbes* case⁴⁸. Whereas the *Micheletti* case⁴⁹ shows that Mr. Micheletti's rights are protected in other Member States. In fact, other Member State nationals enjoy the rights of the EU citizenship without having dual nationality, so they are not discriminated against.

Daniel Sarmiento argues that the existing case law respects the autonomy of Member States on nationality issues. At the same time the EU, in effect, tries to ensure effective protection of rights of European citizens.⁵⁰ The author can agree, as this fact is confirmed in cases like *Micheletti* case⁵¹, *Eman* case⁵² and *Zambrano* case⁵³. In fact, the *Zambrano* case is a very insightful example of the EU national rights protection. Mr. Zambrano does not have citizenship of any EU Member State, but two of his children do and therefore he was granted with EU rights to ensure the children's rights are protected. The logic behind this is that the children would not have the option to remain in the EU and study, if their parent did not have permission to stay and work there so as to care for the two little EU citizens.

As there are no harmonised rules within the EU, at least for now, TCN may choose a Member State with more flexible rules for naturalisation and thereafter be free to move to any other Member State if they wish to. The TEU grants equality and non-discrimination which only comes into force after obtaining the citizenship. The procedure and requirements for applying for a citizenship differ under

⁴⁸ ECLI:EU:C:2019:189, CJEU, 2019, Case C-221/17 *Tjebbes and Others v Minister van Buitenlandse Zaken*

⁴⁹ ECLI:EU:C:1992:295, CJEU, 1992, C-369/90 *Micheletti and Others v Delegacion del Gobierno en Cantabria*

⁵⁰ Daniel Sarmiento, 'EU Competence and the Attribution of Nationality in Member States' (2019) IMC Working Paper IMC-RP 2019/2 <https://investmentmigration.org/download/eu-competence-attribution-nationality-member-states-imc-rp-2019-2/> accessed 20 July 2019

⁵¹ ECLI:EU:C:1992:295, CJEU, 1992, C-369/90 *Micheletti and Others v Delegacion del Gobierno en Cantabria*

⁵² ECLI:EU:C:2006:545, CJEU, 2006, Case C-300/04, *Eman and Sevinger v College van burgemeester en wethouders van Den Haag*

⁵³ ECLI:EU:C:2011:124, CJEU, 2011, Case C-34/09 *Zambrano v Office national de l'emploi*

each Member State's national law. Some countries are more concerned about sovereignty and have stricter rules. This, of course, creates confusion and debates. The Parliamentary Assembly in their resolution calls the Member States of the Council of Europe to review their national policies and use the same principles for naturalisation in order to reduce inequalities.⁵⁴ This idea is also mentioned by some academics, but the author believes that this is not likely to happen in the near future. Nationality issues are under national law competences and at this stage the EU does not have the power to demand that Member States harmonise these. For this to happen, treaties need to be updated.

Having the European citizenship status does not guarantee equal rights or enjoyment of rights to all citizens. There are a number of factors that may change this outcome, such as a person's financial situation, their country of origin and their country of residence. For instance, a resident who is working, earning an income and paying taxes, or a student who is studying in the country may gain certain defined rights. However, a single mother without any source of income may not enjoy the right of free movement, for example.⁵⁵ The rights of EU nationals who are not economically active and are not self-sufficient are limited. This was confirmed in the *Grzelczyk* case⁵⁶, where Mr. Grzelczyk was denied the right to receive social support as a student in the country where he studied, because he was not working for a long enough period. It is even possible to have European citizenship rights or part of them without *de jure* becoming a citizen, like EU citizens' family members⁵⁷. This, in turn, was confirmed by the *Zambrano* case⁵⁸ where the parents received the right to work within a Member State due to the fact that they had to take care of their children, two of

⁵⁴ Parliamentary Assembly, 'Access to nationality and the effective implementation of the European Convention on Nationality' (2014)¹ Resolution 1989

⁵⁵ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States [2004] OJ L158/77

⁵⁶ ECLI:EU:C:2001:458, CJEU, 2001, Case C-184/99 *Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve*

⁵⁷ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States [2004] OJ L158/77

⁵⁸ ECLI:EU:C:2011:124, CJEU, 2011, Case C-34/09 *Zambrano v Office national de l'emploi*

whom were EU nationals. The two children were born in Belgium and had Belgian nationality by birth according to national law.

In the context of EU citizenship, legal status and rights are subject to discussion.⁵⁹ In the legal world, status and rights would be accepted as equal, but in the context of the European citizenship they are not always the same. Taking the *Beldjoudi* case in the European Court of Human Rights as an example, the Court's decision was that an Algerian national, who spent all his life in France, cannot be deported. It was decided that his connection with France was stronger than his connection with Algeria, despite the fact that he was an Algerian residing in France and did not have French citizenship.⁶⁰ Although Mr. Beldjoudi did not have any Member State nationality, he received access to rights granted to those who have EU citizen status *de fact*. This comes as a parallel layer of citizenship within the EU - 'social citizenship', which is based on long-term residency.⁶¹ These rights can only be obtained in a specific country, usually based on residency, but the European citizenship status will give access to all Member States. A similar situation is presented in the *Ruiz Zambrano* case where the parents of an EU citizen who are not EU nationals themselves used their child's EU citizenship to avoid expulsion from EU territory on the basis that they are the primary carers of an EU citizen who cannot be deprived of their own EU rights.⁶²

The EU nationality itself is a new phenomenon. Usually nationality is linked to a specific community in one specific country. As confirmation of this, individuals have passports, which are identification documents that allow them to travel outside their own country. But the EU nationality is granted to 28 different nationalities and there is no passport for it. It is like a promise given to all 28 Member State nationals, that they will have EU protection. The author assumes that status and rights often do

⁵⁹Dimitry Kochenov, 'Ius Tractum of Many Faces: European Citizenship and the Difficult Relationship between Status and Rights' [2009] CJEL 169

⁶⁰*Beldjoudi v France* App no 12083/86 (EctHR, 26 March 1992)

⁶¹ Dimitry Kochenov, 'The Essence of EU citizenship emerging from the last ten years of academic debate: Beyond the Cherry blossoms and the Moon?' (2014) University of Groningen Faculty of Law Research Paper Series No. 02/2014 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2374901> accessed 16 July 2019

⁶² ECLI:EU:C:2011:124, CJEU, 2011, Case C-34/09 *Zambrano v Office national de l'emploi*

not mean the same thing; having status does not necessarily mean the same as having rights. This point is also linked to human rights and this link further creates another anomaly of having rights without status, as discussed previously.

Section II Multiple Nationalities

Cyprus's Citizenship by Investment Programme

Cyprus currently offers fully-fledged citizenship in exchange of a donation and investment in real estate or investments in the Cyprus economy.⁶³ These amendments were introduced in 2013 following the bail-in deal that was evoked due to the banking sector's crisis. This subsequently allowed citizenship to be granted to foreign investors without the compliance with the government's official nationalisation rules.⁶⁴ Investors can apply for their entire family, including financially dependent adult children up to the age of 28 years old who are studying as well as the investors' parents.⁶⁵ All adults should have clean criminal records, they cannot be on any sanction lists, they should not have any frozen assets in any other EU Member State, they cannot have been denied citizenship by any other EU Member State and need to have a Schengen visa, if applicable. Investment funds within Cyprus should come from outside the country and should be kept within the country for at least five years from the moment of naturalisation. The family must also own property which is worth at least 500 000 euro for a life. If these conditions of the programme are breached, granted citizenship may be revoked.⁶⁶ Sofya Kudryashova questions whether the requirement to have their house there forever is a violation of EU law, limiting the rights of free movement of capital under Article 63 of the TFEU.⁶⁷

Despite the fact that Cyprus grants investors fully-fledged citizenship, investors naturalised as a result of this investment programme are exempt of the obligation to attend military service in the Cyprus National Guard, which ordinarily is mandatory by law for all male citizens of the Republic of

⁶³Cyprus Investment Programme on the bases of subsectionj (2) of section 111A of the Civil Registry Laws of 2002-2019

⁶⁴Nicos Trimikliniotis, 'Report on Citizenship Law: Cyprus' (2015) EUI Working Paper RSCAS / EUDO Citizenship observatory 2015/1 <http://globalcit.eu/country-profiles/>> accessed 25 July 2019

⁶⁵Cyprus Investment Programme on the bases of subsectionj (2) of section 111A of the Civil Registry Laws of 2002-2019 Investor's Family Members

⁶⁶Cyprus Investment Programme on the bases of subsectionj (2) of section 111A of the Civil Registry Laws of 2002-2019

⁶⁷ Sofya Kudryashova, 'The Sale of Conditional EU Citizenship: The Cyprus Investment Programme under the Lens of EU Law' (2019) IMC Working Paper IMC-RP 2019/ <https://investmentmigration.org/download/the-sale-of-conditional-eu-citizenship-the-cyprus-investment-programme-under-the-lens-of-eu-law-imc-rp-2019-3/>> accessed 21 July 2019

Cyprus. The next generations that will be born as Cypriots, however, do not have this exemption.⁶⁸ Exemptions such as this, can lead to citizens with the same status having different duties towards the government, thus giving rise to inequality. At the same time, however, it is a requirement that investors hold an expensive property forever. The same status but different duties, resembling a type of revised discrimination. While some can avoid military service, but are obliged to have expensive property forever, for others attending military service is mandatory, but they are not obligated to own property.

The Cyprus Investment Programme has become even more attractive by offering Non-Dom tax status in addition to other attractive tax advantages that enable the avoidance of defence tax for those who were not living in Cyprus for at least 17 years during the last two decades. This benefit is not directly linked to citizenship, but can be considered as a significant benefit to new Cypriot citizens. Here we can discuss the discrimination of locals and why other categories of Cyprus nationals are treated differently. But as the author has already emphasised, this benefit is not directly linked to citizenship. Moreover, Cypriots residing abroad can also use this when returning to Cyprus to live.

The supranational EU citizenship is comprehensively discussed in the context of having free access to the Union and other Member States. It is clear that the EU accepts multiple citizenships and how it works is set by law. But the main applicants for passports by way of the Citizenship by Investment programmes are TCN such as Russians, Ukrainians, Chinese, Indians and nationals from the Middle East. These countries may have restrictions to having multiple citizenships. Such restrictions differ from country to country. Questions regarding extradition may arise, as investors have duties to both (or even more) countries. And in the case of having several passports, citizenship can be recalled much more easily. At this moment there is uncertainty as there is a lack of case law with regards to Citizenship by Investment. There may be few cases that are more concerned with the act of obtaining

⁶⁸Minutes of the council of Minister`s meeting dated 23/05/2014, No. Decision: 76.973

citizenship without the obligation of full information disclosure, not even with regards to any involvement in fraud or criminal activity.

There are several potential issues that could arise leading to the possible risk of losing newly obtained passports or even previously held passports if investors do not research their legal situation thoroughly before they proceed.

Firstly, there is the risk that the investor's existing nationality could be recalled as per their home country's national law. Or the investor could have an obligation to obtain permission from or inform their home country first before applying for a second citizenship, and if this is not done, they could face penalties or even legal consequences. It is often the case that new citizenship is granted to persons that are not allowed to have multiple citizenships. Here the question reverts to an ethical issue. Is it correct to grant citizenship for example to Chinese nationals, when it is known that they are not allowed to have another citizenship? And whose responsibility would this be, the Chinese national themselves or the country that issues the new citizenship? These are therefore potential threats to one's existing nationality. If a person obtains multiple nationalities, the situation could become significantly more complicated.

A second problem would arise if a person receives full protection from a country whose passport was newly obtained. In this case, this country would be Cyprus and by extension as a national of a Member State, this person would also receive EU nationality protection. It is clear that individuals' consular protection can be weakened by having both nationalities.⁶⁹ This is a lesson demonstrated in the *Tjebbes*⁷⁰ case, which shows that having Member State nationality without any link to any Member State can lead to the nationality being revoked. Additional confirmation for this is given by

⁶⁹ The European Convention on Nationality 1997

⁷⁰ ECLI:EU:C:2019:189, CJEU, 2019, Case C-221/17 *Tjebbes and Others v Minister van Buitenlandse Zaken*

the *Micheletti* case⁷¹, where Mr. Micheletti activated his EU nationality and had protection of his EU citizen rights.

This leads investors to search for ways to protect their rights. To avoid their citizenship being recalled, an option could be for an investor to renounce any previous citizenship in order to protect themselves, as governments aim to avoid leaving a person stateless.⁷² A more detailed discussion on this matter in particular will follow in the next paragraphs. It is possible that in this way, an investor could gain additional security as they stand to have the right to have rights. It will also reveal the investor's intentions to be affiliated with the country of which they now hold nationality. But it is important to remember, that a person can be left stateless, if it was obtained based on fraud or misrepresentation of facts. That was confirmed by the *Rottmann*⁷³ case and the *Ramadan* case⁷⁴ in two different courts, where both EU citizenships were lost.

Before moving on to worst case scenarios, like the deprivation of citizenship and statelessness, it is important to understand the concept of multiple citizenships. This will be discussed and analysed in next chapter.

Multiple Nationalities

Before we start the discussion, it is important to make it clear that multiple nationalities involve a situation when one person has more than one nationality. Where countries accept dual nationality, it means that both involved countries approve of dual citizenship and it is possible to forward duties from one country to the other. For example, a national will not be asked to undertake military service in both countries. Another term used is second or additional citizenship. This is when countries

⁷¹ ECLI:EU:C:1992:295, CJEU, 1992, C-369/90 *Micheletti and Others v Delegacion del Gobierno en Cantabria*

⁷² The European Convention on Nationality 1997

⁷³ ECLI:EU:C:2010:104, CJEU, 2010, Case C-135/08 *Rottman v Freistaat Bayern*

⁷⁴ *Ramadan v Malta* App no 76136/12 (ECtHR, 21 June 2016)

accept nationals having more than one nationality, but they have duties to both countries in question and there is a procedure they need to follow in order to inform the original country of their additional citizenship.

Dual citizenship or multinational citizenship for EU nationals is now allowed and does not lead to the loss of nationality of origin. It is stated as such in Article 20 of the TFEU. Moreover, EU nationals have *inter alia* rights stated in the same Treaty.⁷⁵ Dual or even multinational citizenship as a trend is also presented in the Resolution of Parliamentary Assembly.⁷⁶

Multiple citizenships may be an advantage that allows individuals to travel more easily by using their multiple passports which can serve as visas across certain countries. It can also be an added layer of security in case of political instability in one of the countries of the passport holder. However, if multiple citizenship is not allowed between the countries involved, it may become a disadvantage with serious consequences should the countries find out. It also means that individuals with two or more citizenships have duties to all countries whose nationality they hold if dual citizenship is not accepted by the countries involved. Dual citizenship within the EU also limits diplomatic and consular protection. Individuals will not have diplomatic protection against countries of other nationalities.⁷⁷ This rule is established in EU law.

Cyprus allows both dual and multinational citizenship. Investors can apply for the Cyprus Investment Programme while keeping their existing passport. But they need to bear in mind that it is better to have a link with the country. Despite the fact that the Cyprus Investment Programme itself does not

⁷⁵Treaty on the Functioning of the European Union (Consolidated version 2016) [2016] OJ C202 (hereinafter TFEU)

⁷⁶ Parliamentary Assembly, 'Access to nationality and the effective implementation of the European Convention on Nationality' (2014)¹ Resolution 1989

⁷⁷ Parliamentary Assembly, 'Access to nationality and the effective implementation of the European Convention on Nationality' (2014)¹ Resolution 1989

require a presence in Cyprus, there is a provision in Cyprus national law that should a person spend seven consecutive years abroad or leave the country without the intention to return, citizenship could be recalled. This rule applies to naturalised or registered persons.⁷⁸ Following this logic, however, this condition should not relate to investors who applied for citizenship by investment as there is no condition with regards to how much time they spend in Cyprus. But this is not yet specified as such and there is no case law on this matter either. It is therefore crucial for investors to study the rules and regulations of each country whose passport they hold.

Some countries like China do not allow dual citizenship, but Chinese nationals are one of the top immigrant nationalities worldwide. Hence, there could be consequences. The Russian Federation allows dual citizenship, but only with one country so far. There are no other settled agreements, but the understanding is that a second citizenship is allowed.⁷⁹ Although the author has concluded that Russians are allowed to have a second nationality, there is still a procedure to inform the Russian Federation. In the case of Russia, dual citizenship and having a second citizenship are two separate understandings in terms of the individuals' duties and obligations. In such a case, duties to each government will be in force unless there are agreed exemptions between the Russian Federation and the second country in question.

Dual citizenship and even multinational citizenship are becoming progressively more conventional. But there is still plenty of uncertainty in terms of how countries will react when issues arise and which country power will prevail when the person in question holds multiple passports. At present, there is no need to check or request permission before applying for another nationality. However, it does not seem right or appropriate to grant a Chinese national, for example, a second citizenship as it is a known fact that it is against China's regulations to do so. On the other hand, it is each person's

⁷⁸ The Civil Registry Law of 2002 N. 141(I)/2002

⁷⁹ Alexander Salenko, 'Country report: Russia' (2012) EUI Working Paper RSCAS / EUDO Citizenship observatory 2012/1 <https://cadmus.eui.eu/handle/1814/60230>> accessed 25 July 2019

individual responsibility to renounce any previous passports and inform their current governments. But this is an ethical issue that could be discussed in future within the framework of other research. The author even assumes that in next few years there could be certain relevant upcoming cases between countries.

In any case, for investors to follow the correct path by informing their home country, or even renouncing their original nationality, they need to have certainty regarding their newly obtained citizenship. It is difficult, however, for investors to do this when they have the protection from their nationality by birth or blood, while also feeling the risk that their new nationality could be suspected or even recalled.

The next section of the thesis will discuss the deprivation of citizenship by analysing the law while referring to existing case law. Statelessness will be also be discussed as a potential outcome, so it is important to understand in what cases it could be possible so as to avoid that situation.

Section III Losing Nationality

National Law v EU Law on Matters Regarding Nationality

Cyprus is one of the EU Member States that has the Citizenship by Investment programme. Investors can become citizens of Cyprus and therefore EU citizens in exchange of investment.

There are certain conditions that should be followed, for example investment should be kept for at least five years and the investor must have their own residence for life with a value of at least 500 000 euro. If these conditions are not fulfilled, citizenship may be revoked.

It may also be revoked in the case of criminality or if false information or documents are provided in order to obtain citizenship. Antigua and Barbuda, for example, recalled a passport granted to an Indian national in 2017. India requested his extradition after his past criminal activities came to light.⁸⁰ On the one hand, Antigua and Barbuda needs to protect its citizens; even criminals have citizen rights. But on the other hand, countries have to act in order to show that they are not a safe haven to criminals. Multiple citizenships can provide certain freedoms and safety, but this cannot be a way out to avoid fair trial in case of illegal affairs. It will also evidence the fact that the Citizenship by Investment programmes are not a protection from criminality and as such, there will be consequences. But legally speaking it creates a fascinating and interesting situation regarding citizens' rights as investors may not feel safe for themselves and their families' future. Having citizenship should provide a more stable and fundamental understanding of rights compared to simply having a visa, for example.

The *Rottman* case⁸¹ raised questions as to whether the loss or revocation of Member State nationality acquired by deception is within the scope of EU law or whether it is under national law competence.

⁸⁰ 'Choksi's citizenship to be revoked' *The Daily observer* (Antigua and Barbuda, 24 June 2019) <<https://antiguaobserver.com/choksis-citizenship-to-be-revoked/>> accessed 20 July 2019

⁸¹ ECLI:EU:C:2010:104, CJEU, 2010, Case C-135/08 *Rottman v Freistaat Bayern*

For the Court it was important to ensure that EU citizenship rights are not undermined.⁸² This case also showed that there is a lack of legislation in place with regards to how governments need to react in such situations. Which of the two countries in question – Austria or Germany – would abandon their citizen and even lead them to become stateless, as it so happened? This discussion is still open. But there are increasingly more arguments and suggestions for harmonised national law on nationality issues, but to move on to this would require serious amendments to treaties. It does not sound as a realistic scenario that could occur in the near future, as a number of other issues will arise.

As the author has previously mentioned, migration rises with globalisation. Existing legislation does not adapt quickly to such major changes on a national scale, however, leading to significant improvisation and a lack of relevant case law. For each discussed matter the law may not be in place on a national level, nor on an EU or even international law level. Moreover, existing case law can only reveal similarities on different issues regarding nationality. Previous cases cannot be directly linked to a new case. It is important to therefore also take into account the investor's contribution to the country whose citizenship they obtained. Of course, it does not mean that countries are allowed to do whatever they like, but it enforces some obligations upon the governments. Another problem is that exceptions in existing national law in order to issue Citizenship by Investment are incomplete. There are no provisions for all potential situations, for example as the author has discussed previously regarding the possibility of a passport being revoked while being outside Cyprus for more than seven consecutive years. Only assumptions can be made for possible outcomes.

Citizenship matters should fall under the competence of Member States, where new practice is becoming more realistic if it concerns the EU national rights like in the *Eman* case⁸³. Revocation can fall under EU law competence in cases which concern EU national rights, while granting citizenship

⁸² Daniel Sarmiento, 'EU Competence and the Attribution of Nationality in Member States' (2019) IMC Working Paper IMC-RP 2019/2 <https://investmentmigration.org/download/eu-competence-attribution-nationality-member-states-imc-rp-2019-2/> accessed 20 July 2019

⁸³ ECLI:EU:C:2006:545, CJEU, 2006, Case C-300/04, *Eman and Sevinger v College van burgemeester en wethouders van Den Haag*

is currently ruled by national law. This may create quite an unprecedented situation as the acquisition of citizenship can be separated from its loss, two aspects that are usually linked. Professor Dmitry Kochenov discusses this link in one of his articles in the context of the triumph of supranational status over national status.⁸⁴ This issue is already being taken up by the European Commission which issued a second report on investor citizenship schemes in the EU in 2019.⁸⁵ This report raises concerns regarding transparency and good corporate governance in the face of money laundering risks. The Commission has undertaken the monitoring of Member States so as to ensure compliance with EU law. This could be the first step towards the EU gaining some kind of control over national law on nationality matters. Under Article 267 of TFEU the CJEU has no jurisdiction to interpret national law, but in the case that national law refers to EU law provisions, the Court may give a ruling.⁸⁶

Revocation of Cyprus Citizenship

Cyprus citizenship may be revoked if it was obtained fraudulently, if the person involved is convicted abroad for more than one year, if they are residing outside Cyprus for seven years with no intention to return, if they are threatening public interest or if investors applying through the Cyprus Investment Programme do not meet the relevant criteria. These rules relate to either naturalised or

⁸⁴ Jo Shaw, 'Has the European Court of Justice challenged Member States Sovereignty in Nationality Law?' (2011) EUI Working Paper RSCAS 2011/62 <https://cadmus.eui.eu/handle/1814/19654> accessed 23 July 2019

⁸⁵ European Commission, 'Investor Citizenship and Residence Schemes in the European Union' (2019) Report COM(2019) 12 final

⁸⁶ TFEU Article 267 (ex Article 234 TEC) The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning: (a) the interpretation of the Treaties; (b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union. Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgement, request the Court to give a ruling thereon. Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court. If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay.

registered citizenships. The author observes a conflict between the national law of Cyprus and EU law:

- Firstly, the right of free movement within the EU is restricted, because such movement can result in being the reason for citizenship conviction.
- Secondly, one of the granted benefits of the Cyprus Investment Programme is that there is no requirement to reside in Cyprus. So the condition of being abroad for seven years should not relate to these investors.

Sofya Kudryashova also concluded that the requirement for investors to own property forever physically restricts their rights of free movement of capital and is thus a violation of EU law.⁸⁷

The author could not uncover any case law involving issued citizenships to investors being revoked due to reasons other than fraud and misrepresentation. However, the future could see numerous interesting cases with unpredictable developments, as TCN apply for Citizenship by Investment and the outcome relies on specific countries in question and their relations with Cyprus. How will other countries in question react? Which of the involved countries will truly stand up for their citizens' rights? How important will proportionality be? Or will original citizenship by birth prevail in the principle of proportionality? How willing will the EU be to protect the rights of citizens that obtained citizenship based on investment? Will the EU accept it as real citizenship?

An interesting question arises with regards to what decisions the CJEU or national Courts will take when faced with cases of recalling passports or leaving individuals stateless. Cyprus national law does not have provisions regarding statelessness other than the fact that Cyprus cannot reject granting citizenship if a person is stateless.⁸⁸ Is this a case where the CJEU could act under Article

⁸⁷Sofya Kudryashova, 'The Sale of Conditional EU Citizenship: The Cyprus Investment Programme under the Lens of EU Law' (2019) IMC Working Paper IMC-RP 2019/ <https://investmentmigration.org/download/the-sale-of-conditional-eu-citizenship-the-cyprus-investment-programme-under-the-lens-of-eu-law-imc-rp-2019-3/>> accessed 21 July 2019

⁸⁸ The Civil Registry Law of 2002 N. 141(I)/2002

267 of TFEU and issue a preliminary ruling? And will the CJEU be concerned with the fact that a TCN, who also has EU citizenship, will be losing their EU status and rights?

One more uncertainty is what will happen with regards to family members - will they lose their citizenship too? What will be the case with babies who were born Cypriots and do not hold any other nationality?

At this stage the number of questions significantly exceeds the number of available answers. There are debates, discussions and arguments, but investors would like to have certainty because in case their citizenship is revoked, they will also lose their rights. And in the context of investors, this may lead to further problems as investors usually keep their money and hold different types of across different countries. This, of course, is a different point for another discussion, but the author mentions it simply to highlight the crucial importance of the revocation of citizenship.

Statelessness

There are two international conventions addressing statelessness – the 1954 Convention relating to the Status of Stateless Persons⁸⁹ and the 1961 Convention on the Reduction of Statelessness⁹⁰. The former defines the status of stateless persons and ensures that these persons who do not have any nationality enjoy a minimum of human rights. The latter aims to reduce and prevent statelessness by ensuring that every person has the right to a nationality with certain exceptions and requires the Member States to adopt their national laws so as to prevent statelessness. Unfortunately, Cyprus did not adopt any of the two conventions.⁹¹

⁸⁹ 1954 Convention relating to the Status of Stateless Persons

⁹⁰ 1961 Convention on the Reduction of Statelessness

⁹¹ United Nations Treaty Collection https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5 accessed 27 July 2019

Within the EU, statelessness status and rights are regulated by the European Convention on Nationality,⁹² which leaves the issue of statelessness to national law competence and asks Member States to avoid it. Cyprus has not yet signed this convention, with the reason being the Cyprus problem, as the north part of the island is still occupied. Ratifying this right would give greater access to Cyprus citizenship that subsequently leads to EU citizenship⁹³. Another document within the EU that Cyprus has signed but not ratified, is Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms⁹⁴.

Despite the fact that legislation exists on an international level and EU level, Cyprus has not adopted it. Moreover, there are no provisions within national law regarding leaving a person stateless. It is particularly difficult to make assumptions on what the outcome could be if the case goes to Court and what law or rules the Court will follow.

When a person is left stateless, it means they have a lack of legal identity and therefore a lack of fundamental human rights such as health care, the ability to register their children or have property and the benefit of having diplomatic protection. A person may be restricted to see their family if they cannot visit the country when they lose that nationality. Even their children and spouse may be deprived from the nationality in question. This situation could be problematic and unpleasant as their other nationality, if they still have it, may not be effective. This reveals the link between nationality issues and human rights highlighting the fact that statelessness is becoming a serious issue. It is likely that a number of new cases will follow, involving international and European legislation regarding human rights. Although there will not be any further discussion regarding human rights in this thesis, this trend was simply mentioned to underline the importance and severity of statelessness.

⁹² The European Convention on Nationality 1997

⁹³ Nicos Trimikliniotis, 'Report on Citizenship Law: Cyprus' (2015) EUI Working Paper RSCAS / EUDO Citizenship observatory 2015/1 <http://globalcit.eu/country-profiles/> accessed 25 July 2019

⁹⁴ Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms 2000

Member States are also asked to avoid the deprivation of citizenship, where possible, so as not to leave persons without a single citizenship.⁹⁵ So far the author could not find any case where statelessness is involved in Cyprus case law, so it is difficult to predict how it will look like in practice. At this stage it is not even clear whether it will remain under the national law competence or whether it will fall under the CJEU competence.

As there is no case law on this, the author can only develop assumptions. National Courts could follow national law guidance or could decide on the basis of the case being a threat to public interest based on national law. It depends on how serious the case is and what possible consequences it could incur. The national Court could also ask for a ruling from the CJEU. Another important factor would be whether the person has activated his EU citizen rights; if so, the case could be considered under the CJEU competence.

In the *Rottman* case the CJEU referred statelessness to international law. According to the *Rottman* case⁹⁶, even when stateless, Mr. Rottman still enjoyed the rights as set in the TFEU. The same happened in the *Ramadan* case⁹⁷ that actually referred to the *Rottmann Case*. Another important lesson from both previous cases is the fact that, despite existing legislation in place that welcomes the avoidance of statelessness, practice only exists in cases where citizenship was obtained by fraud or misrepresentation.

Nevertheless, statelessness is a situation that should be avoided. When a person has only one nationality, then its government should not recall their nationality, unless under the conditions discussed previously. In the case of multiple citizenships, any government could move to revocation of nationality. This is already discussed as a disadvantage of dual or multiple citizenships.

⁹⁵ Jo Shaw, 'Has the European Court of Justice challenged Member States Sovereignty in Nationality Law?' (2011) EUI Working Paper RSCAS 2011/62 <https://cadmus.eui.eu/handle/1814/19654>> accessed 23 July 2019

⁹⁶ECLI:EU:C:2010:104, CJEU, 2010, Case C-135/08 *Rottman v Freistaat Bayern*

⁹⁷*Ramadan v Malta* App no 76136/12 (ECtHR, 21 June 2016)

Previously, certain Member States could revoke nationality as a result of prolonged absence abroad. Greece was an example of such a Member State. Before the law was recently changed in Greece, Greek nationals could lose their nationality, including European citizenship and the rights that accompany it, by leaving Greece without the intention to return. Even students studying abroad could fall under this category. These people could therefore be left stateless.⁹⁸

Greece was not the only example of this, but now it is agreed that Member States accept dual citizenship within the EU. Cyprus national law, however, still has a provision that nationality can be revoked if a person lives abroad for seven years without the intention to return. But it is not specified if this provision relates to investors. Logically it should not, as there is no condition for investors to reside in Cyprus. Moreover, this provision seems to be conflicting with the EU law as it is restricting the freedom of movement within the Union. On the other hand, if the person informs the authorities of their intention to maintain their nationality, this can be avoided.

The EU values its citizens' freedoms such as free movement, principles such as equal treatment, and fundamental rights such as protection against statelessness.⁹⁹

⁹⁸Dimitry Kochenov, 'Ius Tractum of Many Faces: European Citizenship and the Difficult Relationship between Status and Rights' [2009] CJEL 169

⁹⁹ Phoebus L. Athanassiou and Stephanie Laulhe Shaelou, 'EU Citizenship and its Relevance for EU Exit and Secession' in D. Kochenov (ed.), *EU Citizenship and Federalism: The Role of Rights* (Cambridge University Press 2017)

Conclusions

Globalisation has had a significant effect on immigration. The freedom of movement has created the need to move abroad either for business, to look for a better quality of life, to study or in some cases to have an escape plan in the case of political instability or war. Having EU nationality, which can be obtained through having citizenship of any EU Member State may prove to be more useful than having a passport from an African country, for example. This is the issue of inequality that prevails in the world. As a result, during the last 10 years the trend of obtaining citizenship through investment has evolved. There are a growing number of countries offering such programmes around the world. Within the EU there are two official programmes of such kind, which are a way for countries to address these inequalities while also attracting investments which they also stand to benefit from.

The reasons why investors choose to have an additional citizenship include the benefits of having greater freedom to travel, do business, and to avoid discrimination simply because of their country of origin and its political activities. They are rich and are looking for a better quality of life for their children and they would like to enjoy the security and full array of rights that come with the citizenship they obtain.

The EU citizenship can be obtained by having citizenship of one of the Member States. It is also essential for citizens to activate their EU status, however, a fact that was proven by existing case law. The recent *Tjebbes* case¹⁰⁰ shows that having EU nationality is not enough. Ms Tjebbes's citizenship was recalled because she resided outside the EU. Whereas in the *Micheletti* case¹⁰¹ Mr. Micheletti's rights were protected as he moved from Italy to Spain, despite his non-EU nationality. Following this, the author concludes that in the case of TCN wishing to have EU national rights they are obliged to reside elsewhere in the Union.

¹⁰⁰ ECLI:EU:C:2019:189, CJEU, 2019, Case C-221/17 *Tjebbes and Others v Minister van Buitenlandse Zaken*

¹⁰¹ ECLI:EU:C:1992:295, CJEU, 1992, C-369/90 *Micheletti and Others v Delegacion del Gobierno en Cantabria*

An interesting discovery is that EU citizenship rights and status can be obtained without having any of the Member States' citizenship. This was confirmed by the *Zambrano* case.¹⁰² In fact, this highlights that the EU cares about its citizens' rights, particularly in cases where children have EU citizenship, while the parents do not. As children have the right to have a family, their parents without EU citizenship, being their primary carers, gain EU citizen rights too.

It also highlights another need for more harmonised nationality laws. There are still countries where citizenship can be obtained by place of birth, leading to issues discussed previously. This can create more discussions regarding access to EU citizenship.

Cyprus is one of the two countries offering investment programmes that offer investors the opportunity to obtain a passport within slightly more than six months in exchange of investment. This programme originated from the amendments that were carried out in national law with the objective of economic recovery following the financial crisis in 2013. But things are not so simple. On an EU level, the question as to whether such investment programmes are legitimately legal has been raised, as these programmes give investors access to all other Member States as well. Despite the fact that nationality matters should exist under the competence of national laws, there are no strong arguments against the legality of issuing passports in exchange of investment, but discussions are ongoing.

For the author it was interesting to research the true benefits of obtaining Cyprus citizenship on behalf of clients. Having Cyprus citizenship can be considered safe and they could keep it forever. However, while studying the advantages of multiple citizenships, the author discovered there are also disadvantages. Investors who have several nationalities could stand to lose diplomatic and consular protection. In other words, if a Russian national who also holds Cyprus citizenship asks for consular protection from Cyprus, they will not get it simply because they are a citizen of both countries

¹⁰² ECLI:EU:C:2011:124, CJEU, 2011, Case C-34/09 *Zambrano v Office national de l'emploi*

involved. Also, in practice, simply having citizenship it is not enough; having a true, formal connection to the country also plays a major role – the principle of proportionality. Cyprus law allows naturalised persons to be deprived of their citizenship if they spend seven years abroad¹⁰³, or show disrespect and disloyalty to the country or if an investor does not comply with the set conditions for obtaining Cyprus citizenship. This, however, can be a very subjective matter to resolve.

Citizenship by Investment has attracted a lot of attention recently, as there have already been a number of first cases of revocation as a result of fraud in jurisdictions offering such investment programmes. Such investment programmes cannot be used to avoid imprisonment. Uncovering information revealing fraudulent activity is significant grounds for deprivation of citizenship even if it leaves a person stateless, a fact that was confirmed in the *Rottmann* case¹⁰⁴. Citizenship by Investment should not exist simply as an expensive visa. Investors deserve to have the benefit of clear and fair rules in order to keep their new citizenship; they need the assurance that they will undergo the same treatment as other citizens of the country.

Cyprus legislation provides a legal provision for notification before revoking citizenship and the person is entitled to protect themselves, which is good. However, this is completely at the discretion of the minister. At present, there are no cases to rely on regarding any issues derived from multinational citizenship or statelessness.

A potential solution to safeguard the rights to have citizenship could be the reunification of any previous citizenships. There is international and EU legislation against statelessness, but Cyprus is not adopting any of it because of the complexity that stems from its own the Cyprus problem.

¹⁰³ The author assumes that this is not relevant for investors as there is no such condition to reside in Cyprus under the Cyprus Investment Programme

¹⁰⁴ ECLI:EU:C:2010:104, CJEU, 2010, Case C-135/08 *Rottman v Freistaat Bayern*

Moreover, there are cases¹⁰⁵ where persons were deprived from a Member State citizenship and left stateless on the grounds that it was obtained fraudulently. It is impossible to predict any outcome or to guarantee that it will help a specific case. On the other hand, the principle of proportionality is already established in existing case law¹⁰⁶ but it may only help in the case where the person moves. But it may not be the case with investors who are TCN, as they need to have more than one nationality in order to run their business in different countries.

Current investment programmes are strict and governments undergo intense and thorough checks of international databases and sanction lists before granting citizenship. These checks could stand as an argument in favour of the investor if a case against them arises. If the checks did not uncover anything at the time, then the government also has a responsibility. The investor, in turn, also has to do their homework before choosing a country to apply for a second citizenship. They need to check whether dual citizenship or multiple citizenships is allowed to begin with, as well as what relevant cases already exist. In the context of the EU, it is slightly more challenging as they would not only have to research a specific country's legislation, but EU legislation as well. Existing cases show that the EU will intervene if a case concerns EU citizenship rights.

¹⁰⁵ ECLI:EU:C:2010:104, CJEU, 2010, Case C-135/08 *Rottman v Freistaat Bayern*
Ramadan v Malta App no 76136/12 (ECtHR, 21 June 2016)

¹⁰⁶ ECLI:EU:C:2010:104, CJEU, 2010, Case C-135/08 *Rottman v Freistaat Bayern*
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