

EU citizenship: Loss of Member State nationality

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Abstract

The European Union citizenship formally established by the Treaty on European Union 1992 is the legal status of every person who has the citizenship of a Member State. The EU citizenship is not just a concept but enables all citizens of European Union member states to enjoy a range of exceptional economic and political rights.

The term "European citizenship" is perceived as a condition by which people from different nations should have similar rights to be asserted vis-à-vis the European public courts and public officials. In fact, this conception of citizenship has large been accomplished within the European Union and this is a major achievement which should not be belittled.

Following the difficulties faced by EU citizens in exercising their right to free movement and residence in 1992, the ECJ ruled that national governments had the right to exercise their competence in determining of acquisition and loss of nationality with due regard to the requirements of Community law. In the case of loss of EU citizenship this is complicated as every citizen of a member state also holds European Union citizenship.

Throughout this paper I examine the ways and causes that lead to the loss of nationality of the Member States and the relationship with the broad conception of European citizenship.

Keywords: Eu Citizenship – Nationality – Member States – Loss – Deprivation.

Introduction

In order to deal with the cases of loss of citizenship in the European Union and to have a clear picture of the phenomenon and its distribution in the territory of the Union, I will first conduct a statistical analysis and present them with the appropriate graphs. The main source of statistical data on which I have based my findings and conclusions on the loss of nationality is the Eurostat Database published on the official website and other statistical data obtained directly from national sources, especially from national statistical offices and the relevant government ministry in charge of citizenship issues. In most cases the statistical data collected and published by the National Departments responsible for citizenship issues in the Member States remain limited. This lack of public data is due to two main reasons: Firstly, for a number of Member States, Eurostat provides some statistical data on the loss of nationality, but these data have not been made available to the public by national authorities, as in the case of Ireland, Greece, Poland, Slovenia and Sweden. Statistical data on the loss of nationality from national sources were also not found in Denmark, Ireland, Romania and Slovakia. Secondly, and most important, is the lack of statistical indicators for the loss of nationality in a significant part of the Member States. Specifically, for Austria, Cyprus, the Czech Republic, Germany, Italy, Malta, Portugal and Spain no information was found either through national sources or those of Eurostat.¹

¹Maarten P. Vink and Ngo Chun Luk, "Mapping Statistics on Loss of Nationality in the EU: A New Online

The data from the Eurostat database cover the period 2008-2017.² Seventeen Member States have reported statistics on nationality loss to Eurostat although only nine Member States have reported statistics for the last ten years.

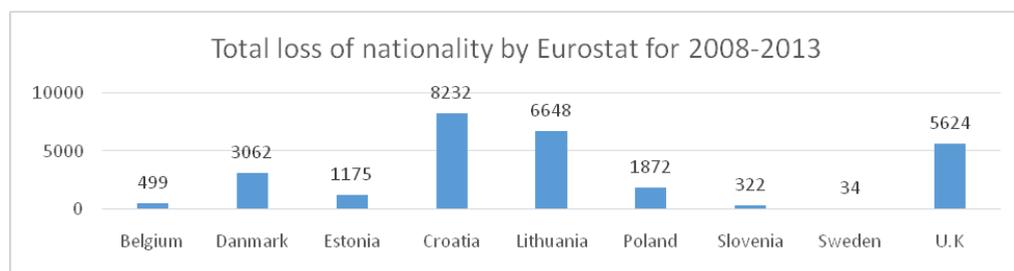


Figure 1 summarizes the graphical data from these Member States.

Data source: Eurostat. Graph built by me

As shown in Graph 1, the Member States with the highest number of nationality losses are Croatia, Lithuania and the United Kingdom³. The data reported to Eurostat by these countries are fully consistent with the data publications of national institutions published in the country. In the Croatian state these losses of nationalities come as a result of the voluntary loss of nationality by their citizens as a result of the acquisition of another citizenship (mainly of the Member States) or states of ethnic affiliation (mainly Serbian). The same factors affect the situation of loss of citizenship in the Lithuanian state. But, in the database in which state there is a considerable figure of involuntary loss of nationality. In the United Kingdom the causes of loss of nationality are linked on a voluntary basis but a large number of cases are related to the lack of connection to British territory. Information due to rejection is not provided. Reports indicate that although in small numbers, the causes of deprivation of British citizenship are linked to reasons of terrorism and disturbance of public order.

Loss of nationality can put a person in a "legal vacuum"⁴ regarding the fundamental freedoms and social rights guaranteed by national and international legislation. The ways and reasons in which persons may lose the citizenship of the Member States adhere to various procedures which in most cases are not fully apparent. Conceptually, the loss of nationality depends heavily on normative premises and is supported on a voluntary and involuntary basis.

Voluntary loss of nationality usually occurs when a person acquires a citizenship of another state and this act is expressly manifested through a voluntary and conscious statement or request in which the person expresses his will that he no longer wishes to be a citizen of the state in word. Given the voluntary nature of this way of losing

Database "Liberty and Security in Europe Papers, No. 76/December 2014, pp 3-5.

² https://ec.europa.eu/eurostat/en/web/products-datasets/-/MIGR_ICT

³ I include the U.K in this argument as part of the European Union just for the fact that in the data reference it was still a Member State.

⁴ Molnár, Tamás (2015) *The Prohibition of Arbitrary Deprivation of Nationality under International Law and EU Law: New Perspectives*. In: Hungarian Yearbook of International Law and European Law 2014. Eleven International Publishing, Portland, pp. 67-92.

citizenship, the Member State does not present any problems from the point of view of the legal and social rights of EU citizens. It should be added that the initiative of voluntary loss of citizenship by the person is not always enough to bring the desired result. Specifically, we can distinguish two procedures for loss of citizenship by Declaration or Release. We can bring these two procedures into analogy with the difference between naturalization by declaration or by measured administrative decision. In the first case the person has the sole power to bring about the loss while in the second case the government must agree to a request for the citizen to be released. To date, there is no European case law connected to the voluntary renunciation of nationality, so in this study in my analysis I will focus more on the involuntary loss of nationality.

First it is important to make some terminological definitions of the notions to be mentioned.

The revocation of citizenship is among the harshest procedures of all these divisive measures in that it places the person outside the protections bestowed by the membership of a state. The term "deprivation" means all forms of loss of citizenship or nationality involuntarily and does not include any form of loss of citizenship voluntarily claimed by the person concerned.⁵ The notions of denaturalization and denationalization can be considered as synonymous with it.⁶ Denaturalization refers to the subset of cases where denationalization provisions aim to reverse a acquisition of citizenship through naturalization rather than through the right of birth. In case of denationalization, the affected persons become non-citizens in relation to the state that deprived them of their citizenship. In this case they become foreigners in their home country by acquiring citizenship of another state or in the worst case the person becomes a stateless citizen. The term "withdrawal" can be used as a more specific form referring to the state action for obtaining deprivation status. In the case of arbitrary loss *ex lege*, for which we use the term "automatic loss", denaturalization has occurred automatically with the application of the law, but nevertheless its status has not been actively withdrawn by a decision of state or judicial authorities.

The procedure for automatic loss of citizenship in the Member States is different. In Belgium and Denmark, it is possible to automatically lose the relevant Belgian or Danish citizenship if a person who was born outside the territory of the states and has no further residence in Belgium or Denmark before the age of 22 years. In France or Hungary the automatic loss of citizenship does not exist as a phenomenon. In the Netherlands there is a similar possibility of automatic loss for a person holding a dual citizenship and having lived outside Dutch territory for more than 10 years.

Another form of loss of citizenship of the Member States is the "active" withdrawal of citizenship by decree, court decision or other formal action. Research on European citizenship reveals that for an active withdrawal of nationality there is a general common practice for Member States: the main reasons for an active withdrawal of citizenship are fraudulent conduct while acquiring citizenship, or committing some

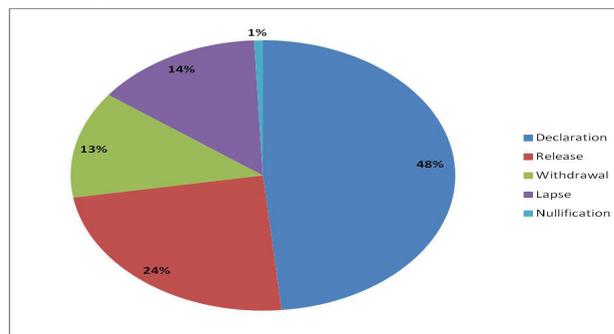
⁵R. Bauböck& S. Paskalev (2015) Citizenship Deprivation: A Normative Analysis, CEPS Paper in Liberty and Security in Europe 82, pp. 1-37, <http://www.ceps.eu/publications/citizenship-deprivation-normative-analysis>.

⁶Bauböck, R., &Paskalev, V. (2015). Cutting genuine links: a normative analysis of citizenship deprivation. Georgetown Immigration Law Journal, vol 43:47 pp 53-60

serious crimes, such as terrorism. This subsequent issue is subject to heated debate and various legislative proposals in Belgium, France and the Netherlands and could have a significant impact on EU émigrés and their children, as this could lead to the loss of citizenship status. of the EU. It is worth noting that in the Netherlands, the withdrawal of citizenship for reasons of fraud has a retroactive effect. This may create a particular problem as the Dutch citizenship of the person in question (together with the citizenship of his children) may be considered to have never existed even when the cases of withdrawal may be accompanied by a state of statelessness.

The last form of deprivation is nullification which is used almost exclusively in cases where the purchase is seen as flawed but which is not the dominant procedure for this loss basis. Most European countries use citizenship withdrawal procedures. Revocation often means that citizenship is retroactively invalid (*ex tunc*), but can also take effect only (*ex nunc*) if the state does not deny that the acquisition of citizenship had legal effect even when the purchase was defective. Defective acquisition can occur for a variety of reasons, including mistakes made by the authorities granting citizenship, mistakes made by the person acquiring citizenship (or other persons, such as parents and spouses, applying for citizenship on behalf of the person conditions or procedures by the person acquiring citizenship or others acting on his behalf).

It is important to note that in all Member States the rules on loss of nationality apply in the same way as for EU citizens and third-country nationals.



The data in Graph 2 shows the procedures by which the loss of nationality was carried out in all Member States of the Union for the period (1985-2013). It is noted that in the same reference period, the number of voluntary citizenship losses constitutes 72% of the total nationality loss registered in the

Member States. In this situation monitoring the number of involuntary nationality losses becomes even more difficult, especially where the loss has become *ex lege*.⁷

Another important step in conceptual analysis is to identify the grounds for the involuntary loss of citizenship. According to researchers G. Groot and M.Vink⁸ a European citizen deserves protection through binding principles such as proportionality, effective remedies and legitimate expectations. Within the rules for involuntary loss of nationality, five basic categories can be distinguished on the basis of which nationality can be lost:

a) Absence of a genuine link between the citizen and the state, b) Undesirable behavior of the person towards the state, mainly terrorist activities or military character, c) Fraudulent acquisition when the nationality has been acquired through fraud or similar acts, d) loss of nationality from the breakdown of a family relationship if it has been the basis for its acquisition, e) Loss of the nationality

⁷ Ibid.

⁸ Gerard-René de Groot and Maarten Vink (2014), "Involuntary Loss of Nationality", CEPS Paper in Liberty and Security in Europe No. 73, CEPS, Brussels.

of parents in some cases causes the loss of nationality in minor children.

I will give two illustrative examples of the loss of citizenship by member states of the Court of Justice that put into practice what was said above about the loss of nationality.

The situations covered by EU law have included the type of scenario that arose in the case of *Mr. Rottmann*,⁹ an Austrian citizen, enjoys the freedom of movement he enjoys as a European citizen and goes to live in Germany. After a few years he obtained German citizenship through fraud, failing to inform the authorities that he was the subject of possible criminal proceedings in Austria. At the same time he loses Austrian citizenship given the prohibition of dual citizenship provided by Austrian law. Meanwhile, in the Austrian state on behalf of *Mr. Rottmann* had opened a criminal case, which the citizen did not communicate to the German authorities in the completed form for obtaining German citizenship. In these circumstances, the German authorities decide to revoke the naturalization measure. *Mr. Rottmann* addressed the German administrative judge arguing that revoking German citizenship would create statelessness and also deprive him of European citizenship. The ECJ made it clear that measures to withdraw a citizenship and deprive a person of their EU citizenship required national courts to verify whether state decisions on revocation of nationality were proportionate and in order to comply with the requirements of EU law. In drawing this conclusion, the Court referenced the early case of *Grzelczyk* where it stated that citizenship of the Union is intended to be the fundamental status of nationals of the member states. In general, though, the Court indicated that withdrawal of citizenship on grounds of fraud during the process of naturalization expresses a legitimate state interest. It declined to rule on the question of what, if any, measures Austria should take if *Mr. Rottmann* sought to recover his original nationality.

Another case that the CJEU decision has directly intervened in the field of citizenship law is the *Tjebbes*¹⁰ case which provided for the automatic loss of citizenship for Dutch citizens who were residents outside the Netherlands abroad for more than ten years. A further provision provided that the children of non-naturalized individuals under the ten-year rule would also lose their Dutch citizenship. As can be seen in this case as well, EU citizenship cannot provide a counterbalance to the lack of recognition of dual nationality under Dutch law, which currently reduces the opportunities available to Dutch migrant citizens, mainly with dual citizenship.

In general, the interaction of national, international and EU legal systems will serve as a basis for the recognition of national citizenship at EU level. International and European Treaties were created to prevent the involuntary loss of citizenship and especially the prevention of statelessness, as this way of losing is quite dangerous for the citizen. The international law takes on an imperative character for the Union because even its founding Treaties have been signed in accordance with international treaty legislation.

The first and most important standard in international law for the loss of citizenship is sanctioned in Article 15 of the Universal Declaration of Human Rights 1948 which

⁹ Case C-135/08.

¹⁰ Case C-221/17.

codifies “nationality” as a human fundamental right: Everyone has the right to a nationality and no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. However, the Universal Declaration is not an international treaty and therefore is not directly binding on the Member States of the United Nations who still find justifies in limiting the loss of their nationality although, scholars of international law acknowledge that a number of provisions of the Universal Declaration have acquired the status of customary international law.

The universal definition of who qualifies as a “stateless person” is accepted as ordinary international law and is also important for the purpose of implementing the 1961 Convention on the Reduction of Statelessness to which eighteen Member States of the European Union are party. of this Convention. However, the European Union made a formal promise in September 2012 that all Member States would consider ratifying it.¹¹ The object and purpose of the Convention is not the complete elimination of statelessness but the reduction of cases of statelessness at birth and the causes of statelessness by the automatic (*ex lege*) loss of nationality or by the withdrawal or deprivation of nationality. The principles governing the withdrawal of nationality are set out in Articles 5 to 9 of the Convention which list a number of situations in which the loss and deprivation of nationality usually occur and serve a legitimate purpose. For each type of citizenship withdrawal it specifies how States should seek to avoid statelessness. For example Article 5 aims to prevent statelessness resulting from the loss of nationality associated with a change in personal status¹², while Article 6 deals with the situation where the deprivation or loss of citizenship of the person is accompanied by the loss of nationality of the spouse or dependent children.¹³ Of importance are Articles 7 (6) and 8 (1) of the Convention” which contain a general prohibition against loss and deprivation of nationality if such a loss would produce statelessness , notwithstanding such a loss not expressly prohibited by any other provision of this Convention.

In the light of this international framework, the “European Convention on Nationality” has been drafted and adopted where some of its provisions address the avoidance or reduction of cases of statelessness. Not all EU Member States are bound by this Convention. So far, twelve of them are members¹⁴, while seven other member states have signed the European Convention on Nationality but have not yet ratified it.

The Article 4 (a) - (c) of the Convention reiterates the message of Article 15 of the UDHR where the rules on the nationality of each State Party will be based on the following principles: a) everyone has the right to a nationality. b) Statelessness will be avoided. c) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

The European Convention on Nationality summaries this international legal framework and includes rules on loss of nationality and on procedural matters.

¹¹ See the Verbal Note of the European Union Delegation to the United Nations on 19 September 2012. <https://www.un.org/ruleoflaw/files/Pledges%20by%20the%20European%20Union.pdf>.

¹² This includes marriage, termination of marriage, legitimation, recognition or adoption.

¹³ such loss is conditional on the possession or acquisition of another citizenship.

¹⁴ Austria, Bulgaria, Czech Republic, Denmark, Finland, Germany, Hungary, the Netherlands, Portugal, Romania, Slovakia and Sweden. See, www.conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=166&CM=1&DF=07/02/2012&CL=ENG.

Very important is the fact that Articles 7 and 8 of it provide a comprehensive list of acceptable prevention reasons for losing of nationality at the initiative of the individual. Furthermore, Article 7 (3) asserts that the basis for the loss may not give rise to statelessness, except in the case of Article 7 (1) (b): relevant facts related to the applicant. This restriction significantly reduces cases of statelessness. The grounds referred to in Articles 7 (4) and (5) of the 1961 Convention, which may give rise to statelessness, may not apply to the European Convention on Nationality. Article 8 specifies that “(1) Each State Party shall permit the renunciation of its nationality provided the persons concerned do not thereby become stateless. (2) However, a State Party may provide in its internal law that renunciation may be effected only by nationals who are habitually resident abroad.”

Furthermore, it emphasizes that statelessness in the event of loss of citizenship is exclusively acceptable in the event of fraudulent acquisition. Articles 11 and 12 of the European Convention on Nationality state that all decisions in matters of nationality must provide reasons and must be challenged in court. These principles are of particular importance in cases of loss. To summarize, no specific reference to statelessness has been made under the Charter of Fundamental Rights of the European Union.¹⁵

The first reference to stateless persons in the context of the main sources of EU law was introduced with the adoption of the Lisbon Treaty. In particular, unlike previous treaties, the community legislator has paid special attention to the choice of the specific basis of the Treaty for the identification and protection of stateless persons and the treatment of this category of citizens.

The first paragraph of this provision which opens Title V of the TFEU (Area of Freedom, Security and Justice) states that “The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States”. Establishing a balance between the two principles set out in this paragraph of the article seems difficult especially in the area of rights and status of aliens. This difficulty is manifested by the divergence between the need for common EU rules and standards and the different characteristics in national legal systems.

These are particularly divergent in terms of the rights and status of aliens. Also, Article 67 (2) TFEU, second paragraph, adds that the Union “It shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals. For the purpose of this Title, stateless persons shall be treated as third-country nationals”.

It is clear that this paragraph summarizes the most important governing principles of European law towards third-country nationals such as interstate solidarity and fair treatment, although their content remains undefined.

With this assimilation made by the TFBE, it can be considered a very important step towards creating a legal framework on statelessness. So far the community legislator has addressed statelessness only indirectly based on the *acquis communautaire* in the field of asylum and immigration legislation or on the observance and guarantee of

¹⁵ Alice Edwards and Laura Van Waas “Nationality and Statelessness under International Law”. 2014.

fundamental rights.

The two components of paragraphs of Article 67 of the TFEU show a tension in defining the status of aliens in the EU: respect for fundamental rights, respect for national differences and the notion of “fair treatment”. The latter shows the obvious difference from the rule of “equal treatment” which applies only to EU citizens.¹⁶

The principle of equal treatment and the European Social Charter itself provides a preferential treatment for EU citizens over those who are not nationals of the Member States in this area. However, the principles of fair treatment of third-country nationals, considerations related to the integration of migrants and politico-economic factors often prevent governments from applying various rules regarding welfare access to non-EU citizens.

EU legislation does not explicitly regulate the access of third-country nationals to social benefits but requires fair treatment for workers and other persons from non-EU countries. This means that the basic rules for the integration of workers from EU countries into social security schemes also apply to nationals of non-Member States. However, individual member states are free to revoke residence permits if foreigners are not supported by social assistance.¹⁷

The protection and identification of stateless persons by EU legislation is done specifically. The normative content of the text of the Treaty reflects, among other things, the treatment of EU citizenship and protection conditions that arise before regular legislation on foreigners in the EU may be more limited to the TFEU -in. If we refer to the primary direction as those of entry and stay the role of acts adopted by the EU institutions to determine status and immigration in immigration policy is established. Article 78 TFEU regulates the procedure for adoption and legislation in a European Union Asylum Policy while Article 79 TFEU empowers the EU to issue a format in the other format of immigration to the EU. Pursuant to Article 79 of the TFEU, work directives have been adopted that refer to long-term resident residents, family reunification, the blue card is included in their scope of stateless persons.

However the permits used in enforcing the conditions to define EU law are of a constitutional nature and are not merely declarative as was the case with EU citizens. Not all stateless persons necessarily fall into one area and because of relevant recommendations. Furthermore, none of the guidelines adopted pursuant to Articles 78 and 79 of the TFEU meet the protection regimes that are specifically applicable to stateless persons. To this end, it is necessary to use legislative actors in combination with the fundamental rights guaranteed by the Charter and the fundamental direction of the European Union.

Regarding residence permits, statelessness requires approval on a special basis in this context. On the one hand, the purpose of a residence permit would be to provide protection for an individual who is vulnerable due to the lack of a nationality link to a state. On the other hand, stateless persons do not seek the same type of protection as asylum seekers, as no typical asylum problem related to persecution and non-

¹⁶ Sara Iglesias Sánchez, *Constitutional Identity and Integration: EU Citizenship and the Emergence of a Supranational Alienage Law*, Special Issue: Constitutional Identity in the Age of Global Migration Volume 18 - Issue 7 - 01 December 2017, pp 1800-1803.

¹⁷ *Immigration Policy and the Welfare System: A Report for the Fondazione Rodolfo De Benedetti*, Tito Boeri, ©Gordon Howard Hanson, ©Barry McCormick – 2002 p 46.

renewal is put at risk. In special cases where a stateless person also happens to be an asylum seeker, asylum considerations will form the basis for protection. Different Member States group statelessness-related procedures together with asylum-related procedures, while other states have the opposite approach. For example, the French state, stateless persons and asylum seekers are assisted by the same state authority. While the Dutch state, residence status originally intended for stateless persons is grouped together with the status of residence persons who have not sought asylum. The wording of both articles of the TFEU provides sufficient flexibility to serve as the basis for EU legislation on the identification and protection of stateless persons.¹⁸ It is worth noting the suggestion made by Molnar in considering a new alternative on another legal basis in relation to the treatment of stateless persons sanctioned in Article 67 (2) in conjunction with Article 352 TFEU. Article 352 of the TFEU, the so-called “flexibility clause”, allows the powers of the Union to be adopted to the powers laid down in the Treaty when the latter has not conferred the powers of action necessary to achieve it. It can be said that by mentioning stateless persons and equating their status with that of third-country nationals, the Treaty brings statelessness within the scope of its objectives, and unless any provision the Treaty specifically creates a competence to achieve of this objective, can be relied on in Article 352 TFEU.¹⁹ However, Article 67 (2) can also be interpreted as reinforcing the compatibility of Articles 78 or 79 as the legal basis for legislation on the protection and identification of stateless persons. But if we refer to Article 79 of the TFEU which guarantees all the necessary powers I think it is unnecessary for the common policy on asylum, immigration and external border control to be based on Art. 352 TFEU. Referring to the lack of a clear legal basis in the Treaties and the close historical and legal links between refugee protection regimes and stateless persons, it can be argued that the development of a common immigration policy for stateless persons can be constructed in Article 78 TFEU.

Conclusions

Some of the losses of EU citizenship can be critical because they fail to be argued on a minimum logical basis in the context of the interaction between EU legislation and national legislation. In fact, the legal order of the Member States is characterized by a variety of legal bases related to matters of acquisition or loss of nationality. Relationships between them are sometimes prone to complete inconsistencies and can often create gaps in some of the rights of citizens who decide to naturalize in another Member State. In its approach, the Court stated that disputes between Member States and the EU would be resolved only by reference to the laws of the Member States and that national decisions on the granting of citizenship should pay due attention to the definition of EU legislation. Should not be forgotten that the citizenship of the Union is complementary to, but does not replace, national citizenship.

If both legal citizenship statuses remain “autonomous” and as long as EU citizenship

¹⁸ Katja Swider “Protection and Identification of Stateless Persons Through EU Law”. Amsterdam Law School Research Paper No. 2014-38 p14.

¹⁹ T. Molnar ‘Moving Statelessness Forward on the International Agenda’, *Tilburg Law Review* 19 (2014) p. 198.

does not have a significant impact on the citizenship of the Member States, they will not pose a significant problem in the proceedings as a whole. On the contrary where one status would be the derivative of another then clash is inevitable.

Another important shortcoming is the presence of states that have not ratified the above mentioned conventions, which forces the *Court of Justice of the European Union* to find it difficult to interpret and uphold its jurisprudence in the face of the legal norms of international law invoked by the Member State in defense of policy which has potentially detrimental effects on the European Union project as well.

Of course, citizenship issues fall entirely within the sovereignty of the Member States, but the presence of this difference between Member States, especially when it leads to the constitution of the same legal status as EU citizenship, which proves that the path to European integration in harmonization full legislation on citizenship issues is still long.

These inconsistencies affect negatively the lives of many EU citizens, who face random and complicated rules in the field of nationality of the Member States.

Citizenship of the Union must be the basic status of nationals of the Member States. If we refer to the *Tjebbes* case it is really paradoxical to think that not timely renewal of an identification document before its expiry date constitutes the main cause of the loss of European citizenship. This shows once again the fragility of European citizenship status

It is true that Member States have exclusive legislative competence and set limits on the acquisition and loss of their citizenship. I think that the only boundaries that Member States must respect should not be state administrative boundaries but the boundaries of respect for fundamental human rights which should not be violated.

It is paradoxical and unacceptable for a European Union citizen to convert to a third country national or at worst create statelessness and face his or her family with immigration policies remains unjustified.