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Protecting an Individual from Deprivation of Citizenship of the Union

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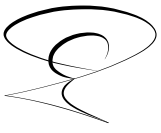
GEORGIO PODIEBRADENSI REGI BOHEMIAE
ET
IARAE CIMRMANO INGENIO BOHEMIAE

DUOBUS MAXIMIS BOHEMICIS EUROPAEIS



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Content

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Introduction

At the turn of the first and second decade of our century, by that time, an Estonian national was enjoying, as a citizen of the Union,[1] freedoms and rights which flowed for her from the European Union legal order. Nonetheless, she could not have even presumed that one day she would be deprived of these rights and freedoms as a result of the loss of her citizenship of the Union.[2] All necessary for that was only an intention to be fully integrated into the society of a host Member State by application for and acceptance of its nationality. Yet the host Member State was Austria, which, unfortunately for the Estonian national concerned, has been a party to the Convention on the Reduction of Cases of Multiple Nationality;[3] wherefore, Austria does not allow their nationals to hold dual or multiple nationalities and, at the same time, does not grant its nationality to nationals of another state.[4] The Estonian national at issue persisted in her intention to become an Austrian national; hence, she applied for the nationality of Austria. The competent public authority gave her an assurance that she would be granted the Austrian nationality under the condition that she would submit that she had renounced the nationality of Estonia first.

Her choice was none but to comply with the law. Having followed the required procedure, she relinquished her prior Estonian nationality, provided confirmation of that to the competent public authority, and was waiting for the new nationality—of Austria to be granted to her. Nevertheless, for she committed administrative offences, the competent authority revoked the decision of assurance and rejected her application for Austrian nationality.[5] All of a sudden,

1 Hereinbelow referred to as 'Union citizen' also.
2 Hereinbelow referred to as 'Union citizenship' also.
3 Case C-118/20 *Wiener Landesregierung* [2021] EU:C:2022:34, Opinion of AG Szpunar, paragraphs 5-6.
4 § 10 (3) des Staatsbürgerschaftsgesetz, BGBl Nr 311/1985.
5 Case C-118/20 *Wiener Landesregierung* [2021] EU:C:2022:34, Opinion of AG Szpunar, paragraphs 18-22.

the once-Estonian national became a stateless person without a majority of the freedoms and rights, which she had enjoyed before. One might wonder how this person, who had utilised and enjoyed her freedoms and rights ensured by European Union law and, primarily, had no intention to renounce her citizenship of the Union voluntarily,[6] could be deprived of all of that only on the basis of the decision of the Member State not to grant her promised nationality.

In this master's thesis, the author constructs research upon a premise that a citizen of the Union should be provided protection—against an involuntary deprivation of his or her Union citizenship unreservedly by a Member State—either through the factual relation between a Union citizen and the European Union or through the legal relation between the same subjects. The author subsequently defines the factual relation as a mutual societal attachment and shared political interests, which mirrors the principle of the genuine link. Whilst the legal relation is depicted as an autonomous legal form and nonvicarious legal content, which reflects in the author's developed concept of the *direct bond*. It must be emphasised that the author deliberately distinguishes between factual relation and legal relation on the one hand, and factual relationship and legal relationship on the other. The term *relation* refers to a qualified connection between two subjects, and which either exists or not with no gradual scale in-between. In contrast, the term *relationship* is utilised as every ordinary connection between two subjects, and which may have different ranges of quality. Whence it follows that, since the European Union and citizens of the Union exist, the factual relationship and the legal relationship exist by the very nature of things. Nevertheless, the question is whether these relationships are of such quality that they give rise to the *factual relation* in the form of the genuine link or the *legal relation* in the form of the direct bond. With the kindest regards, the reader should bear that distinction in his or her mind also.

The premise materialises in the following reasoning. Suppose that the factual relationship between the European Union and a Union citizen is of the quality of the mutual societal attachment and shared political interests, which may thus be interpreted as that Union citizens do believe they are members of one shared *europaios demos*.[7] Such *europaios demos* would constitute and legitimise the

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[6] Case C-118/20 *Wiener Landesregierung* [2021] EU:C:2022:34, paragraph 36.

[7] Regarding the believe, D. Miller proposes an argument for the rationale behind the nationality as 'a nationality exists when its members believe that it does'. That author liken this conception

European Union directly.[8] In that case, the author is of the opinion that such factual relation in the form of the genuine link could not be dissolved by any Member State as this factual relation would be of a straight nature. Applying the same logic, if the legal relationship of Union citizenship is of quality of the true autonomous form and nonvicarious content, the author dares to claim that such legal relation as the direct bond could not be severed by any action of any Member State by the very virtue of the autonomy and nonvicariousness. The Estonian national would, in such a case, lose the nationality of a Member State but not citizenship of the Union. Thus, the central research question is whether the essence of Union citizenship is the factual relation in the form of the genuine link, and whether the essence is the legal relation in the form of the subsequently developed concept of the direct bond.

This master's thesis is divided into four main chapters. Chapter 1 provides the reader with fairly contextual and chronological research on the historical development of citizenship of the Union. Since the vast majority of scholarly research and writings have hitherto focused on the evolution of the content of Union citizenship—rights, the author deliberately emphasises on the history of the form, the status of citizenship of the Union to bring a rather new and coherent perspective. The research is partitioned by major milestones of the development in the form of the successively adopted treaties; wherefore, the chapter begins with the establishment of Union citizenship by the Treaty of Maastricht in 1993 and with problems attached to its enactment. It continues with the period of time after the Treaty of Amsterdam, which came into force in 1999. The third crucial milestone is consequently the era from the Constitution for Europe to the 'Reform Treaty', in this day and age known as the Treaty of Lisbon, which was in 2009. As no more treaties have been produced, the reins of the development have been left to the Court of Justice.[9] The entire evolution of the status of Union citizenship may be summarised in two subtitles—from derivativeness to complementarity to additionality—and—'from workers to movers to citizens'.[10] As for the

to *demos*; ergo, he would paraphrase as 'a demos exists when its members believe that it does'. To that effect, see David Miller, 'In Defence of Nationality' (1993) 10/1 Journal of Applied Philosophy 6 <www.jstor.org/stable/24353704> accessed 18th June 2023.

8 As other *demoi* directly constitute and legitimise entities in the form of states.

9 Hereinbelow also referred to as 'the Court'.

10 Willem Maas, 'The Origins, Evolution, and Political Objectives of EU Citizenship' (2014) German Law Journal 801 <http://doi.org/10.1017/S2071832200019155> accessed 17th June 2023.

methodology, this chapter stands mainly on the descriptive approach to the history of the status of Union citizenship, however, with numerous analytical conclusions based on them.

Chapter 2 is dedicated to the focal point of this master's thesis, ergo, to the essences of Union citizenship in the form of the genuine link or the direct bond. The first one to be assessed is the former, where, on the basis of the judgement of the International Court of Justice in Case Nottebohm, the author outlines a framework for the examination of the presence of the genuine link in citizenship of the Union. That develops two prerequisites to be able to claim that the factual relation in the form of the genuine link is the essence of Union citizenship, *id est*, the mutual societal attachment and shared political interests of the 'European people'. The second is the author's developed concept and theory of the direct bond, which finds its grounds in the ruling of the Nottebohm case also. The author introduces this theory standing on two elements, *id est*, the directness and the bond. The element of the directness comes into being with the existence of the nonvicarious content of citizenship—rights and duties that are nonvicarious by any other, secondary, entity; thus, it can exist without any intermediate subject. The element of the bond emerges with the existence of the autonomous form of citizenship. If these two elements are present together, such a legal relationship, as might Union citizenship be, would be of the quality to result in the legal relation in this form of the direct bond. Nonetheless, this assessment is subsequently conducted in the two following chapters. In terms of the methodology, in the first section devoted to the factual relation and the genuine link, the author analytically develops from the judgement in Case of Nottebohm the framework for the assessment, which is subsequently grounded on the empirical data from the Eurobarometer. The second section, with the direct bond in the focal point, is built upon a legal-analytical approach, whereby the author constructs categories to examine two elements of the direct bond.

Chapter 3 is the one which examines the element of the bond; thus, whether it is bearable to claim that the legal character of the form, the status of Union citizenship is of the autonomous character. In the first section, the author describes the origin of the status of Union citizenship in the nationality of a Member State through an endemic concept of *ius tractum* developed by

D. Kochenov;[11] which means that, whether the Member State's nationality is acquired on the basis of *ius soli*, *ius sanguinis*, *ius doni* or of any other *ius*, citizenship of the Union is always acquired derivatively through *ius tractum*. In the second section, it is proceeded to the assessment of the legal relationship of Union citizenship from the perspective of the postulates of the normative legal theory, primarily from the point of view of H. Kelsen, and V. Knapp with A. Gerloch. The issues examined are the emergence, the sole existence, and the termination of Union citizenship and which of these may be considered autonomous.

Chapter 4 is the other which examines the element of the directness; thus, whether it is bearable to claim that the legal character of the content, rights of Union citizenship is of the nonvicarious character. In the first section, the author focuses on the question of whether rights can accrue to individuals from any entity distinct from the 'nation-state' regardless of vicariousness or nonvicariousness. And in the second section, the attention is paid solely to political rights granted to Union citizens, and to what extent it is imaginable to assume them nonvicarious. Regarding the methodology, Chapter 3 and Chapter 4 examine the matter at issue *de lege lata* on the basis of the postulates of the normative legal theory in the case of the former, and by virtue of the normative approach to the rights of Union citizens in the case of the latter.

Last but not least stands Conclusion, where the reader may find the answer to the central research question and the outcomes which derive from that.

[11] Dimitry Kochenov, 'Ius Tractum of Many Faces: European Citizenship and the Difficult Relationship between Status and Rights' (2009) 15/2 Columbia Journal of European Law 181 <https://ssrn.com/abstract=1352734> accessed 17th June 2023.

1. Status of Union Citizenship: Historical Perspective

In this chapter, the author provides a fairly contextual background of the historical development of Union citizenship—from the very first mention in *acquis communautaire* until recent changes in approach towards it. Given that there has already been a plethora of scholarly research and writings on the evolution of the content[12] of Union citizenship elaborated,[13] this chapter is hence rather focused on an assessment from the perspective of its form and on demonstrating its existence and relevance through historical research. The objective of this chapter is thus to provide the reader with a chronological context of the development of citizenship of the Union from the perspective of its form, of its status.

The pre-legal and political discussions prior to the Treaty of Maastricht are nonetheless deliberately omitted in the following subchapters since this master's thesis is oriented rather towards legal aspects of citizenship of the Union and its consequences. In spite of that intention, it must be stated, at least concisely, that an idea of a common status of and for all Europeans had come a long way in its development before it was materialised in the institute of Union citizenship. Should the profoundly historical debates and proposals not be taken into consideration, the first relevant propositions began appearing amongst the professional public in the late 1960s.[14] The 1970s were subsequently determined regarding Union citizenship by reports brought up by Belgian politician

[12] For the sake of argument, the content has been interpreted as consisting of a set of rights and duties, as is ordinarily said; nevertheless, in spite of the wording of Article 20(2) TFEU, which enshrined that '[c]itizens of the Union […] be subject to the duties provided for in the Treaties', explicit duties of citizens towards the Union cannot be found anywhere else in Union primary law. M. Svobodová attributes that to the political reasons for trying to depict Union citizenship as a 'bonus' which confers rights but does not place duties. To that effect, see Magdaléna Svobodová, *Občanství Evropské Unie* (Auditorium 2021) 81.

[13] For the general perspective, see Chapter 3 in Magdaléna Svobodová, *Občanství Evropské Unie* (Auditorium 2021); from the angle of political rights, see Jo Shaw, *Transformation of Citizenship in the European Union. Electoral Rights and the Restructuring of Political Space* (Cambridge University Press 2007); for the perspective of the free movement, see Willem Maas, 'Free Movement and the Difference that Citizenship Makes' in Antonio Varsori and Elena Calandri and Simone Paoli (eds), *Peoples and Borders: Seventy Years of Movement of Persons in Europe, to Europe, from Europe* (Baden-Baden: Nomos 2017) 91-108.

[14] For instance, Lionello Levi Sandri, the vice president of the European Commission, backed the free movement of workers over goods in order to support the emergence of European citizenship or a common European identity of 'pride and strength'. To that effect see, Lionello L Sandri, 'The Free Movement of Workers in the Countries of the European Economic Community' (Bulletin EC 6/61 1961) 5-6.

Leo Tindemans,[15] or Mario Scelba[16] as a response to the former. European citizenship itself emerged in legal documents, firstly in 1984, in the draft prepared by the European Parliament on the Treaty on European Union, also known as the Spinelli draft,[17] whereas actual citizenship was implemented eight years later.

1.1. Establishment of Union citizenship by Treaty of Maastricht

Citizenship of the Union was legally established only by the adoption of the Treaty of Maastricht—the Treaty on European Union, which came into force in 1993, as abovementioned, in the original phrasing:

> Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union.[18]

As it must be evident at first sight from the proposal, at that time, there were no explicit limits of derivativeness, complementarity, or additionality of Union citizenship in relation to the nationality of a Member State; yet, they have been eventually added later in history as a reaction to the resistance of some Member States against, from their point of view, more than deep and rapid European integration.

1.1.1. Denmark's Referendum and Consequent Rejection of Proposal

The first defiant amongst the Member States was Denmark, probably also due to being the first one who efforted to ratify the Treaty of Maastricht; nevertheless, as a result of the national referendum that ended with 50.7% voting 'no',[19] the ratification process of the Treaty was rejected. One of the reasons behind this backlash might have been of linguistics since the Danish legal order has typically

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15 See Leo Tindemans, 'Report on European Union' (Bulletin of the European Communities 1975) 26.

16 See Mario Scelba, 'Report on the granting of 'special rights' to the citizens of the European Community in implementation of the decision of the Paris Summit of December 1974' (Proceedings of the Round Table on 'Special rights and a charter of the rights of the citizens of the European Community' and related documents 1978) 81 <http://aei.pitt.edu/33761/1/A319.pdf> accessed 24th February 2023.

17 See Altiero Spinelli, 'Draft Treaty establishing the European Union' (Bulletin of the European Communities 1984) 11.

18 Treaty on European Union [1992] OJ C 191 TITLE II Article 8.

19 Willem Maas, 'European Union citizenship in retrospect and prospect' (2014) Routledge Handbook of Global Citizenship Studies 414.

utilised the word *indfødsret* for nationality and *borgerskab* for citizenship, yet the wording of Article 8 in Danish was not:

> **Unionsborgerskab** har enhver, der har **indfødsret** i en Medlemsstat;[20]

but:

> **Unionsborgerskab** har enhver, der er **statsborger** i en Medlemsstat.[21]

The dual utilisation of *borgerskab*, once in the sense of Union citizenship, another time of the Member State's nationality, could have been the cause for perceiving citizenship of the Union as a substitution to the nationality of a Member State and, as stated by G. de Groot: '[It] may perhaps partly explain the Danish fear that the creation of European citizenship could be the first step towards the decline of their own (Danish) nationality'.[22] Citizenship of the Union was therefore perceived as a 'dangerous supplement',[23] not only in Denmark but by national elites almost all-around the Union, which would or might eventually 'lead to a parallel Euro-nationality'.[24] An action was nonetheless taken, again, in Denmark, where the government and opposition parties drew up a memorandum of 'national compromise'[25]—'Denmark and the Treaty on European Union' thereby special provisions in terms of citizenship of the Union were requested.[26]

In the unilateral declaration, Denmark formulated that Union citizenship '[does] not in any way take the place of national citizenship. The question whether an individual possesses the nationality of a Member State will be settled solely by reference to the national law of the Member State concerned.'; [27] and that 'citizenship of the Union is a political and legal concept which is entirely different from the concept of citizenship within the meaning of the Constitution

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[20] Translation and the draft of the author how the Treaty in Danish would be phrased: 'Citizenship of the Union is held by anyone who possesses the nationality of a Member State'.

[21] Emphasis added and translated by the author: 'Citizenship of the Union is held by anyone who is a citizen of a Member State'. Treaty on European Union [1992] OJ C 191 TITLE II in Danish language.

[22] Gerard-René de Groot, 'Towards a European nationality law' (2004) 8/3 Electronic Journal of Comparative Law <https://doi.org/10.26481/spe.20031113gg> accessed 28th February 2023.

[23] Dora Kostakopoulou, *Citizenship, Identity, and Immigration in the European Union: Between Past and Future* (Manchester University Press 2001) 67.

[24] To that effect, see ibid 68.

[25] Willem Maas, 'European Union citizenship in retrospect and prospect' (2014) Routledge Handbook of Global Citizenship Studies 414.

[26] Aside from the defence policy, common currency, justice, and police affairs. To that effect, see ibid.

[27] 'Denmark and the Treaty on European Union' [1992] OJ C 348 Section A, Citizenship.

of the Kingdom of Denmark and of the Danish legal system. Nothing in the Treaty on European Union implies or foresees an undertaking to create a citizenship of the Union in the sense of citizenship of a nation-state. The question of Denmark participating in any such development does, therefore, not arise.'.[28] After the summit of the European leaders in Edinburgh, Denmark's demands for opt-out were noted in Protocol No 22 of the Treaty on EU, and the Declaration on nationality of a Member State[29] repeated that also. The second plebiscite consequently resulted in 56.7% in favour,[30] and the Treaty of Maastricht was ratified. Notwithstanding little difficulties of the French government with the enforcement of a constitutional amendment necessary to the implementation of Union citizenship and, hence, a tight victory in favour,[31] all other referenda and ratifications across the Union passed after all.[32]

1.1.2. Jurisprudence in Beginnings of Union Citizenship

On the other hand, a significant number of legal scholars[33] perceived citizenship of the Union only as a purely decorative icing on the Treaty which, in fact, did not add anything essential or new that had not existed before.[34] The reason behind this approach, amongst others, was that they viewed it only through the lens of the content of this institute—of every individual right that the Treaty enshrined[35]—rather than from the perspective of its form, which in the future

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28 Ibid Annex 3.

29 Treaty on European Union [1992] OJ C 191, Declaration on nationality of a Member State.

30 Palle Svensson, 'The Danish Yes to Maastricht and Edinburgh. The EC Referendum of May 1993' (1994) 17/1 Scandinavian Political Studies 75.

31 The primal problem for France emerged in the content of Union citizenship's rights, specifically in the right of Union citizens to vote in municipal and European elections in their state of residence because it would have required a constitutional amendment which, however, was supported by the president Mitterrand who saw great potential in European citizenship—not only for Europe but also for France as he discovered that this issue might cause a division of the opposition, which in the end happened. To that effect, see Willem Maas, *Creating European Citizens* (Rowman & Littlefield 2007) 50.

32 For a more detailed depiction of the history and evolution of the Treaty of Maastricht ratifications in each Member State, see ibid 52-59.

33 *Exempli gratia*, see Michelle Everson, Hans U. J. d'Oliveira, or Percy B. Lehning; for that purpose, see Dora Kostakopoulou, 'The Evolution of European Union Citizenship' (2008) University of Manchester School of Law Symposium <https://doi.org/10.1057/eps.2008.24> accessed 28th February 2023.

34 Except of the right to vote and to stand as a candidate at municipal elections and in elections to the European Parliament in the Member State in which he resides and the right to protection by the diplomatic or consular authorities.

35 At that time, the right to move and reside freely, the right to vote and to stand as a candidate at municipal elections and in elections to the European Parliament in the Member State in which he resides, the right to protection by the diplomatic or consular authorities, the right to

may be filled with an innovative essence as, at last, proved the Court of Justice many times in its case-law. Yet, their opinion was not incorrect without further as the nationals of the Member States had already possessed, before the constitution of Union citizenship, most of the rights in, according to E. Olsen, '*citizenship acquis*'[36] which might be defined as an organic and non-systematic set of rights, respectively, duties.[37] Like the first swallow of spring might have seemed Case of Martínez Sala,[38] which occurred at the end of the 1990s. The Court of Justice could begin to perform its fateful role as the engine of European integration with the strategy of gradual extension and widening of fields where principles of Union citizenship, hence, of Community and later Union law, apply as it is apparent in the following text.

Albeit citizenship of the Union had initially been defined without attributive limits, the Danish declarations, consequently, the result of the European Council in Birmingham in 1992—the Birmingham Declaration, which enshrined that 'citizenship of the Union brings […] citizens **additional** rights and protection **without** in any way **taking the place of** their **national citizenship**',[39] narrowed the interpretation of citizenship of the Union towards its derivative nature, which later resulted in the provisions of the Treaty of Amsterdam that limited this institution and partially imprisoned it in a cell of complementarity. In spite of these facts, the Treaty of Maastricht may be genuinely considered, as W. Maas remarked, the ''constitutional moment' that created European citizens',[40] whereby European integration was about to wander in a new direction.

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petition the European Parliament, and the right to apply to the Ombudsman. To that effect, see Treaty on European Union [1992] OJ C 191 TITLE II Article 8a-8d.

36 Espen DH Olsen, *Transnational Citizenship in the European Union: Past, Present, and Future* (Continuum 2012) 100.

37 Which in this day and age still exist in the context of the rights to good administration, of access to documents, to refer to the European Ombudsman, and to petition the European Parliament. In spite of that, these rights are mentioned at sections regarding citizenship of the Union, they are not exclusively devoted only to Union citizens. Wherefore, for others than Union citizens, it is of an organic nature. To that effect, see note 281 below.

38 In Case C-85/96 *Martínez Sala* [1998] ECLI:EU:C:1998:217, the Court of Justice took a stand that citizens of the Union can rely on their status of Union citizenship in cases of discrimination on the basis of nationality; therefore, the access to social benefits in a Member State must be equal and non-discriminatory both for Member State's nationals and for European citizens who reside there.

39 Emphasis added by the author. 'Birmingham Declaration' (1992) Annex I.

40 Willem Maas, *Creating European Citizens* (Rowman & Littlefield 2007) 45 based on Bruce Ackerman, *We the People, Volume 1: Foundations* (Harvard University Press 1991).

1.2. (Non-)Adjustment Brought up by Treaty of Amsterdam

The outcomes of the Birmingham Declaration and the resistance of the 'nation-states', especially the United Kingdom and Denmark, against deeper integration, if not federalisation, materialised indeed in the provision of the Treaty of Amsterdam,[41] which came into force in 1999, as follows:

> 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.[42]

1.2.1. Behind 'Complement and not Replace'

Although the wording of the article concerning citizenship of the Union was not revolutionary and was only augmented by the explicit 'complement and not replace' phrase, several proposals of the Member States before the Treaty of Amsterdam was enacted could be seen as ground-breaking if not even radical. Apart from extending rights,[43] all of which Portugal contained in its draft of a European Citizens Charter,[44] a peculiar idea appeared amongst the Liberal Forum, by that time an Austria's opposition party,[45] which proposed that Union citizenship was not supposed to be there only for nationals of the Member States but also for 'third-country nationals who had resided legally in the [European Union] for five years'.[46] Nevertheless, any of these notions did not approach the final text of the Treaty.

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41 Which amended the Treaty establishing the European Community, which later became the Treaty on the Functioning of the European Union.

42 Emphasis added by the author. Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts [1997] OJ C 340 PART ONE Article 17.

43 *Exempli gratia*, Ireland proposed 'a right to vote in referenda and non-municipal elections', and 'a right to petition the European Commission'; Italy and Austria suggested 'a right of association in European trade unions, and a right of education in at least one second language'; for this purpose, see Willem Maas, *Creating European Citizens* (Rowman & Littlefield 2007) 68.

44 Ibid 69. W. Mass cites C. Marinho here: 'To provide citizens a clear picture of the advantages and added value of European citizenship.'. For this purpose, see Clotilde Marinho, 'Portugal: Preserving Equality and Solidarity among Member States' in Finn Laursen (ed), *The Amsterdam Treaty: National Preference Formation Interstate Bargaining and Outcome* (University Press of Southern Denmark 2002) 298.

45 Austria's opposition was not the only one who fought for the rights of third-country nationals; besides them, they were the Migrants' Forum, the Starting Line Group, the European Anti-Poverty Network and the European Women's Lobby; to that effect, see Dora Kostakopoulou, *Citizenship, Identity, and Immigration in the European Union: Between Past and Future* (Manchester University Press 2001) 75.

46 Willem Maas, *Creating European Citizens* (Rowman & Littlefield 2007) 68. W. Mass refers to C. Neuhold here; to that effect, see Christine Neuhold, 'Austria: Trailing Behind and Raising the

Ad the former information, the explicit usage of 'complement and not replace' may be explained by the national elites' fear of the decline of the good old 'nation-state' nationality, against which D. Kostakopoulou mentions that '[c]omplements normally add, they do not substitute'.[47] On the opposite side of those defenders of the *status quo* stood the European Parliament which attempted to assure that European citizenship had not been designed to replace the nationality of a Member State but instead to be an extension of the rights of every individual Member State national.[48]

1.2.2. Court of Justice's Interventions

In the period after the Treaty of Amsterdam was enacted, the Court of Justice made decisions in several cases that became more than fundamental for citizenship of the Union. In the first place, it would be appropriate to remember Case of Grzelczyk,[49] whereby Union citizenship began to head towards a status which was no longer mainly economic-based—derived primarily from the cross-border economic movement, but rather towards a true status of citizenship, which '[strengthened] the rights of non-active economic actors'[50] also. W. Maas evaluated this development with a gloss: 'from workers to movers to citizens',[51] as a central idea behind the Court of Justice's case-law; nonetheless, Union citizenship reached only the notional second stage in this era. The concept of the prohibition of discrimination on the basis of nationality, which had already been presented in Case of Martínez Sala, was in this case explicitly enhanced as

Flag' in Finn Laursen (ed), *The Amsterdam Treaty: National Preference Formation Interstate Bargaining and Outcome* (University Press of Southern Denmark 2002) 34.

47 Dora Kostakopoulou, *Citizenship, Identity, and Immigration in the European Union: Between Past and Future* (Manchester University Press 2001) 68.

48 'Union citizenship is by its nature a dynamic institution, a key to the process of European integration, and expected gradually to supplement and extend the rights conferred by nationality of a Member State, while not replacing national citizenship.' To that effect, see Resolution on the second Commission report on citizenship of the Union (COM(97)0230–C4-0291/97) [1998] OJ C 226 61.

49 In Case C-184/99 *Grzelczyk* [2001] ECLI:EU:C:2001:458, the Court of Justice decided about the rights of a French national who studied in Belgium. During his first three years, he financed his studies by taking several minor jobs; however, in the fourth year, he started to experience economic difficulties. In order to face that, he applied to the CPAS for the *minimex* (minimum allowance). Although the CPAS granted him the *minimex*, the decision was eventually upheld as an involved minister decided that Mr Grzelczyk was not entitled to that allowance since he was not a Belgian national or an economic-active person; by that time, he was not employed any more.

50 Dora Kostakopoulou, 'The Evolution of European Union Citizenship' (2008) University of Manchester School of Law Symposium 290.

51 Willem Maas, 'The Origins, Evolution, and Political Objectives of EU Citizenship' (2014) German Law Journal 797.

follows: 'Union citizenship is destined to be the fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality […].'.[52] This provision can be found in various following judgements, *exempli gratia*, Case of Baumbast and R[53] and Case of Rottmann;[54] the word 'destined' was eventually replaced by 'intended' in this case;[55] wherefore, it became a cornerstone for future case-law of the Court. European Union's intervention into the area of nationality and citizenship, which had historically been a prerogative of sovereign states, through the Court of Justice has not terminated only with the declaration of the nature of the 'fundamental status' of Union citizenship, but it continued in the proclamation of Member States' actions concerning acquisition and loss of the nationality of a Member State to fall within the scope *ratione materiae* of Union law as it did for the very first time in Case of Rottmann.

Case of Rottmann[56] was one of the cases from the long series before the Court of Justice related to the matter of dual nationality and, especially for this master's thesis, of deprivation of the nationality of a Member State and Union citizenship, respectively. For a decision at issue, the relevant interpretive aspect was through the wording of the Declaration on nationality of a Member State, which says: '[T]he question whether an individual possesses the nationality of a Member State shall be settled solely by reference to the national law of the Member State concerned.'.[57] The national courts decided primarily on the deprivation of the nationality of a Member State; nonetheless, the question of Union citizenship appeared at stake also since—if Rottmann had been deprived of the Member

[52] Case C-184/99 *Grzelczyk* [2001] ECLI:EU:C:2001:458, paragraph 31.
[53] See Case C-413/99 *Baumbast and R* [2002] ECLI:EU:C:2002:493, paragraph 82.
[54] See Case C-135/08 *Rottmann* [2010] ECLI:EU:C:2010:104, paragraph 43.
[55] The plot behind this change could be, according to H. d'Oliveira, that '[i]t may have indicated a shift from [the Court of Justice's] own vision ('destined') to deference to the vision of the lawmakers ('intended').'. To that effect, see Hans UJ d'Oliveira 'Union Citizenship and Beyond' in Nathan Cambien and Dimitry Kochenov and Elise Muir (eds.), *European Citizenship under Stress* (Brill | Nijhoff 2020) 41.
[56] In Case C-135/08 *Rottmann* [2010] ECLI:EU:C:2010:104, the Court of Justice pronounced judgement on the legal situation of Janko Rottmann, who had been originally an Austrian national. After the accession of Austria to the EU, Rottmann automatically acquired Union citizenship which he used for resettlement to Germany, where he subsequently, after a mandatory period of residence, applied for German nationality. As was abovementioned, Austria has been a party to the Convention on the Reduction of Cases of Multiple Nationality; hence, Rottmann lost his initial Austrian nationality right at the moment he acquired a German one. Nonetheless, he had omitted to indicate in the application that an Austrian court had conducted a criminal proceeding against him. As a result, the German authority decided to withdraw Rottmann's German nationality retroactively, whereby he was also deprived of his status of a Union citizen.
[57] Treaty on European Union [1992] OJ C 191, Declaration on nationality of a Member State.

State's nationality, he would have subsequently lost citizenship of the Union also. Ergo, the Court of Justice became involved through a preliminary ruling and could deliver judgement where it first assessed whether the situation at stake fell into the scope of Union law. Unlike the Advocate General, the Commission and intervening Member States, which found the loss of the Member State's nationality completely falling out of the ambit of European Union law;[58] the Court took a stance opposite, arguing that the eventuality of losing the status of Union citizen and consequently rights contained therein fell within the scope of Union law.[59] What was, on the one hand, peculiar and unexpectable but, on the other, crucial was the attitude of the Court towards the 'union element', which it did not find in a past cross-border movement, hence, in previous economic activity but rather in a potential future exercise of the rights.[60] The same approach was later followed by the Court in Case of Ruiz Zambrano.[61] The sole examination consisted principally of the test of proportionality, the assessment of which was nevertheless left to the Member States with 'due regard to Union law' to decide.[62]

1.3. From Ideals of Constitution for Europe to Treaty of Lisbon

Whilst the Court of Justice laboured on the demarcation of boundaries of Union citizenship, other actors of European integration participated in amending Treaties, primarily on the Constitution for Europe and, may the reader forgive the author for the spoiler, after the failure of ratifications, on the Treaty of Lisbon.

1.3.1. Constitution for Europe and New and Old Horizons

The Treaty establishing a Constitution for Europe was meant to, supposed to, and drafted to replace the old community law mysterium of several Treaties by providing one coherent basic law. Where in charge was the Convention on the Future of Europe presided by former French president Giscard d'Estaing, who,

58 Case C-135/08 *Rottmann* [2010] ECLI:EU:C:2010:104, paragraph 37.
59 Ibid 42.
60 Hanneke van Eijken, 'European Citizenship and the Competence of Member States to Grant and to Withdraw the Nationality of their Nationals' (2010) Utrecht Journal of International and European Law 69 <https://ssrn.com/abstract=1785589> accessed 5th March 2023.
61 See Case C-34/09 *Ruiz Zambrano* [2011] ECLI:EU:C:2011:124.
62 Case C-135/08 *Rottmann* [2010] ECLI:EU:C:2010:104, paragraph 55.

in his initial speech, called for *affectio societatis*[63] of European governments and citizens.[64] Moreover, the Commission found the crucial point of the Constitution in defining citizenship of the Union precisely and in giving it 'full meaning'[65] in order not to displace the nationality of a Member State but instead to strengthen it.[66] After all these demands,[67] it could not be wondered why the first draft of the Constitution enshrined Union citizenship more than revolutionarily, as follows:

> Every citizen of a Member State is a citizen of the Union; enjoys **dual citizenship**, national citizenship and European citizenship; and is free to use either, as he or she chooses; with the rights and duties attaching to each.[68]

At first sight, it is indeed apparent that the relationship between the nationality of a Member State, on the one side, and citizenship of the Union, on the other, would have been significantly reformed—from complementarity to an autonomous status, whereby the European Union would have headed in the direction of a true federal state same as others where citizens or nationals possess similar vertical-dual citizenships or nationalities. This transformation or renarrative would have undoubtedly been the most substantial step towards the idea of European federalism. With such a radical proposal, the backlash could not have been long-awaited; it occurred ultimately amongst the Danish Eurosceptic party, the member and MEP of which made a simile between the potential citizenship of the Union by virtue of the Constitution and citizenship of Bavaria—just as the German nationality takes precedence over Bavarian citizenship, so would Union citizenship take precedence over the nationality of a Member state.[69]

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63 *Affectio societatis*, as a French legal term, refers to the will of various subjects, natural or legal, to associate in order to share profits and expenses.

64 Willem Maas, *Creating European Citizens* (Rowman & Littlefield 2007) 83.

65 Commission of the European Communities, 'Communication from the Commission: A Project for the European Union' [2002] COM(2002) 247, 3

66 Ibid.

67 *Exempli gratia*, Representatives of the Committee of the Regions supported the approach of the Commission and suggested that citizenship of the Union should be materialised in rights in the newly enacted Charter of Fundamental Rights into primary law. The European Youth Convention, on top of that, proposed an introduction of EU passport same for all Member States. The Dutch government, paradoxically for the future 'no' in the referendum, suggested strengthening European competencies in the field of education in order to create and shape a genuine European identity. To that effect, see Willem Maas, *Creating European Citizens* (Rowman & Littlefield 2007) 83-85.

68 Emphasis added by the author. Preliminary draft Constitutional Treaty [2002] CONV 369/02 Article 5.

69 Willem Maas, *Creating European Citizens* (Rowman & Littlefield 2007). W. Mass cites that MEP here: 'EU citizenship can grow. National citizenship can be removed to the museums.' For this

The result was nothing more than a return to the original wording of the Treaty of Amsterdam without mentioning dual citizenship and with the explicit 'complement and not replace' phrase. Notwithstanding the concession by the pro-integration representatives in the Convention, the ratifications of the Treaty establishing a Constitution for Europe collapsed after two referenda, one in France and the other in the Netherlands.[70] Since, for the Treaty to enter into force, the approval of every Member State was needed, the Constitution has never been passed, and afterwards, the efforts were even abolished.[71] The place was, in the end, taken by the 'Reform Treaty'—the Treaty of Lisbon, which resolved the future development of European integration and Union citizenship.

1.3.2. Treaty of Lisbon as Plaster for Wounded Heart of Integration

The Treaty of Lisbon has brought on the basis of the Constitution for Europe a new rewording of the provisions regarding citizenship of the Union, thereby replacing 'complement but not replace' with 'be additional to and not replace'.

> 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 **be additional to** and **not replace** national citizenship.[72]

To observe nuances between complementarity and additionality, it is indispensable to dive into the preparational documents of the Constitution for Europe again, as the 'be additional to' phrase originated there. Between the refusal of the ground-breaking rewording of Union citizenship, as being of a dual character in relation to the Member State's nationality, mentioned hereinabove, and the retreat in the final text of the Constitution, the Convention formulated another version which comprised the 'be additional to' wording.[73] With respect

purpose, see Jens-Peter Bonde, 'Nation States Get Same Status as Bavaria!' *EU Observer* (5th November 2002).

70 The Federalist, 'France and Netherlands' Rejection of this Europe' (2005) 2 The Federalist 65.

71 After the rejections in referenda in France and the Netherlands, the Amato Group, containing top European politicians, was to resolve the constitutional/treaty crisis. The key to that was amending the Treaty of Rome, which became the TFEU, and the Treaty of Amsterdam, which had already been named TEU; the Charter of Fundamental Rights of the EU was to be enacted to be legally binding. What was left behind from the Constitution was the part about the Union symbols and the original name of the High Representative of the Union for Foreign Affairs and Security Policy as Union Minister for Foreign Affairs. For this purpose, see ACED, 'A New Treaty and Supplementary Protocols: Explanatory Memorandum' (7th June 2007).

72 Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C 326.

73 'Citizenship of the Union shall be additional to national citizenship; it shall not replace it.'. See Report of the Select Committee on the EU of the House of Lords presented by Lord Tomlinson and Lord Maclennan " Contribution to the work of the Convention" [2003] CONV 598/03.

to the fact that this solution was designed to replace fairly categorical and courageous expression of dual citizenship, which might have created a reminiscence of prevailing Union citizenship over the nationality of a Member State, the change of wording might or even should be interpreted in view of intentions at that time. The objective behind this was probably to calm down opponents of even deeper integration of the Union whilst also to widen citizenship of the Union more autonomously. Furthermore, A. Schrauwen reads that it has entailed that 'be additional to' might be an alternation on the provision enshrining autonomous dual citizenship.[74] Moreover, since the Treaty of Lisbon has not maintained the version of the Treaty of Amsterdam but instead anchored the very similar language of the interim draft of the Constitution, which was supposed to establish citizenship of the Union matured from the embryonic stadium,[75] it might be valuable to theological or historical interpretations.

A. Schrauwen further states the difference between these two formulations in an argument that citizenship of the Union which only complements the nationality of a Member State cannot be of an autonomous character, whereas Union citizenship which is additional to the Member State's nationality might. That all also corresponds more to the picture which the Court of Justice has tried drawing in the 'fundamental status of nationals of the Member States'[76] which be citizenship of the Union.[77] Nonetheless, the rewording was a win-win situation for both camps; on the one hand, it pleased the integrationists for the reasons provided above, and, on the other, the Eurosceptics were no less satisfied since the Member States asserted that 'being additional' derived from 'adding', wherefore Union citizenship would only add rights and not detract any already given by and in the Member States.[78]

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[74] See Annette Schrauwen, 'European Union Citizenship in the Treaty of Lisbon: Any Change at All?' (2008) 15/1 Maastricht Journal of European and Comparative Law 59-60 <https://doi.org/10.1177/1023263X0701500106> accessed 9th March 2023.

[75] As would have Spanish Socialist members of the Convention called. For that purpose, see Contributo del Sig. Josep Borrell, membro della Convenzione, e dei Sigg. Carlos Carnero e Diego López Garrido, membri supplenti della Convenzione: "Una costituzione europea per la pace, la solidarietà e i diritti umani" [2002] CONV 455/02, 10.

[76] Originally, the Court of Justice had used in Case of Grzelczyk a phrase of 'is destined to be', whereas, in Case of Rottmann, that was replaced by an expression of 'is intended to be'. Even though the reformulation was not emphasised, it might have been related to the then-new wording of the Treaty of Lisbon; hence, Union citizenship has not been only destined to be the fundamental status but already, after the Treaty was enacted, intended to be.

[77] Annette Schrauwen, 'European Union Citizenship in the Treaty of Lisbon: Any Change at All?' (2008) 15/1 Maastricht Journal of European and Comparative Law 60.

[78] It has been based on the document 'Denmark and the Treaty on European Union' [1992] OJ C 348.

1.4. Reins of Development Solely on Shoulders of Court of Justice

Since the Reform Treaty came into force, no other amendment concerning citizenship of the Union has been adopted; therefore, the baton of further development has been passed merely to the Court of Justice. Yet, albeit the provision regarding citizenship of the Union was reshaped in the sense of the 'additionality', the case-law of the Court has not altered its approach much. One of the important cases regarding the status of Union citizenship and its loss or deprivation was the ruling of the Court of Justice in Case of Tjebbes,[79] which became more than polarising in terms of the reaction of some scholars. The more-or-less proponents of the decision referred to it as being 'bold'[80] since the Court took a stand whereby the somehow empty rule—that the issue of loss of the nationality of a Member State, consequently, of Union citizenship must be assessed according to the proportionality test[81] and decided with due regard to Union law[82]—was filled with new conditions. The conditions that the examination must be individually conducted in order to secure that 'the normal development of his or her family and professional life from the point of view of EU law'[83] would not be affected 'disproportionately'.[84]

On the contrary, Dimitry Kochenov perceived the judgement as an absolute failure where the Court of Justice did not follow up and did not continue in the previous promisingly evolving case-law. Amongst many other arguments, he recited, *exempli gratia*, that the loss of Union citizenship as the fundamental status because of not renewing a passport is absurd.[85] Also, he pointed out an unequal

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[79] In Case C-221/17 *Tjebbes* [2019] ECLI:EU:C:2019:189, the Court of Justice decided over a collective case of former Dutch nationals who, as possessors of multiple nationalities—Dutch and Canadian, Dutch and Swiss, Dutch and Iranian—and as a result of a ten-year long period of not residing in the Netherlands or in the European Union (or not renewing their passport, or not announcing of being interested in not losing the nationality), lost their nationality of the Netherlands automatically.

[80] See Stephen Coutts, 'Bold and Thoughtful: The Court of Justice intervenes in nationality law Case C-221/17 Tjebbes' (2019) European Law Blog <https://doi.org/10.15166/2499-8249/292> accessed 12th March 2023; Martijn van den Brink, 'Bold, but Without Justification? Tjebbes' (2019) 4/1 European Papers <https://doi.org/10.15166/2499-8249/292> accessed 12th March 2023.

[81] Requirement brought by Case C-135/08 *Rottmann* [2010] ECLI:EU:C:2010:104, paragraph 55.

[82] Requirement brought by Case C-369/90 *Micheletti* [1992] ECLI:EU:C:1992:295, paragraph 10.

[83] Case C-221/17 *Tjebbes* [2019] ECLI:EU:C:2019:189, paragraph 44.

[84] These 'disproportionatelies' includes 'particular difficulties in continuing to travel to the Netherlands or to another Member State in order to retain genuine and regular links with members of his or her family, to pursue his or her professional activity or to undertake the necessary steps to pursue that activity'. To that effect, see Case C-221/17 *Tjebbes* [2019] ECLI:EU:C:2019:189, paragraph 46.

[85] Dimitry Kochenov, 'The Tjebbes Fail' (2019) 4/1 European Papers 324-325 <http://doi.org/10.15166/2499-8249/293> accessed 15th March 2023.

and discriminatory assessment of the legal status, on the one hand, of Union citizens who possess some of the Member States' nationalities and the third-country nationality at the same time, and of Union citizens who possess some of the nationalities of Member State solely on the other. The latter would not be harmed by Dutch law thanks to an instrument against statelessness, whereas the former would be; wherefore he or she would lose citizenship of the Union also.[86] Whilst the enhancement of requirements for the test of proportionality might be viewed as beneficial to Union citizenship, it must also be conceded that the Court did not settle all of the concerns of the loss or deprivation of citizenship of the Union through the loss or deprivation of the nationality of a Member State; the concerns that appeared in similar cases again in the years to come.[87]

Another narrative-expanding ruling appeared relatively recently in Case of Wiener Landesregierung,[88] the factual circumstances of which are hereinabove described in Introduction. What was essential in the approach of the Court of Justice was the remark that all similar situations—when a Union citizen must renounce his or her original Member State's nationality to acquire a nationality of another Member State—fall within the ambit of Union law;[89] especially in the case of the involuntarily renounced nationality as it being only a result of a naturalisation procedure requirement, not the will of a person.[90] Moreover, it was stressed that '[a] person should not at any time be liable to lose the fundamental status of citizen of the Union by the mere fact of the implementation of that procedure'.[91] Notwithstanding that the Court accepted the Member State's wish to prevent an individual from having multiple nationalities as legitimate,[92, 93] the

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86 Ibid 327.

87 The referring court has nonetheless decided that the decisions regarding the losses of nationalities, thus Union citizenships as well, had not been proportional and with due regard to Union law. According to G.-R. de Groot, retaining such legal provisions would cause more problems than benefits in the future since the individual assessment in each particular case would be rather time-consuming. For that purpose, see Gerard-René de Groot, 'A follow-up decision by the Council of State of the Netherlands in the Tjebbes case' (18th February 2020) Global Citizenship Observatory <https://globalcit.eu/a-follow-up-decision-by-the-council-of-state-of-the-netherlands-in-the-tjebbes-case/> accessed 15th March 2023.

88 Case C-118/20 *Wiener Landesregierung* [2022] ECLI:EU:C:2022:34.

89 Something which was not expected by the referring court at all; to that effect, see Case C-118/20 *Wiener Landesregierung* [2022] ECLI:EU:C:2022:34, paragraph 25.

90 Ibid paragraphs 43-44.

91 Ibid paragraph 47.

92 On the basis of the European Convention on Nationality in conjunction with the Convention on the Reduction of Statelessness. For this purpose, see ibid paragraph 55.

93 D. Kochenov and D. de Groot nevertheless find a failure in this approach, as the Court of Justice uncritically accepts the argument of the referring court justifying Austria's provisions,

assessment to provide a decision must be conducted individually and under the test of proportionality. In the wake of that, the concrete examination of the situation, by contrast to the settled case-law, was provided. The Court of Justice thus found that administrative traffic offences, which had been committed by the applicant and for which she had been deprived of the assurance of naturalisation, cannot constitute a legal ground for a decision whereby an individual loses any chance for regaining the status of a Union citizen.[94]

What cannot be omitted are the latest developments in case-law with regard to the withdrawal of the United Kingdom from the European Union, with regard to 'Brexit'. The question of whether the nationals of the United Kingdom retain their citizenship of the Union after the United Kingdom has left the European Union was firstly resolved in Case of Préfet du Gers.[95] The Court of Justice clearly stated that 'that citizenship of the Union requires possession of the nationality of a Member State',[96] and that 'the authors of the Treaties thus established an inseparable and exclusive link between possession of the nationality of a Member State and not only the acquisition, but also the retention, of the status of citizen of the Union'.[97] Moreover, in the freshest rulings,[98] the Court describes that nationals of the United Kingdom have not lost their citizenship of the Union as a result of the Withdrawal Agreement but instead as 'an automatic consequence of the sole sovereign decision […] to withdraw'.[99] Whereby scholar dispute on the possession of Union citizenship by United Kingdom's nationals after 'Brexit' has been ended. This issue is further utilised in the examination in Chapter 3.2.4.

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for being vehemently opposed to the development and trends in the field of law of nationalities while only Austria and the Netherlands are the only parties to the Chapter One of the Convention on the Reduction of Statelessness. For this purpose and more, see Dimitry Kochenov and David de Groot, 'Helpful, Convoluted and Ignorant in Principle: EU Citizenship in the Hands of the Grand Chamber in JY' (2022) 47 European Law Review 6-8 <https://ssrn.com/abstract=4187331> accessed 18th March 2023.

94 Case C-118/20 *Wiener Landesregierung* [2022] ECLI:EU:C:2022:34, paragraph 74.

95 In Case C-673/20 *Préfet du Gers* [2022] ECLI:EU:C:2022:449, the Court of Justice held the ruling in the case of a national of the United Kingdom who had resided in France for a period of time longer than fifteen years. She demanded to be registered on the electoral roll before the municipality in France. Nevertheless, the municipality and the prefect had argued that, with the loss of Union citizenship, she lost the rights attached upon it. In proceeding before the Court of Justice, she claimed that since she had resided outside of the United Kingdom for a period longer than fifteen years, she had not been able to participate even in the referendum on 'Brexit' due to British electoral law.

96 Ibid 46.

97 Ibid 48.

98 Case C-499/21 P *Silver and Others v Council* [2023] ECLI:EU:C:2023:479; Case C-501/21 P *Shindler and Others v Council* [2023] ECLI:EU:C:2023:480; Case C-502/21 P *Price v Council* [2023] ECLI:EU:C:2023:482.

99 Case C-499/21 P *Silver and Others v Council* [2023] ECLI:EU:C:2023:479 paragraph 45.

To conclude this chapter; for many years has citizenship of the Union not only been the 'fundamental status of all nationals of the Member States' but also a dynamic[100] element of European integration, as this chapter has been intended to highlight. Although the content, rights, historically preceded the form, status, as is evident from Case of Micheletti, where the Court of Justice laid the foundations for then-future Union citizenship even without citizenship of the Union yet existing, it is more than apparent that the status has taken its place in the *acquis communautaire,* also with regard to the years of development. The development which might be described as being, on the one hand, shaped by the legislation in terms of what quality Union citizenship holds—from derivativeness to complementarity to additionality; and, on the other, by the Court's case-law that has gradually extended fields where this status is present and for whomever it provides protection, which W. Maas depicts as 'from workers to movers to citizens'.[101] The Court of Justice, by promulgating that 'Union citizenship is destined to be the fundamental status of nationals of the Member States […]',[102] posed a question of whether Union citizenship has already reached this stadium given that the word 'destined' directs rather *pro futuro*. Nonetheless, with respect to the changed wording after the Treaty of Lisbon and the Court of Justice's replacement of 'destined' by 'intended',[103] the author thus considers citizenship of Union to reach that stadium. Ergo, as has the historical evolution of the status of Union citizenship been introduced, now it is time to immerse into what the essence of citizenship of the Union is.

[100] As was Union citizenship described by the Commission. To that effect, see Katerina Kalaitzaki, 'Chapter 4 EU Citizenship as a Means of Broadening the Application of EU Fundamental Rights: Developments and Limits' in Nathan Cambien and Dimitry Kochenov and Elise Muir (eds.), *European Citizenship under Stress* (Brill | Nijhoff 2020) 45.

[101] See Willem Maas, 'The Origins, Evolution, and Political Objectives of EU Citizenship' (2014) German Law Journal 801.

[102] Case C-184/99 *Grzelczyk* [2001] ECLI:EU:C:2001:458, paragraph 31.

[103] See Case C-135/08 *Rottmann* [2010] ECLI:EU:C:2010:104, paragraph 43.

2. Essence of Union Citizenship: Genuine Link or Direct Bond

The objective of this chapter and of those consequently following is to explore whether the essence of Union citizenship is the factual relation—belonging and attachment to a society of an entity—in the form of the genuine link, and whether the essence is the legal relation—autonomous form and nonvicarious content—in the form of the subsequently developed concept of the direct bond. The author deliberately distinguishes between factual relation and legal relation on the one hand, and factual relationship and legal relationship on the other. The term *relation* refers to a connection between two subjects, which connection either exists or not with no gradual scale in-between. In contrast, the term *relationship* is utilised as a connection between two subjects, which connections may have different ranges of quality. Whence it follows that, since the European Union and citizens of the Union exist, the factual relationship and the legal relationship exist also. Nevertheless, the question is whether these relationships are of such quality that they give rise to the factual relation in the form of the genuine link or the legal relation in the form of the direct bond.

The rationale behind this assessment is the premise that either the factual relation or the legal relation should provide protection for a citizen of the Union against an involuntary deprivation of his or her Union citizenship unreservedly by a Member State. If the factual relationship between the European Union and a Union citizen is of the quality of a mutual societal attachment and shared political interests, which may thus be interpreted that Union citizens are members of a shared European demos and that the genuine link is the essence of Union citizenship, the author is of the opinion that such factual relation could not be broken by any Member State. By the same logic, should the legal relationship of Union citizenship be of the quality of a true autonomous form and nonvicarious content,[104] from the author's point of view, such legal relation as the direct bond could not be severed by any action of a Member State.

[104] See Figure IV. – Real and effective nationality according to the author below.

2.1. Factual Relation: Genuine Link

The first one assessed is the factual relation between the European Union and a Union citizen—the Union citizen's genuine link, existence or non-existence of which is the aim to discover in this subchapter. Albeit the genuine link doctrine had been created to assess the right to diplomatic protection in the case of multiple nationalities by the International Court of Justice in Case Nottebohm;[105, 106] for the purpose of exploring the essence of Union citizenship, it may serve more than well as well.[107] The International Court of Justice established the rule of real and effective nationality as being comprised of two essences, namely: the social fact of attachment, and reciprocal rights and duties.[108] May the latter be spared for the following subchapter and the former analysed here. The social reality of an individual's attachment to a population or society conforms to the already-mentioned genuine link, which has been framed as a 'genuine connection of existence, interests and sentiments'.[109] These are based on rather strong factual ties, such as the centre of life interests, family ties, participation in public life, the attachment shown to a given country, or intentions for the near future to live in it, all from the perspective of an individual.[110] In other words, the genuine link can be defined as belonging and attachment to a specific group of people delineated by common interests, family or political ties, a sense of patriotism, or a shared proximate future.

This delineation mirrors the concepts of a nation or, in the Union context more adequate, *demos*. Therefore, for confirmation or refutation of the existence of the

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105 *Nottebohm Case (Liechtenstein v Guatemala) (second phase)* [1955] ICJ Rep 4. Since the case's circumstances are irrelevant to this master's thesis, they are not included.

106 Its utilisation in the field of public international law has been more than controversial and criticised; in addition to the original ruling, three dissents were attached which disagreed with the very existence of the concept of 'genuine link'; for that purpose, see Dissenting Opinion of Judge Klaestad, Dissenting Opinion of Judge Read, and Dissenting Opinion of M. Guggenheim, Judge 'Ad Hoc'. From the recent criticism, it is relevant, for instance, Rayner Thwaites, 'The Life and Times of the Genuine Link' (2018) 49 Victoria U Wellington L Rev 645 <https://ssrn.com/abstract=3352955> accessed 30th March 2023; Peter J Spiro, 'Nottebohm and 'Genuine Link': Anatomy of a Jurisprudential Illusion' (2019) 1 IMC-RP <https://investmentmigration.org/wp-content/uploads/2020/10/IMC-RP-2019-1-Peter-Spiro.pdf> accessed 30th March 2023; Audrey Macklin, 'Is It Time to Retire Nottebohm?' (2017) 111 AJIL Unbound 492 <http://doi.org/10.1017/aju.2018.5> accessed 30th March 2023.

107 Similarly, the genuine link doctrine and test have been used by Ayelet Shachar for an assessment of the general citizenship theory; hence, the original circumstances of the case were omitted entirely, and the genuine doctrine was used independently. To that effect, see Ayelet Shachar, The *Birthright Lottery: Citizenship and Global Inequality* (Harvard University Press 2009) 164-190.

108 *Nottebohm Case (Liechtenstein v Guatemala) (second phase)* [1955] ICJ Rep 4, 23.

109 Ibid.

110 Ibid 22 and 24.

genuine link in Union citizenship, it is inevitable to take a closer look at the concept of *europaios demos*. However, since that is not the very focal point of this master's thesis and since that would be worth independent research, as has been done innumerable times from the various angles of political and social sciences,[111] the author takes a relatively narrow approach in terms of what is crucial to the genuine link test under two requirements—examining whether the mutual societal attachment to the European Union and shared political interests are present. Both aspects are closely connected to the often-invoked European identity, which the majority of scholars find in liberal-democratic values of the *rechtsstaat* or *état de droit*[112] common to almost all Member States,[113] also known as constitutional patriotism.[114] However, might sole shared legal and political values and principles bring forth the mutual societal attachment and the shared political interests, thus, the genuine link in Union citizenship? That is the centre of focus in the following sections.

2.1.1. Emotional Component: Mutual Societal Attachment

As was intended, the genuine link in citizenship of the Union is explored through two perspectives or requirements where one is the (non-)existence of mutual societal attachment, or in other words, whether a Union citizen identifies him or herself as European belonging and attached to a broader culturally interlinked

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[111] From the angle of the political and social sciences, see Beatriz P de las Heras (ed), *Democratic Legitimacy in the European Union and Global Governance: Building a European Demos* (Palgrave Macmillan Cham 2016); or Lars-Erik Cederman, 'Nationalism and Bounded Integration: What it Would Take to Construct a European Demos' (2001) 7/2 European Journal of International Relations 139 <https://doi.org/10.1177/1354066101007002001> accessed 30th March 2023. From the angle of empirical assessment, see Matthew J Gabel and Christopher J Anderson, 'The Structure of Citizen Attitudes and the European Political Space' (2002) 35/8 Comparative political studies <https://doi.org/10.1177/0010414002035008002> accessed 30th March 2023; or Martina Klicperová-Baker and Jaroslav Košťál, 'Chapter 9: Toward empirical assessment of the European demos and public sphere: comparing democratic value orientations of citizens and elites' in Hakan G Sicakkan (ed), *Integration, Diversity and the Making of a European Public Sphere* (Edward Elgar Publishing Limited 2016).

[112] The author does take into account the broad utilisation of the term the rule of law; however, the rule of law is more related to the common law system, whereas *rechtsstaat* or *état de droit* to civil law system, and thus, is used in this master's thesis.

[113] The European Parliament provides a whole website about Hungary's problems with following the principles of *rechsstaat*. To that effect, see The European Parliament, 'Rule of law in Hungary' (5th December 2022) <https://multimedia.europarl.europa.eu/en/package/rule-of-law-in-hungary_20302> accessed 31st March 2023.

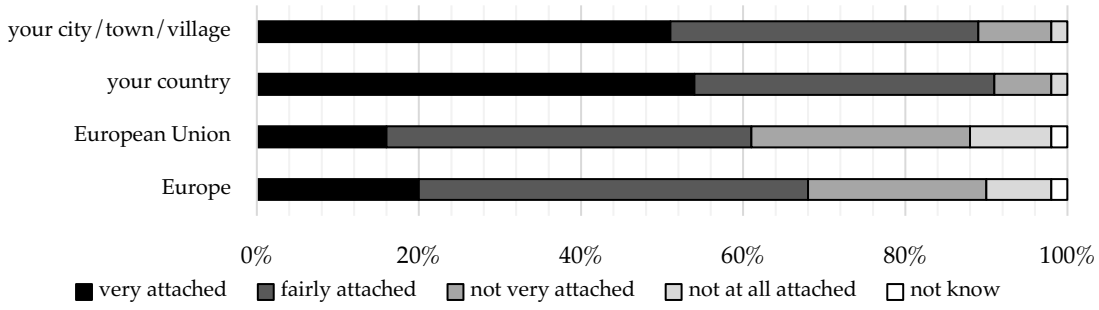
[114] Constitutional patriotism played a crucial role in the post-war unification of Western Germany, as Jürgen Habermas argued for an emphasis on that instead of on the ideas of an ethnically homogeneous nation-state. In European Union affairs, the notable scholar who promotes these ideas is Jan-Werner Müller; for all these purposes, see Jan-Werner Müller, *Constitutional Patriotism* (Princeton University Press 2007).

society of the Union. The *entitative* identity,[115] referring to M. Haller and R. Ressler, consists of two main elements: the *emotional component*—defined as belonging and attachment to a society of an entity and as a specific kind of love for an entity, awareness of its pride and shame; and the *action component*—defined as a willingness to take action to support an entity and to endorse political measures in order to strengthen that entity's position.[116] For the purposes of this part, the former is inspected, whilst the latter is more relevant for the following sub-subchapter.

Ad the belonging and attachment to a society of an entity, of the European Union in this case. The empirical data collected by the Eurobarometer are more than convenient. They are examined on the same ground plan as examined by M. Haller and R. Ressler in their research in 2006,[117] hence, through aspects of attachment to a city/town/village, to a country, to the European Union, and to Europe.

Figure I. – Levels of attachment to the different entities

How attached do you feel to:



Source: Standard Eurobarometer 98 - Winter 2022-2023

First of all, one clarification must be made; namely, the subject under examination is not attachment and belonging to non-defined Europe but to the European Union since it is Union citizenship that is the matter at issue. According to these results, 61% of Union citizens feel attached to the European Union, from which 45% feel only fairly attached; on the contrary, in the cases of attachment to

[115] M. Haller and R. Ressler use 'national identity'; however, since the European Union is described as the entity *sui generis*, it is more appropriate to utilise, in the context of the European Union, the term *entitative* identity instead of national identity.

[116] Max Haller and Regina Ressler, 'National and European identity: A study of their meanings and interrelationships' (2006) 47/4 Revue française de sociologie 821 <www.jstor.org/stable/20453416> accessed 1st April 2023.

[117] Ibid 838.

a city/town/village or to a country, the percentages amount to 89% and 91%, respectively. For comparison, the attachment for a non-defined Europe is slightly higher, reaching 68%; nonetheless, qualitative research would be supposably more appropriate here for more profound insight as a different person might have different connotations behind the attachment to Europe. However, for the purposes of this master's thesis, it is sufficient to state that the individual attachment to the European Union cannot be compared to the attachment to a city/town/village or to a country at all.

Ad the specific kind of love for an entity, for the European Union in this case. This section must be perceived more as a background for the section hereinabove of belonging and attachment to a society of an entity since this part of the emotional complement is not assessed empirically, as is not in the capacity of this master's thesis, but rather through the symbols. The common symbols of and for the European Union were presented in the Constitution for Europe by virtue of Article I-8, *id est* the flag,[118] the anthem,[119] the motto,[120] the currency of the Union,[121] and Europe Day.[122] These symbols have been, because of the failure of referenda, eventually dropped from the wording of the Treaty of Lisbon. Failures of the ratifications of the Constitution for Europe have been oftentimes related to the absence of the European identity;[123] moreover, that can also be interpreted as a non-acceptance of the symbols of the Union as their own for being 'too much federalising'.[124] In spite of that, the European Union[125] and the majority of the Member States, in fact, utilise them, although the single currency is adopted only in twenty Member States, and Europe Day is far less important for Union citizens than their national and public holidays.[126] That is caused, on the basis of

[118] A circle of twelve golden stars on a blue background.
[119] Based on Ode to Joy from the Ninth Symphony by Ludwig van Beethoven.
[120] 'United in diversity'.
[121] The euro.
[122] Celebrated on the 9th of May throughout the Union.
[123] Max Haller and Regina Ressler, 'National and European identity: A study of their meanings and interrelationships' (2006) 47/4 Revue française de sociologie 821.
[124] Translation of the author. For that purpose, see Magdaléna Svobodová, *Občanství Evropské Unie* (Auditorium 2021) 93.
[125] Legally speaking, the European Parliament's usage of the symbols of the Union has been enacted by the rules of procedure; to that effect, see European Parliament, 'Rules of Procedure of the European Parliament' rule 238.
[126] Since 2019, Europe Day has been declared a public holiday in Luxemburg (to that effect, see <www.luxtimes.lu/en/luxembourg/mps-make-it-official-two-extra-days-holiday-this-year-6 02d6851de135b9236a8db1e> accessed 2nd April 2023) and memorial day in Croatia (to that effect, see <https://vlada.gov.hr/news/pm-new-calendar-of-public-holidays-memorial-days-will-clear-doubts-vagueness/27969> accessed 2nd April 2023). In Germany, Europe day is promulgated as a 'flag day' when flags must be displayed on public buildings (to that effect,

J. Zemánek's argument, by the fact that the European Union itself lacks one binding emotional charisma, wherefore it is internally heterogeneous[127] with only a few unifying narratives. Albeit particular academic research[128] stipulates that institutions may encourage the emergence of the entitative identity through symbols,[129] and albeit the European institutions endeavour that way, Europe and the European Union still remain deeply national-patriotist oriented,[130] and citizens of the Union generally do not feel a specific kind of love for the European Union.

For these reasons; whilst some foetuses of the emotional component are apparent amongst Union citizens, it is not possible to prove, on the basis of the facts submitted, that the mutual societal attachment would be present in citizenship of the Union since its expressions are far less significant than those of a national or regional level.

2.1.2. Action Component: Shared Political Interests

The second requirement for the genuine link is the presence of shared political interests that, at the same time, corresponds to the action component as the second element of the entitative identity.[131] The issue is observed through two interconnected angles; the descending perspective, from politics towards voters, and the ascending perspective, from voters towards politics; both ones in terms of the European Parliament elections. To the former, the national vs European themes and topics during European Parliament elections are relevant; to the latter, the behaviour of voters.

Ad the descending perspective, national vs European themes in the European Parliament elections. According to S. Hix and B. Høyland, the elections for the European Parliament are massively dominated by national and domestic concerns and interests as a result of the fact that these elections are somewhat the

see <www.protokoll-inland.de/Webs/PI/DE/beflaggung/beflaggungstage/regelmaessige/regelmaessige-allgemeine-befl aggungstage-node.html> accessed 2nd April 2023).

127 Jiří Zemánek, 'Unijní občanství a evropská identita' (2015) 59/2 Acta Universitatis Carolinae Iuridica 84.

128 *Exempli gratia*, Michael Bruter, 'Winning Hearts and Minds for Europe: The Impact of News and Symbols on Civic and Cultural European Identity' (2003) 36/10 Comparative Political Studies <https://doi.org/10.1177/0010414003257609> accessed 2nd April 2023

129 The other actors, who are capable of that, are the media; to that effect, see ibid.

130 Magdaléna Svobodová, *Občanství Evropské Unie* (Auditorium 2021) 92.

131 See note 115 above.

second-order elections[132] which the national political parties perceive only as an instrument to gain or maintain political power in first-order elections.[133] Nevertheless, D. Braun conducted an empirical study which had analysed the salience of European issues in the 2019 European Parliament elections in relevant mass media outputs in five selected Member States during four weeks prior to those elections.[134] Although she draws a conclusion that the European Parliament elections in 2019 were characterised by tremendous stress on European matters than in the previous elections;[135] from data utilised and submitted there, it cannot be stated at all that the importance of European affairs during the elections was high in all five examined Member States. European issues' salience attacked above 50% only in France, probably due to the vast success and support of the party 'La République en Marche!' which had actively raised pro-European topics.[136] The second place is not surprising as slightly above 40% was the situation in the United Kingdom generally caused and affected by the omnipresent theme of 'Brexit'. Nonetheless, the salience of European matters in Sweden, Austria, and Germany was far lesser: marginally above 20%, below 20%, and 10%, respectively.[137] That could be interpreted as—unless anything crucial related to European affairs appear in the Member State, theoretically in the European Union also, the European Parliament elections continue to be more national- than European-focused.

Ad the ascending perspective, the behaviour of voters in the European Parliament elections. Shared interests are not only common ideas and directions

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[132] Behind this concept, a peculiar theory is depicted as follows: 1) turnouts are much lower in these second-order elections, 2) government and big parties lose, 3) petty, extreme, and protest parties win, 4) government parties lose primarily around the midterm of the first-order elections; to that effect, see Karlheinz Reif and Hermann Schmitt, 'Nine second-order national elections: A conceptual framework for the analysis of European election results' (1980) 8/1 European Journal of Political Research <https://doi.org/10.1111/j.1475-6765.1980.tb00737.x> accessed 5th April 2023; Hermann Schmitt et al, 'It All Happens at Once: Understanding Electoral Behaviour in Second-Order Elections' (2020) 8/1 Cogitatio 7 <https://doi.org/10.17645/pag.v8i1.2513> accessed 5th April 2023.

[133] Simon Hix and Bjø Høyland, The *Political System of the European Union* (Basingstoke: Palgrave Macmillan 2011) 157.

[134] Daniela Braun, 'The Europeanness of the 2019 European Parliament elections and the mobilising power of European issues' (2021) 41/4 Politics <https://doi.org/10.1177/0263395721992930> accessed 5th April 2023.

[135] Ibid 457.

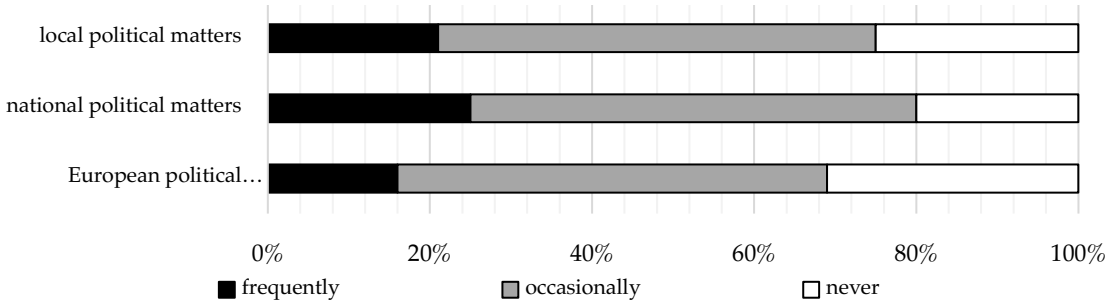
[136] That actually contradicts the theory of K. Reif and H. Schmitt, see note 132 above, since this party was founded by then-incumbent president Emanuel Macron and thus would be doomed to failure according to them; however, they placed second slightly behind 'Rassemblement National'. For this purpose, see '2019 European election results' <www.europarl.europa.eu/election-results-2019/en> accessed 10th April 2023.

[137] Daniela Braun, 'The Europeanness of the 2019 European Parliament elections and the mobilising power of European issues' (2021) 41/4 Politics 458.

of a society performed by politics but also the involvement and attentiveness of an individual to this area. The European Parliament elections as second-order elections are generally notorious not simply for low interest from political parties but also for lesser interest from voters. The reasons behind this may be of different kinds, such as the low attachment to the European Union,[138] widespread unconcern in the whole politics,[139] or the 'perception that there is "less at stake"'.[140] The turnouts had been gradually decreasing from the 2004 to 2014 elections, with 45.47% to 42.61%; yet in the last elections in 2019, the turnout hit 50.66%.[141] This sudden shift has been described by O. Treib as a result of urgent and almost ubiquitous warnings of think tanks and media that those elections were to be 'a battle over Europe's future'.[142] Despite that, the European Parliament elections' turnout remained lower than that of national elections in the Member States. By comparison, the average turnout of national elections prior to the 2019 European Parliament elections was 66.1%.[143] These outcomes are underlined by the survey of Eurobarometer which found that the percentage of people never discussing European political matters is 11% higher than that of people never discussing national political matters.

Figure II. – Levels of interest in different political matters

When you get together with friends or relatives, would you say you discuss:



Source: Standard Eurobarometer 98 - Winter 2022-2023

[138] See Figure I. – Levels of attachment to the different entities above.
[139] See Figure II. – Levels of interest in different political matters above.
[140] Constantin Schäfer, 'Indifferent and Eurosceptic: The motivations of EU-only abstainers in the 2019 European Parliament election' (2021) 41/4 Politics 11 <https://doi.org/10.1177/0263395720981359> accessed 10th April 2023.
[141] '2019 European election results. Turnout by year' <www.europarl.europa.eu/election-results-2019/en/turnout/> accessed 10th April 2023.
[142] The fear was that extremist and anti-European parties would gain the majority in the elections; to that effect, see Oliver Treib, 'Euroscepticism is here to stay: what cleavage theory can teach us about the 2019 European Parliament elections' (2020) 28/2 Journal of European Public Policy <https://doi.org/10.1080/13501763.2020.1737881> accessed 10th April 2023.
[143] Fontys University of Applied Sciences, 'Mostly False: "Turnout at National Elections in Europe is between 70 and 80 percent"' (2019) EU factcheck <https://eufactcheck.eu/factcheck/mostly-false-turnout-at-national-elections-in-europe-is-between-70-and-80-percent/> accessed 10th April 2023.

For these reasons; even though European matters' appearance during the European Parliament elections has been increasing over the last decade, the campaign and contact with the electorate are still dominated by national themes, hence, interests. That mirrors the behaviour and interest of voters who do not perceive these elections as essential ones, wherefore they search rather for national topics. Therefore, it cannot be said that shared political interests would appear amongst Union citizens.

To partially conclude; although the author has no intention to question the existence of a certain kind of European identity as a rather constitutional patriotism than as an actual depiction of culturally interlinked society, it alone, as a set of legal and political principles and values, may not give rise to the genuine link since the requirements of the mutual societal attachment to the European Union and of common political interests are not met. Wherefore, it must be clearly stated that the genuine link is not the essence of Union citizenship (yet). As the International Court of Justice depicted, the genuine link is the genuine connection of all elements; ergo, one cannot exist without the other. Therefore, the emergence of the genuine link in citizenship of the Union would need to appear co-jointly. That all might be underscored by the paraphrase of Massimo d'Azeglio:[144] 'We have made Europe, now we must make Europeans.'.[145] The answer to the partial research question—whether the genuine link is the essence of Union citizenship, and whether the factual relationship is of the quality that would give rise to the factual relation—be hence no.

2.2. Legal Relation: Direct Bond

If it is not possible to find the essence of Union citizenship in the factual relation between the Union and a citizen, presented above as the genuine link, it is thus inevitable and appropriate to delve into a purely legalistic approach, which is also prompted by the fact that Union citizenship is primarily a legal concept. On

[144] An Italian artist, politician, and promoter of the unification of Italy under a federal system.

[145] In the original wording: 'L'Italia è fatta. Restano da fare gli italiani.'. To that effect, see Charles L Killinger, The *History of Italy* (Greenwood 2002) 1. First paraphrased in the European meaning by P. Huyst as: 'We have made Europe, now we have to make Europeans' in Petra Huyst, '"We have made Europe, now we have to make Europeans": Researching European Identity among Flemish Youths' (2008) 4/1 JCER <https://doi.org/10.30950/jcer.v4i4.127> accessed 15th April 2023.

the basis of the normative legal theory and H. Kelsen's postulates, citizenship of the Union may be defined as a legal relationship, respectively, a public legal relationship. That is to be defined 'as the relation[ship] between legal subjects'[146] and 'the relation[ship] between superior and inferior (between state [or entity] and subject [or individual])'.[147] In this chapter and onwards, the author wherefore develops a theory of the *direct bond*—the essence by virtue of a true legal relation between an entity and a citizen. Union citizenship has previously been described as a direct bond indeed. For instance, Advocate General C. Villalón states that 'European citizenship is evolving […] as a direct bond between the citizen and the Union'.[148, 149] Nevertheless, a direct bond has been utilised or interpreted rather cursorily and without further assessment; the exact opposite is the objective of this subchapter.

2.2.1. Theory of Direct Bond

The author develops a theory of the direct bond on the basis of the already-mentioned judgement of the International Court of Justice in Case Nottebohm, specifically on the rule of real and effective nationality.[150, 151] According to that, as was abovementioned, real and effective nationality is composed of two essences: a 'genuine connection of existence, interests and

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[146] Emphasis added by the author. Hans Kelsen, The *Pure Theory of Law* (translated by Max Knight, University of California Press 1970) 163.

[147] Emphasis added by the author. Ibid 164.

[148] Case C-47/08 *Commission v Belgium* [2010] ECLI:EU:C:2011:334, Opinion of AG Villalón paragraph 137. Case C-47/08 was one of many others regarding access to the profession of a notary on a national prerequisite. The Advocate General stood the position that the limitation of access to the profession of a notary only for Member States' nationals is against the obligation under Article 49 TFEU—freedom of establishment. That approach was subsequently followed by the Court of Justice. For this purpose, see Case C-47/08 *Commission v Belgium* [2010] ECLI:EU:C:2011:334.

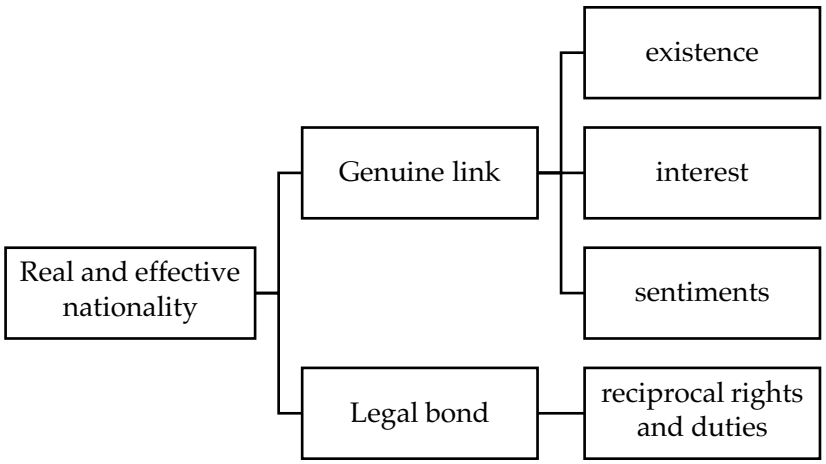
[149] Or D. Kostakopoulou mentions a direct bond between the European Union legal order and Union citizens in her work on how to handle the legal position of Britons after 'Brexit'; nonetheless, this approach vastly differs from the one presented by the author as that one is solely focused on Union citizens who have not spoken for leaving the EU, even though collectively. To that effect, see Dora Kostakopoulou, '*Scala Civium*: Citizenship Templates Post-Brexit and the European Union's Duty to Protect EU Citizens' (2018) 56/4 Journal of Common Market Studies 865 <https://doi.org/10.1111/jcms.12683> accessed 15th April.

[150] *Nottebohm Case (Liechtenstein v Guatemala) (second phase)* [1955] ICJ Rep 4, 23.

[151] 'Figure IV. – Real and effective nationality according to the author' could also be likened to the L. Bosniak's schema on how to understand and assess (generally) citizenship as 'one concerned with citizenship as legal status [the form]; another, with citizenship as rights [the content]; a third, with citizenship as political activity [shared political interests]; and the last, with citizenship as a form of collective identity and sentiment [mutual attachment]', [glosses of the author added]. To that effect, see Linda Bosniak, 'Citizenship Denationalized' (2000) 7/2 Indiana Journal of Global Legal Studies 455 <www.jstor.org/stable/20644737> accessed 15th April 2023.

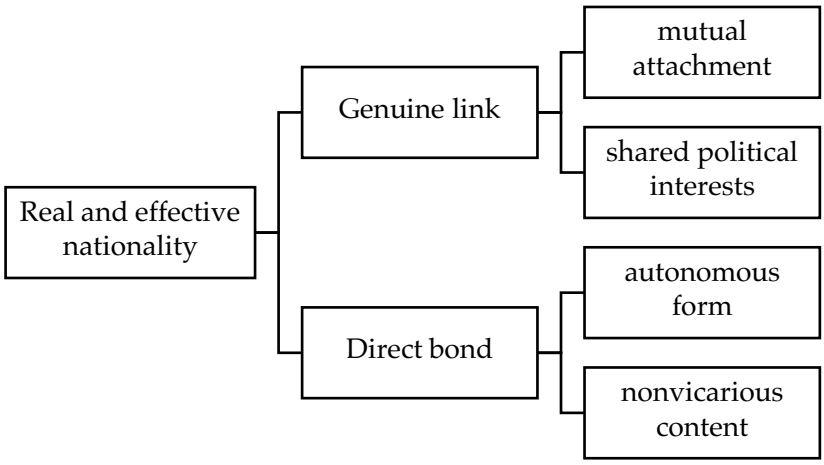
sentiments', and 'reciprocal rights and duties'.[152, 153] The former has already been examined as the genuine link—the factual relation in the previous subchapter, and its presence has not been found, whereas the latter as the legal relation is the subject at issue in this chapter. Nonetheless and moreover, from the author's perspective, reciprocal rights and duties are only a component of a broader essence, namely, the aforementioned direct bond. Therefore, the framework for real and effective nationality is as follows: comprising two elements—the genuine link and the direct bond, which subsequently consists of two complements—the form and the content.[154] This approach corresponds to the well-established legal doctrine according to which citizenship is composed of the status[155] on the one hand and of rights[156] on the other. That all is elaborated further in the following section. Albeit Union citizenship could not be considered real and effective nationality for the absence of the genuine link, the direct bond may still be the essence which protects an individual from deprivation of citizenship of the Union. And that is the reason why it is assessed further.

Figure III. – Real and effective nationality as said by International Court of Justice



[152] Ibid.
[153] See Figure III. – Real and effective nationality as said by International Court of Justice below.
[154] See Figure IV. – Real and effective nationality according to the author below.
[155] See Linda Bosniak, 'Citizenship Denationalized' (2000) 7/2 Indiana Journal of Global Legal Studies 456-463.
[156] See ibid 463-470. In addition, according to D. Kochenov, the focal point of the citizenship studies has been mainly on the rights complement since the T. H. Marshall's essay Citizenship and Social Class (1949); to that effect, see Dimitry Kochenov, 'Ius Tractum of Many Faces: European Citizenship and the Difficult Relationship between Status and Rights' (2009) 15/2 Columbia Journal of European Law 176.

Figure IV. – Real and effective nationality according to the author



The theory is constructed on the direct bond being a legal relation between an entity and an individual, for these master's thesis' purposes— the legal relation between the European Union and a Union citizen.[157] That relation, thus, the direct bond consists of two components, namely, the *autonomous form* and the *nonvicarious content*, as is depicted in Figure IV. The direct bond thus comprises both of the components as a whole. Notwithstanding the fact that the content and the form might exist on their own, only with their mutual presence and existence does that become the direct bond. Each component represents one element of the direct bond, which is described subsequently. For the sake of illustration, the direct bond can be likened to a full tube between an entity and an individual. The tube itself, as a solid and stable boundary, represents the autonomous form of citizenship, whilst the filling of the tube—what flows inside the tube symbolises the citizenship's nonvicarious content.

As was aboveindicated, each complement, the nonvicarious content as well as the autonomous form, gives rise to one element of the direct bond—the *directness* and *the bond*. On the one side, the nonvicarious content as the filling of the tube is in every particular right, which directly emanates from an entity towards an individual, and every particular duty, which directly flows from an individual towards an entity. Therefore, the nonvicarious content materialises in the

[157] By the same principle, however, without further elaborations as in this master's thesis regarding two components—the form and the content, W. Worster produced his paper on reflections on how much Union citizenship is similar to nationality, mainly from the perspective of international law. To that effect, see William Thomas Worster, 'The Emergence of EU Citizenship as a Direct Legal Bond with the Union' (2018) Social Science Research Network <https://ssrn.com/abstract=3111841> accessed 18th April 2023.

element of the *directness*. Furthermore, if it were only for the filling, there would be a content disorderly flowing between an individual and an entity without any boundary.[158] On the other side, there is the autonomous form, the tube which connects or, more suitably in this context, bonds an entity towards an individual and vice versa, and which begins at an individual and ends at an entity and vice versa. Hence, the autonomous form materialises in the element of the *bond*. The question of whether the bond—a form could exist on its own, without a content, might be more than noteworthy; the existence would probably be imaginable only if citizenship under these circumstances were a kind of status without any rights or duties conferred on it. However, in terms of citizenship or nationality, such a depletive concept would be hard to find since its purpose would be primarily symbolic.[159]

Unlike genuine link, the direct bond is in its very core a dualistic phenomenon which occurs in two dimensions—*the bond* thus comes into being on the basis of the existence of the autonomous form of citizenship; the *directness* emerges with the existence of the nonvicarious content of citizenship—rights and duties that are nonvicarious by any other, secondary, entity, and thus can exist without any intermediate subject.[160] And yet, only with their mutual and complemental existence, the direct bond emerges between an individual and an entity.

2.2.2. Bidirectional Nature of Direct Bond

Furthermore, the direct bond can be defined as a bidirectional relation between an entity and an individual of the descending character and of the ascending character. To explain this concept, the descending character in terms of the nonvicarious content includes rights that an entity confers to an individual; whilst, from the perspective of the autonomous form, the descending character comprises a status that an entity provides to an individual. On the contrary, the

[158] And yet even that possibility is not unthinkable; to that effect, see note 37 above.

[159] Nonetheless, the more-or-less form without the content occurred in Australia in 1948 when the Aborigines were granted the status of Australian citizens, yet they have not been given any rights attached to that citizenship. For this purpose, see John Chesterman and Brian Galligan, 'The Slow Path to Civil Rights' *Citizens without Rights: Aborigines and Australian Citizenship* (Cambridge University Press 1997).

[160] On this principle, M. Svobodová finds that social rights enshrined by the Charter of Fundamental Rights of the European Union are, on the one hand, legally granted on the basis of *acquis communautaire*; however, on the other, they are vicarious by the Member States. To that effect, see Magdaléna Svobodová, *Občanství Evropské Unie* (Auditorium 2021) 86.

ascending character concerning the nonvicarious content represents duties which an individual performs towards an entity; and, in terms of the autonomous form, it is a legitimacy that an individual provides directly to an entity. Therefore, there are rights and status, both of the descending character on the one hand and, on the other, duties and legitimacy of the ascending character. Whence it may be concluded that rights are intertwined with status, whereas duties are interlinked with legitimacy.[161] Hence, the whole concept would be outlined in this very sentence:[162, 163]

UBI UNIO IBI CIVIS
UBI CIVIS IBI UNIO

Since this master's thesis is predominantly dedicated to an individual and his or her position, the relevance of the ascending character, the second clause part, is omitted upon research yet to be written, supposably assessing the legitimacy of the European Union *per se*. Wherefore, the autonomous form and the nonvicarious content are exclusively hereinafter referred to as the *form-status* and the *content-rights* to emphasise this distinction. As the theory of the direct bond has been presented, it is further necessary to examine whether the direct bond is the essence of citizenship of the Union. That is further examined on the basis of two questions—whether the form-status of Union citizenship may be considered autonomous, and whether the content-rights of Union citizenship may be considered nonvicarious. If the presence of the direct bond in Union citizenship is found, the author is of the opinion that such a legal relation, the essence of

[161] By performing duties towards an entity and, more importantly, by compliance with laws that an entity creates, individuals legitimise that entity; nevertheless, that applies also vice versa—without legitimacy, an entity could barely enforce performing duties and compliance with laws. To that effect, see Jonathan Jackson et al, 'Why do People Comply with the Law?' (2012) 52/6 The British Journal of Criminology 1051 <www.jstor.org/stable/44174080> accessed 18th April 2023. In addition, J. Zemánek states that duties are identity-forming constituents; thus, it would also be worth exploring them in terms of (a lack of) common European identity; for this purpose, see Jiří Zemánek, 'Unijní občanství a evropská identita' (2015) 59/2 Acta Universitatis Carolinae Iuridica 84.

[162] If the direct bond would be the essence of Union citizenship.

[163] Paraphrase of the Latin phrase: 'UBI ALLIUM IBI ROMA, UBI ROMA IBI ALLIUM', which means that where there is garlic—there is Rome, where there is Rome—there is garlic. In this master's thesis' usage, it indicates the descending character, that where there is the Union, there is a citizen—the Union is one who creates a citizen; but also the opposite approach, the ascending character, where there is a citizen, there is the Union—it is a citizen who creates the Union.

which is the direct bond, cannot be terminated by any legal subject other than the European Union or a Union citizen. Ergo, if the legal relationship of Union citizenship is of the quality of the autonomous form-status and the nonvicarious content-rights, such legal relation as the direct bond could not be severed by any action of a Member State.

To conclude this chapter; to resolve the question of whether the factual relation as the genuine link is the essence of Union citizenship, or whether it is the legal relation as the direct bond between a citizen of the Union and the European Union—the author finds up to this point only the answer to the former; hence, it is not the factual relation. Albeit Union citizenship cannot be considered real and effective nationality yet, due to the absence of the genuine link essence and its complements,[164] the other essence—the direct bond—shall not be affected by that. The assessment of that is further executed in the following chapters, where the reader may find the answer to whether it is the direct bond which is the essence of Union citizenship, moreover, which protects a citizen of the Union from deprivation of his or her Union citizenship by a Member State.

[164] See Figure IV. – Real and effective nationality according to the author above.

3. Legal Character of Union Citizenship: ¿Autonomy?

The premise that either the factual relation or the legal relation should provide protection for a citizen of the Union against an involuntary deprivation of his or her Union citizenship unreservedly by a Member State has been presented in the previous chapter. Nonetheless, the factual relation in the form of the genuine link in citizenship of the Union has not been found. What remains is the legal relation in the developed concept of the direct bond. Hence, if the presence of the direct bond in Union citizenship is found, such a legal relation could not be severed by any legal subject other than the European Union or a Union citizen. To find the direct bond in citizenship of the Union, two prerequisites must be met—whether the form-status of Union citizenship may be considered autonomous, and whether the content-rights of Union citizenship may be considered nonvicarious. The former is the focal point of this chapter.

The question to answer is where the form-status originates and if, potentially when, it acquires an *autonomous character* on the nationality of a Member State. The concept of autonomy may be the very needed impetus for the development of citizenship of the Union beyond its embryonic stage.[165] Nonetheless, in order to take into account, let alone even consider the potential attainment of the autonomy of the form-status of Union citizenship, it is inevitable to return to the beginnings of where and how it emerges. Only then, on these grounds, can the autonomy be assessed. For these reasons, the first section examines the origin of the form-status of citizenship of the Union—different *iura*, on which the emergence of Union citizenship stands, and the rules of which are afterwards utilised in the assessment of the following section. The second part henceforth covers the issue of the autonomy of the form-status of Union citizenship on the basis of an assessment from the perspective of postulates of the normative legal theory in conjunction with the logical interpretation of the wording of the article regarding citizenship of the Union.

[165] As would have Spanish Socialist members of the Convention called. For this purpose, see Contributo del Sig. Josep Borrell, membro della Convenzione, e dei Sigg. Carlos Carnero e Diego López Garrido, membri supplenti della Convenzione: "Una costituzione europea per la pace, la solidarieta è i diritti umani" [2002] CONV 455/02, 10.

3.1. Origin of Form-Status

From the wording of the article establishing citizenship of the Union—'Every person holding the nationality of a Member State shall be a citizen of the Union.',[166] it is unarguably more than apparent that the only way to become a Union citizen is through obtaining nationality of one of the Member States, as emphasised by the Commission: 'There is no separate way of acquiring citizenship of the Union.'.[167] The relevant, if not the most significant, role in the origin of Union citizenship, thus, in its acquisition is therefore played by the Member States' nationalities, which serve as so-called 'gateway[s]'.[168] These gateways however do not stand on one uniform European Union act, which would enshrine stipulations of access, acquisition or loss, but instead, due to the falling within the exclusive competence of the Member States, on twenty-seven different legal orders, the provisions of which differ.[169] Moreover, that has been underlined by the Declaration on the nationality of a Member State amended to the Treaty on European Union as that 'the question whether an individual possesses the nationality of a Member State shall be settled solely by reference to the national law of the Member State concerned'.[170] Notwithstanding that, the Court of Justice has several times entered the waters of an already-former prerogative of sovereign states, which has been presented in more detail in the historical research of Chapter 1.[171]

For these reasons, a look at the origin of Union citizenship as the form-status is taken from the acquisition of nationalities of the Member States—first, at the general scholarship on nationality law in terms of the origin, such as *ius soli*, *ius sanguinis* and other rules—second, at a concise overview of how the form-status of Union citizenship actually emerges heterogeneously by virtue of those rules.

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166 Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ 326/47, article 20.

167 Commission, 'Third Report from the Commission on Citizenship of the Union' COM(2001) 506 final 7.

168 Hanneke van Eijken and Pauline Phoa, 'Chapter 5: Nationality and EU citizenship: strong tether or slipping anchor?' in *Civil Rights and EU Citizenship* (Edward Elgar Publishing 2018) 99.

169 Ibid 103.

170 See note 14 above; in addition, see Treaty on European Union [1992] OJ C 191, Declaration on nationality of a Member State. On challenging Member States' nationality laws by the Court of Justice, see Jo Shaw (ed), 'Has the European Court of Justice Challenged Member State Sovereignty in Nationality Law?' (2011) 2011/62 EUI Robert Schuman Centre for Advanced Studies <https://hdl.handle.net/1814/19654> accessed 1st May 2023.

171 See Chapter 1.2.2. Court of Justice's Interventions above.

3.1.1. General Scholarship on Nationality Law

Several approaches how to perceive the origin and acquisition of nationality may be encountered; the author nevertheless relies in his study on the systematics and knowledge developed in research by A. Mantha-Hollands and J. Dzankic,[172] and H. van Eijken and P. Phoa;[173] nonetheless, also on his own input. The entire matter at issue can be divided into two pathways with subsequent specific laws whereby an individual acquires nationality. First, the **acquisition *ex lege*[174]** thereby nationality is acquired predominantly at and by birth—an individual needs not to act in any way; the sole fact of birth is the only way for acquiring nationality. Second, the **acquisition *ex actu*,**[175] whereby an individual acquires nationality by mutual acting with an authority under the qualified procedure. Under each category of acquisition, particular *iura* may be subordinated, the primal objective of which is to secure the continuity of link between a state and its citizens throughout generations.[176]

3.1.1.1. Acquisition ex lege

The acquisition *ex lege*, hence, an acquisition by birth consists of two principal rules, namely, *ius sanguinis*—the right of blood, and *ius soli*—the right of soil. The principle of *ius sanguinis*—acquiring nationality after parents—may be traced backwards up to the Greco-Roman era and the concept of free citizens,[177] which is also the reason for its widespread distribution on the Old Continent as they were the very French revolutionaries that would burn anything mediaeval

[172] Ashley Mantha-Hollands and Jelena Dzankic, 'Ties that bind and unbind: charting the boundaries of European Union citizenship' (2022) 49/9 Journal of Ethnic and Migration Studies 2091 <https://doi.org/10.1080/1369183X.2022.2107499> accessed 3rd May 2023.

[173] Hanneke van Eijken and Pauline Phoa, 'Chapter 5: Nationality and EU citizenship: strong tether or slipping anchor?' in *Civil Rights and EU Citizenship* (Edward Elgar Publishing 2018).

[174] H. van Eijken and P. Phoa label this means as '*acquisition de iure*'; to that effect, see ibid 104.

[175] The author considers the term of the acquisition *ex actu*—both meaning from an individual legal act, such as a decision, and from acting of an individual—more precise than the broadly used term of the acquisition by naturalisation, as it implies the very needed act both of an individual and of the state; moreover, it also includes the acquisition of nationality by the declaration of option, which according to the doctrine does not fall under the naturalisation. For this purpose, see, *exempli gratia*, Thomas Huddleston, 'Naturalisation in context: how nationality laws and procedures shape immigrants' interest and ability to acquire nationality in six European countries' (2020) 8/18 Comparative Migration Studies <https://doi.org/10.1186/s40878-020-00176-3> accessed 3rd May 2023.

[176] Maarten Peter Vink and Rainer Bauböck, 'Citizenship configurations: Analysing the multiple purposes of citizenship regimes in Europe' (2013) 2013/11 Comparative European Politics 622 <https://doi.org/10.1057/cep.2013.14> accessed 3rd May 2023.

[177] To that effect, see Peter Riesenberg, *Citizenship in the Western Tradition: Plato to Rousseau* (The University of North Carolina Press 1992) 3-82.

and return to the ideals of antiquity. *Ius sanguinis* hence, firstly in the modern period, occurred in the Civil Code of the French Republic of 1803; P. Weil states that '[t]he grant of French nationality at birth only to a child born to a French father, either in France or abroad, was not ethnically motivated. It was the first step in the creation of a modern independent citizen—no longer a permanent property of the Sovereign on whose soil he was born, but now a subject of rights.'.[178] Thanks to the Napoleonic Wars, *ius sanguinis* has spread all over the countries of the Continent and ingrained in their legal orders; therefore, it became the foremost way to acquire a nationality there. The rationale behind this may primarily be to preserve a community or a nation through bloodlines and family ties and their links to a state from an intergenerational perspective. Furthermore, the preservation might even transcend national borders, and lineage may therefore continue abroad.[179]

On the contrary, here appears *ius soli*—acquiring nationality after the birth-place territory; the principle that might be, on the one hand, perceived as a relic of times bygone, in the form of the serfdom—a feudal link between a serf and the soil, respectively, the monarch.[180] Since the, legal, ideals of the French Revolution did not particularly spread over the United Kingdom, *ius soli* became the rule of acquisition *ex lege* in most of the British colonies, hence, of future Americas.[181] There comes the other hand for barely could be the utilisation of *ius soli* in the New World interpreted as the instrument of feudal oppression; instead, it thus developed into a symbol of freedom and hope that the next generation of immigrants would be rightful members of their nation. *Ius soli* aims to strengthen the connection between an individual and a territory of the state, but, in this day and age, it rather symbolises the openness of the state towards newcomers as better status is guaranteed for their children. The rationale behind different approaches and provisions amongst different states in terms of acquisition *ex lege* also derives from the fact of globalisation, thus, from the cross-national mobility

[178] Patrick Weil, 'From conditional to secured and sovereign: The new strategic link between the citizen and the nation-state in a globalized world' (2011) 9/3 International Journal of Constitutional Law 617 <https://doi.org/10.1093/icon/mor053> accessed 5th May 2023.

[179] Different states have different provisions regarding how far the lineage can continue—some impose a maximum of generations, while others do not. To that effect, see Ashley Mantha-Hollands and Jelena Dzankic, 'Ties that bind and unbind: charting the boundaries of European Union citizenship' (2022) 49/9 Journal of Ethnic and Migration Studies 2093-2094.

[180] Ibid.

[181] Patrick Weil, 'From conditional to secured and sovereign: The new strategic link between the citizen and the nation-state in a globalized world' (2011) 9/3 International Journal of Constitutional Law 618.

of people. Were it not for that, an individual—who was born in a certain state to parents who had been born in that same state—would remain national of that state all his or her life.[182]

3.1.1.2. Acquisition ex actu

The acquisition *ex actu*, ergo, an acquisition by an act or acting contains a Pleiades of various rules such as aforementioned *ius sanguinis* and *ius soli*, however, also *ius familias*—the right of family ties, *ius meriti*—the right of merits, and many others. The purpose of this kind of acquisition is to open the gates of exclusive legal status to individuals who have not had parents, after whom they would be granted nationality, or who were not born in the territory of the state of their residence, or who find themselves in a state of statelessness, and who, at the same time, do yearn for such status and are capable of meeting the qualified conditions. The acquisition *ex actu* is usually grounded on *ius soli* since states ordinally require a specific period of time of residence in their territory in order to grant nationality, behind which there is an idea that 'residency within a bounded place creates a bond between a person and a state'.[183]

Access to this acquisition tends to be simplified by *ius familias*—for individuals whose close family members or spouses do already possess the nationality of that state—states are aware that families are their cornerstones, wherefore they recognise these types of links transfers.[184] Notwithstanding *ius familias* originating in the doctrine of the 'dependent nationality'—married women's status followed their husbands' nationality—which was in force in Europe until the First World War;[185] nowadays, it may serve as a substitute for *ius sanguinis* where there is no bloodline to find.[186] To underline, *ius soli* in conjunction with

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[182] Patrick Weil, 'Access to citizenship: A comparison of twenty-five nationality laws' in T Alexander Aleinikoff and Douglas Klusmeyer (eds), *Citizenship Today: Global Perspectives and Practices* (Carnegie Endowment for International Peace 2001) 19.

[183] Ashley Mantha-Hollands and Jelena Dzankic, 'Ties that bind and unbind: charting the boundaries of European Union citizenship' (2022) 49/9 Journal of Ethnic and Migration Studies 2094.

[184] Ibid.

[185] Leti Volpp, 'Feminist, Sexual, and Queer Citizenship' in Ayelet Shachar and Rainer Bauböck and Irene Bloemraad and Maarten Peter Vink (eds), The *Oxford Handbook of Citizenship* (Oxford University Press 2017) 155.

[186] Such as in cases of international adoptions, a child following their parents to the state the nationality of which they possess, or simple international marriages. For that purpose, see Irene Bloemraad and Alicia Sheares, 'Understanding Membership in a World of Global Migration: (How) Does Citizenship Matter?' (2017) 51/4 International Migration Review 829 <www.jstor.org/stable/45116668> accessed 10th May 2023.

ius familias can be defined as an *ascending instrument* primarily for individuals to apply for a state's nationality. On the other side, there lies the principle of *ius meriti*—a legal title of acquisition 'based on an individual's exceptional abilities and talent'.[187] By this means, individuals acquire nationality as a result of the state's interests in it and in them; hence, it is chiefly a *descending instrument* of a state to attract and to grant nationality for reasonable achievement in science, arts or scholarship.[188] Under this rule can also be subsumed *ius doni*, a peculiar approach whereby the 'individual's exceptional abilities' are examined with regard to the amount of wealth that an individual is willing to 'donate', or rather 'invest'.[189]

In certain cases, the acquisition *ex actu* may be possible also in a simpler form, in the form of the declaration of option. This optional acquisition[190] relies mainly on the rules of *ius sanguinis* and *ius soli*; individuals are under precise requirements entitled to obtain nationality without further procedural acts, unlike in the case of naturalisation, as a result of their specific legal status, historical events, family ties or even their previous possession of the nationality of that state.[191]

3.1.2. Emergence of Form-Status of Union Citizenship

As was already abovementioned, the derivative nature of the acquisition of Union citizenship is more-or-less universally recognised; therefore, a look must be taken at Member States' nationality laws as these are also laws of Union citizenship. Nonetheless, given that more than one pen has already been dipped in mapping this issue thoroughly,[192] this look is rather concise in terms of which

[187] Ashley Mantha-Hollands and Jelena Dzankic, 'Ties that bind and unbind: charting the boundaries of European Union citizenship' (2022) 49/9 Journal of Ethnic and Migration Studies 2095.

[188] To that effect, see Christian Joppke, 'Earned Citizenship' (2021) 61/3 European Journal of Sociology 1 <http://doi.org/10.1017/S0003975621000035> accessed 10th May 2023.

[189] For this purpose, see Christian Joppke, 'The instrumental turn of citizenship' (2018) 45/6 Journal of Ethnic and Migration Studies 864-867 <https://doi.org/10.1080/1369183X.2018.1440484> accessed 10th May 2023.

[190] As is categorised by H. van Eijken and P. Phoa; to that effect, see Hanneke van Eijken and Pauline Phoa, 'Chapter 5: Nationality and EU citizenship: strong tether or slipping anchor?' in *Civil Rights and EU Citizenship* (Edward Elgar Publishing 2018) 104.

[191] For a wider overview of requirements for the declaration of option, see Gerard-René de Groot, 'Conditions for Acquisition of Nationality by Operation of Law or by Lodging a Declaration of Option' (2002) 9/2 Maastricht Journal of European and Comparative Law 144-154 <https://doi.org/10.1177/1023263X0200900202> accessed 10th May 2023.

[192] For this purpose, see, *exempli gratia*, Maarten Peter Vink and Rainer Bauböck, 'Citizenship configurations: Analysing the multiple purposes of citizenship regimes in Europe' (2013)

approaches are followed. With regard to the acquisition *ex lege*, fundamental nationality law of all Member States is *ius sanguinis*, with a plethora of various rationales.[193] In contrast, *ius soli* serves, in a majority of the Member States, only as an additional way of acquisition—if a born child would be stateless or in cases of foundlings. Automatic and unconditional *ius soli* is not present anywhere except in France, Luxemburg and Spain, yet in the form of 'double *ius soli*',[194] which means that an individual acquires nationality *ex lege* of that state only if he or she is already the second generation born in that state.[195] Conditional *ius soli* is practised in certain Member States, primarily with immigrational experiences.[196] From the perspective of the acquisition *ex actu*, one may encounter as many approaches as there are Member States; wherefore, the exception is no *iura* theoretically presented above. As it is not in the capacity of this master's thesis to list and define every different law, may the reader consult the GLOBALCIT Citizenship Law Dataset for a broader overview.[197]

The form-status of citizenship of the Union emerges at the exact moment as the nationality of a Member State does; therefore, the emergence of Union citizenship is constructed on all these *iura* present in the Member States. For these reasons, D. Kochenov defines the rule of the acquisition of Union citizenship as '*ius tractum*'[198]—the right derived. Union citizenship may be acquired variedly on

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2013/11 Comparative European Politics 622; Gerard-René de Groot, 'Conditions for Acquisition of Nationality by Operation of Law or by Lodging a Declaration of Option' (2002) 9/2 Maastricht Journal of European and Comparative Law 121; Patrick Weil, 'Access to citizenship: A comparison of twenty-five nationality laws' in T Alexander Aleinikoff and Douglas Klusmeyer (eds), *Citizenship Today: Global Perspectives and Practices* (Carnegie Endowment for International Peace 2001) 17; or, up-to-date, Ashley Mantha-Hollands and Jelena Dzankic, 'Ties that bind and unbind: charting the boundaries of European Union citizenship' (2022) 49/9 Journal of Ethnic and Migration Studies 2091.

193 For France, it is undoubtedly the fulfilment of the ideals of the French Revolution; to that effect, see Patrick Weil, 'From conditional to secured and sovereign: The new strategic link between the citizen and the nation-state in a globalized world' (2011) 9/3 International Journal of Constitutional Law 617. Whereas for Germany, *ius sanguinis* has played a role of an ethnocultural divider as German nationality had been for a long period of time 'open [only] to ethnic German immigrants from Eastern Europe and the Soviet Union, but remarkably closed to non-German immigrants'; for this purpose, see Rogers Brubaker, *Citizenship and Nationhood in France and Germany* (Harvard University Press 1992) 3.

194 Ashley Mantha-Hollands and Jelena Dzankic, 'Ties that bind and unbind: charting the boundaries of European Union citizenship' (2022) 49/9 Journal of Ethnic and Migration Studies 2098.

195 'GLOBALCIT Citizenship Law Dataset – Modes of Acquisition of Citizenship' (Robert Schuman Centre 2020) <https://globalcit.eu/modes-acquisition-citizenship/> accessed 15th May 2023.

196 *Id est*, Belgium, Germany, Greece, Ireland, and Portugal; to that effect, see ibid.

197 Ibid.

198 'From the Latin trahere—"derive," "get."' To that effect, see Dimitry Kochenov, 'Ius Tractum of Many Faces: European Citizenship and the Difficult Relationship between Status and Rights' (2009) 15/2 Columbia Journal of European Law 181.

the basis of the acquisition of the nationality of a Member State; however, at the end of the day, it is acquired derivatively from the Member State's nationality—through *ius tractum*. Different Member States' *iura*—whether *ius sanguinis, ius soli, ius familias* or others—are hence not actual *iura* of Union citizenship *stricto sensu* but are only prerequisite to the acquisition through *ius tractum*, which may thus be the principle of either the acquisition *ex lege* or the acquisition *ex actu*. To acquire Union citizenship is nevertheless possible also under another rule, symptomatic only of the Union—by the accession of a new Member State to the European Union.[199] At the moment of the accession, all Member State's nationals become citizens of the Union; however, what is apparent and noteworthy is that this is the only case when the emergence and acquisition of nationality are severed from the emergence and acquisition of citizenship of the Union,[200] in all other cases the relationship between them is of a dependent nature.

A different approach is taken by authors who support and defend the idea of 'post-national citizenship', which firstly and seriously entered the citizenship scholarship with Y. N. Soysal's work.[201] Given that the book was published during the enthusiastic period after the end of the Cold War, during the end of history,[202] she argued for a kind of citizenship that would not be a membership that is based on nationhood but instead on personhood,[203] and she saw it emerging in the borderless European Union, in citizenship of the Union.[204] The accurate materialisation of this idea was the proposal by the Liberal Forum party from Austria during the negotiations over the Treaty of Amsterdam,

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[199] W. Worster, however, poses a question of whether the automatic acquisition of Union citizenship through accession to the European Union applies without further. He presents a rather interesting argument that primary law contains only a mechanism for the acquisition of Union citizenship only mutually with the acquisition of Member State's nationality; wherefore, 'it could be argued that once a person received his non-EU member state nationality (at birth or naturalization) [*ex lege* or *ex actu*], he or she missed the chance to get EU citizenship, notwithstanding his or her state's later accession to the EU'. To that effect, see William Thomas Worster, 'Brexit as an Arbitrary Withdrawal of European Union Citizenship' (2021) 33/1 Florida Journal of International Law 110-111 <https://ssrn.com/abstract=4030705> accessed 15th May 2023. Nevertheless, the author of this master's thesis does not agree with this interpretation as the derivative nature of the acquisition of Union citizenship logically only implies from the wording of the Treaties, whilst the Treaties do not provide any explicit mechanism of the acquisition of Union citizenship.

[200] Ibid.

[201] Yasemin Nuhoglu Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe* (University of Chicago Press 1994).

[202] A reference to the F. Fukuyama promulgation of the final victory of liberal democracy as the system which will prevail eventually everywhere. To that effect, see Francis Fukuyama, The *End of History and the Last Man* (Free Press u.a. 1992).

[203] Yasemin Nuhoglu Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe* (University of Chicago Press 1994) 137.

[204] Ibid 164.

as abovementioned,[205] which suggested that Union citizenship be granted to every individual who resides in the European Union legally for five years, regardless of whether he or she is a Member State's or a third-country national. In that case, the rule of the acquisition of Union citizenship would not be exclusively *ius tractum* but also *ius domicilii*—in that case, citizenship of the Union could be acquired separately from the nationality of a Member State. Nonetheless, the author cannot agree with this approach since he himself pursues to move within the limits of the positive law, which this idea cannot meet, as it would require a significant change in the Treaties.[206] The author is hence of the opinion that the derivativeness of the acquisition of Union citizenship is inevitable, thus, *ius tractum* is a perfect depiction of it.

3.2. Autonomy of Form-Status

D. Kochenov argues that the entire form-status of citizenship of the Union is inevitably derivative as the result of the rule of the acquisition, of the emergence—*ius tractum*.[207] To the extent of the acquisition of Union citizenship, the author of this master's thesis has no intention to doubt or question it; what is more, he supports and backs it. Yet, the form-status of Union citizenship is not a monolithic phenomenon; instead, it is crucial to distinguish between different segments, *id est*, either the acquisition—emergence, either the sole further existence, or the final termination. These segments should be viewed separately rather than as one. Ergo, the question is whether the sole existence and the final termination of the form-status of Union citizenship are also of a derivative character, or whether they are already of autonomous. Regarding the methodology, the author exercises the assessment on a pure legalistic basis and the postulates of the normative legal theory of H. Kelsen[208] and Czech jurisprudence in the person the of V. Knapp[209] and A. Gerloch[210] since these

[205] See note 45 above.
[206] Other practical problems and consequences are mentioned by M. Svobodová, *exempli gratia*, that kind of Union citizenship would be difficult to enforce, would not be internationally recognised or would not have reciprocal character. To that effect, see Magdaléna Svobodová, *Občanství Evropské Unie* (Auditorium 2021) 318-319.
[207] Dimitry Kochenov, 'Ius Tractum of Many Faces: European Citizenship and the Difficult Relationship between Status and Rights' (2009) 15/2 Columbia Journal of European Law 181.
[208] See Hans Kelsen, The *Pure Theory of Law* (translated by Max Knight, University of California Press 1970).
[209] See Viktor Knapp, *Teorie práva* (C. H. Beck 1995).
[210] See Aleš Gerloch, *Teorie práva* (4th edition, Aleš Čeněk 2007).

provide a suitable framework for the assessment of the character of Union citizenship.

Citizenship of the Union has already been defined as the public legal relationship between an individual and the European Union.[211] However, before the assessment may proceed, a closer look, with regard to legal relationships, must be taken at the postulates of the normative legal theory, which has hitherto been introduced in the English-speaking area only partially through the translation of the work of H. Kelsen. Yet, the author of this master's thesis cannot at all abandon his background in the Czech legal theory,[212] which had narrowly further developed the normative legal theory in terms of legal relationships, wherefore it may serve more than well for the assessment. Thus, the reader first finds a general theoretical framework of legal relationships on the basis of the Kelsen's and Czech jurisprudence's postulates, which are afterwards applied to the situation of Union citizenship with regard to *ius tractum*. Whereby the author isolates the emergence, existence, and termination of Union citizenship as a public legal relationship. Subsequently, it is examined whether the derivativeness of the emergence sustains into the existence and termination, respectively.

3.2.1. Theory of Legal Relationships

H. Kelsen defines a legal relationship as 'the relation[ship] between legal subjects, that is, between the subject of an obligation and the subject of the corresponding right […] constituted by the legal order'.[213] Czech jurisprudence further develops that a legal relationship emerges, changes, or terminates on the basis of the intersection of two prerequisites, namely, the *legal title* and the *legal fact*. The **legal title** is an effective legal norm, which enshrines first the range of addressees of that norm, second legally relevant circumstances for that norm, and third legal effects of that norm—emergence, change, or termination of the legal

[211] See note 147 above.

[212] Unfortunately, the majority of the Czech jurisprudence's theory of legal relations has not been presented, not even translated into English yet. To explain central postulates, the author draws on the above literature, for this purpose, see note 210 above, with the conjunction of the Czech-English legal dictionary—for this purpose, see Marta Chromá, *Česko-anglický právnický slovník s vysvětlivkami* (LEDA 2010).

[213] Hans Kelsen, The *Pure Theory of Law* (translated by Max Knight, University of California Press 1970) 163.

relationship[214]—and to them connected specific commands, permissions, or authorisations.[215] H. Kelsen points: 'By "norm" we mean that something *ought* to be or *ought* to happen.'.[216] On the other hand, the **legal fact** is that circumstance—yet manifested in the outer world—which is anticipated by the legal title, and to which the legal title links legal effects.[217] Albeit different types of legal facts can be divided by numerous frameworks, the most suitable categorisation for the purposes of this master's thesis is the one according to A. Gerloch, who distinguishes between the legal facts in compliance with the law and the legal facts contrary to the law on the one hand, and the volitional legal facts and the unvolitional legal facts on the other.[218]

The legal facts in compliance with the law may further be divided, from the A. Gerloch's point of view on the basis of the volitionality or unvolitionality, into *lawful legal acts* and *lawful legal events*;[219] moreover, the author of this master's thesis subsequently adds *lawful legal status*[220] to this enumeration. **Lawful legal acts** represent acts of the volition of a legal subject, which are in compliance with the law, and legal effects of which are an emergence, change, or termination of a legal relationship. Should lawful legal acts be exercised by a natural or legal person, these are called transactional acts;[221] whereas if lawful legal acts are exercised by a public authority, those are known as individual legal acts. Individual legal acts are constitutive decisions, which ergo constitute an

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214 Aleš Gerloch, *Teorie práva* (4th edition, Aleš Čeněk 2007) 160.

215 Hans Kelsen, The *Pure Theory of Law* (translated by Max Knight, University of California Press 1970) 5.

216 Ibid 4.

217 Viktor Knapp, *Teorie práva* (C. H. Beck 1995) 203.

218 A. Gerloch, thus, distinguishes between four categories of legal facts: *lawful legal acts*—volitional legal facts in compliance with the law; *lawful legal events*—unvolitional legal facts in compliance with the law; *unlawful legal acts*—volitional legal facts contrary to the law; *unlawful legal status*—unvolitional legal facts contrary to the law. For this purpose, see Aleš Gerloch, *Teorie práva* (4th edition, Aleš Čeněk 2007) 161.

219 Ibid 162-166.

220 Czech legal theory ordinarily works only with the term of *unlawful legal status*, which describes an unvolitional situation or status that is contrary to the law. However, from the author's point of view, if there are unlawful legal status—which are unvolitional legal facts contrary to the law—there must also be lawful legal status—which would be unvolitional facts in compliance with the law. The latter is more than relevant for this master's thesis, as the reader may find hereinbelow.

221 'Rechtsgeschäft' in German; 'negotium juridicum' in Latin. To that effect, see Jaap Hage, 'What is a legal transaction?' in Zenon Bankowski, Maksymilian Del Mar (eds), *Law as Institutional Normative Order* (Routledge 2009). Furthermore, transactional acts are commonly and broadly acknowledged in all Germanic law legal systems, where the Czech Republic with her legal order belongs also.

emergence, change, or termination of a legal relationship.[222] That would be, for instance, a decision on granting nationality or citizenship. **Lawful legal events** are legal facts that are independent of the volition of a legal subject, that are in compliance with the law, and whereby a legal relationship emerges, changes, or terminates. A lawful legal event is a precise point in time; wherefore, the most typical representative of this legal fact is birth. By birth and through birth, an individual enters legal relationships of rights and obligations.[223] In contrast, there stands **lawful legal status**, which is not an isolated point in time; instead, it is a legal fact that durates unvolitionally on a legal subject, in compliance with the law, and, at the point of the intersection with legal title, it causes legal consequences of emergence, change, or termination. A prime example may be a marital status of marriage or, more thematically related, a possession of the Member State's nationality.

The legal facts contrary to the law are further categorised according to the volitionality and unvolitionality into *unlawful legal acts* and *unlawful legal status*. **Unlawful legal acts** are legal facts that are the results of a volition of a legal subject, that are contrary to the law as a result of breach or failure to comply with a legal obligation, and by which a legal relationship emerges, changes, or terminates. The typical representative of these is a legal delict.[224] The emergence, respectively, termination of the legal relationship of citizenship or nationality is nonetheless never a legal effect of unlawful legal acts; therefore, they are furthermore omitted. On the other hand, **unlawful legal status** are relevant, concretely, in the case of the termination. These are legal facts which are independent of a legal subject's volition, which are contrary to the law, and legal effects of which are the emergence, change, or termination of a legal relationship. The contrariness consists in the failure to fulfil the legal circumstances provided for and stipulated by the law. The literature states that an archetypal example of unlawful legal status is a natural disaster;[225] nonetheless, in the context of nationality or citizenship, as an opposite to lawful legal status, it might be 'non-possession' of a certain status, such as the Member State's nationality.

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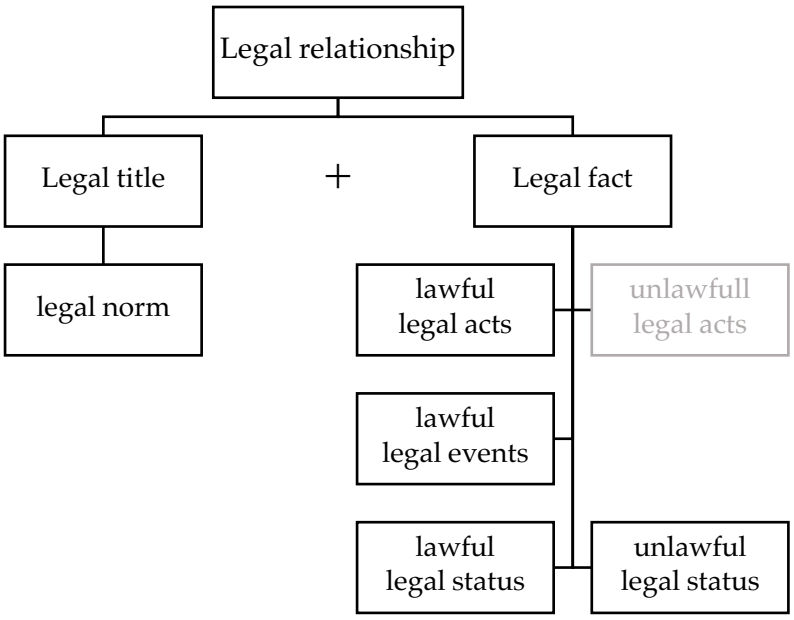
[222] See Aleš Gerloch, *Teorie práva* (4th edition, Aleš Čeněk 2007) 162-164. On the contrary, a declaratory decision only acknowledges an already existing legal relation; wherefore, a declaratory decision cannot be legal act and legal fact, respectively. To that effect, see ibid.
[223] Ibid 165.
[224] Ibid 164.
[225] Ibid 166.

Figure V. – Theory of Legal Relationships



Citizenship or nationality as a legal relationship is always a public legal relationship. Such type of a legal relationship is, by its virtue, of an unequal character on the basis of the superiority of one legal subject and the inferiority of the other.[226] Thus, in this instance, between a Member State or the Union on the one hand and a natural person on the other.

3.2.2. Derivative Character of Emergence of Union Citizenship

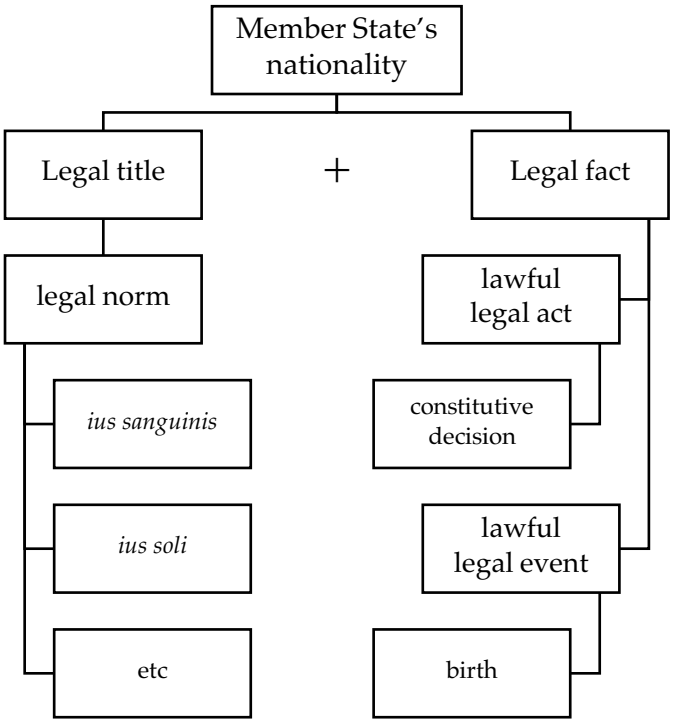
As has the normative theory of legal relationships been introduced and explained, it is more than worthwhile to approach its application to Union citizenship. Yet since citizenship of the Union as a public legal relationship emerges only derivatively from the Member State's nationality through *ius tractum*, the first assessed through the prisms of this theory cannot be citizenship of the Union but must be the nationality of a Member State.

The public legal relationship of the Member State's nationality follows the same pattern and the same formula in its emergence as other legal relationships; hence, it emerges at the point of mutual intersection between the legal title and the legal fact. As may have the reader found above, the legal title is a legal norm

[226] Hans Kelsen, The *Pure Theory of Law* (translated by Max Knight, University of California Press 1970) 164.

which defines the circle of recipients of the legal norm, legally relevant circumstances of its utilisation, and a legal effect. For the purposes of the acquisition of the nationality of a Member State, the legal title is one of abovepresented *iura*.[227] Whether *ius sanguinis*, *ius soli*, *ius familias*, *ius meriti* or *ius doni* or any other; all these first demarcate the range of addressees, who is entitled to obtain the nationality, second specify under which circumstances an addressee is granted the nationality, and third enshrine the legal effect of the emergence. From the other side, there comes the legal fact—an anticipated legally relevant circumstance. Those relevant in this case are lawful legal acts and lawful legal events, which mirror how the Member State's nationality is acquired. For the acquisition *ex actu*,[228] it is a lawful legal act as an individual legal act in the form of a constitutive decision, *id est*, a decision on granting nationality of a Member State issued by a public authority. Whilst for the acquisition *ex lege*,[229] a lawful legal event is the legal fact since it occurs unvolitionally; therefore, in terms of the emergence of such a legal relationship, that can be a birth amongst others.[230]

Figure VI. – Emergence of Member State's nationality



[227] See Chapter 3.1.1. General Scholarship on Nationality Law above.
[228] See Chapter 3.1.1.2. Acquisition *ex actu* above.
[229] See Chapter 3.1.1.1. Acquisition *ex lege* above.
[230] Another lawful legal event may be a case of a foundling.

Albeit the principles of the emergence of the public legal relationship of Union citizenship are of more than a similar nature like in the case of Member State's nationality, the entire process is defined by the different legal title, which results in the different anticipated legal fact. As the author has submitted, all those different *iura*,[231] which are inherent to the acquisition of the nationality of a Member State, are not inherent to the acquisition of citizenship of the Union. Since it is in the Union case conducted by the D. Kochenov-developed term of *ius tractum*. *Ius tractum* is the legal title of Union citizenship which firstly delineates the circle of recipients of the norm—'**[e]very person** holding the nationality of a Member State',[232] secondly defines legally relevant circumstances—'[e]very person **holding the nationality of a Member State**',[233] and thirdly states the legal effect—'shall be a citizen of the Union'.[234] Consequently, it is a lawful legal status that is the legal fact, concretely, the lawful legal status in the form of the holding, possession of Member State's nationality.

Wherefore, citizenship of the Union as a public legal relationship has been emerging at every point in time when the legal title—*ius soli* in the form of European primary law establishing Union citizenship—intersects with the legal fact—a person holding the nationality of a Member State. This generalised perspective is capable of including all thinkable possibilities of the emergence of Union citizenship. Whether it was the establishment of Union citizenship in the year 1993 by the Treaty of Maastricht—the only situation when the legal fact de facto preceded the legal title, the lawful legal status; or accession of a new Member State to the European Union after the year 1993—the legal title already existing and awaiting the fulfilment of the legal fact through lawful legal status; or the simple birth—the legal title anticipating the lawful legal event, which is how new-born Union citizens in the Member States acquire citizenship of the Union.

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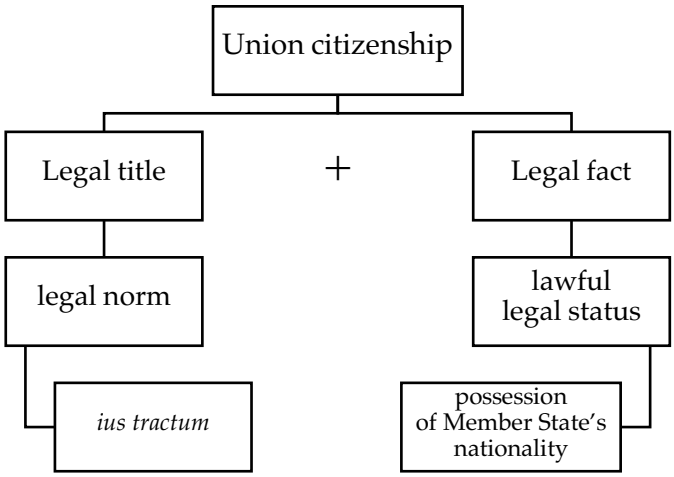
[231] See Chapter 3.1.1. General Scholarship on Nationality Law above.
[232] Emphasised added by the author; Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ 326/47, article 20 paragraph 1.
[233] Emphasised added by the author; ibid.
[234] Ibid.

Figure VII. – Emergence of Union citizenship



3.2.3. Autonomous Character of Existence of Union Citizenship

As the theory prescribes, a legal relationship emerges, changes, or terminates once the legal title intersects with the legal fact. Therefore, the presence of the legal fact is relevant only at the point of the intersection with the legal title; whereas, for further existence, the legal fact is not crucial and what is more, not needed at all. Just as the nationality of a Member State as a public legal relationship emerges at the intersection of the legal title—eg, *ius sanguinis*, *ius soli*—with the legal fact—constitutive decision or birth—so does citizenship of the Union as a public legal relationship when the legal title—*ius tractum*—intersects with the legal fact—possession of a Member State's nationality. Wherefore, just as neither does a Member State's national need to be constantly reborn or granted the nationality by a public authority in order to fulfil the legal title continuously, nor does a Union citizen need to be constantly in possession of the Member State's nationality in order to fulfil the legal title continuously. Thus, what is relevant is only the very moment when the legal title intersects with the legal fact—either a constitutive decision, a birth, or even possession of the Member State's nationality.

On this basis, it should be said that just as the sole existence of the legal relationship of the Member State's nationality is autonomous on any legal fact, so is the sole and further existence of the legal relationship of Union citizenship, beyond and from the point of its emergence, autonomous on the legal fact—

possession of the nationality of a Member State—also.[235] Henceforth, the legal relationship of Union citizenship exists until it is changed or terminated by another legal title which would intersect with another anticipated legal fact. Whence it is reasonable to conclude that the existence of the form-status of Union citizenship is of an autonomous character.

3.2.4. Derivative Character of Termination of Union Citizenship

For the comprehensive assessment, the final segment, the termination of the legal relationship of Union citizenship must not be omitted. Once and for all, a legal relationship terminates at the point of the intersection of the legal title with the anticipated legal fact. On this basis, the author draws two opposite premises. First—there is no legal title related to 'non-possession' of the Member State's nationality for the termination of the legal relationship of Union citizenship; therefore, Union citizenship would remain true autonomous beyond the emergence as the loss of the nationality of a Member States could not affect it. Second, the opposite—Union law, concretely, Article 20 of the Treaty on the Functioning of the EU contains such a legal title for the termination; hence, notwithstanding Union citizenship being autonomous in its existence on the Member State's nationality, at the point of 'non-possession' of the nationality of a Member State, it would terminate derivatively again by reasons of *ius tractum*. Whence it follows that, to confirm or to refute one or the other premise, it is essential to examine whether the legal title for the termination exists or not.

The only legal title for the termination, in the current wording, might be again *ius tractum*.[236] To explore its (non-)presence, the issue must be perceived through legal interpretation. Yet, since the wording is not exhaustive in terms of defining all imaginable legal status of all thinkable legal subjects, the grammatical

[235] W. T. Worster comes to a partially similar conclusion also, yet through a different path of argumentation. Even though he does not doctrinally distinguish between the emergence and the existence, he senses that the only derivative part of Union citizenship is solely the emergence. To that, he states: 'EU citizenship is dependent on member state nationality, but only for purposes of acquisition. EU citizenship is acquired when a person has EU member state nationality. Thus, whether an individual acquires EU member state nationality is primarily within the discretion of the member state's nationality laws. In this way, it is dependent on having EU member state nationality. As such, there is an "independent" EU citizenship that is nonetheless "linked" to EU member state nationality.' For this purpose, see William Thomas Worster, 'Brexit as an Arbitrary Withdrawal of European Union Citizenship' (2021) 33/1 Florida Journal of International Law 110.

[236] Except of a death. The author intends to omit that, for that is more than obvious and is not related to the deprivation of Union citizenship during a lifetime.

interpretation would not be sufficient. Hence, it is inevitable to delve into logical interpretation, that is, by *argumentum a contrario*, which stands on two Roman brocards:[237] *ubi lex voluit, dixit; ubi noluit, tacuit*,[238] and *expressio unius est exclusio alterius*.[239] Whereby it is meant that if the law enshrines that a specified set, for instance, a specified group of legal subjects does possess specified rights or specified status, all other legal subjects, which are not included in the specified group, do not possess such rights or status. Wherefore, by *argumentum a contrario* to: 'Every person holding the nationality of a Member State shall be a citizen of the Union.',[240] one should conclude that every other person, who does not hold the nationality of a Member State, shall not be a citizen of the Union.

Although V. Knapp and A. Gerloch argue that the statement must be expressed exclusively;[241] hence, the specified group of legal subjects must be specified exclusively without any consideration. In order to assess the sufficiency or lack of exclusivity, it is appropriate to compare the wording at issue with others of a similar nature. These are not far away as those compared may be the provisions enshrining the rights of Union citizens. By *argumentum a contrario* to: 'Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties.',[242] one must come to the conclusion that every other person, who is not a citizen of the Union, shall not enjoy the rights and not be subject to the duties.[243] The phrasing of the latter cited legal provision constituting rights is as exclusive as the wording of the former legal provision establishing the status.

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[237] A brocard is a legal principle or maxim. To that effect, see John Webster Spargo, 'The Etymology and Early Evolution of Brocard' (1948) 23/3 Speculum 472-476 <https://doi.org/10.2307/2848433> accessed 8th June 2023.

[238] '[W]hat the law wishes, it states, what the law does not want, it keeps silent upon', for this purpose, see Fabrizio Macagno and Douglas Walton and Giovanni Sartor, 'Argumentation Schemes for Statutory Interpretation' (Argumentation 2012: International Conference on Alternative Methods of Argumentation in Law, Brno, 2012) 66 <www.academia.edu/12535092/Argumentation_Schemes_for_Statutory_Interpretation> accessed 8th June 2023.

[239] 'The expression of one is the exclusion of the other.' Translated by the author.

[240] Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ 326/47, article 20 paragraph 1.

[241] '[…] nestačí o něčem něco tvrdit, nýbrž je nezbytné, aby to, co se o něčem tvrdí, se tvrdilo výlučně o něm.' For this purpose, see Viktor Knapp and Aleš Gerloch, *Logika v právním myšlení* (Eurolex Bohemia, 3rd edition 2000) 213.

[242] Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ 326/47, article 20 paragraph 2.

[243] Unless *acquis communautaire* states that the specific right is not exclusively for Union citizens, but it enshrines it also for others. Such rights would be, *exempli gratia*, the right to good administration, the right of access to documents, the right to refer to the European Ombudsman, and the right to petition the European Parliament. Other persons are also entitled to them but only on the basis that there is another legal provision which states so. But all other rights enshrined in Article 20 of the Treaty on the Functioning of the EU are only granted upon Union citizens.

Ergo, by *argumentum per analogiam*, just as no person other than a Union citizen has the rights of a Union citizen, so no person other than a national of a Member State is a citizen of the Union.[244] For these reasons, it is reasonable to claim that the legal title for the termination of the legal relationship of Union citizenship exists and is included in the wording itself.

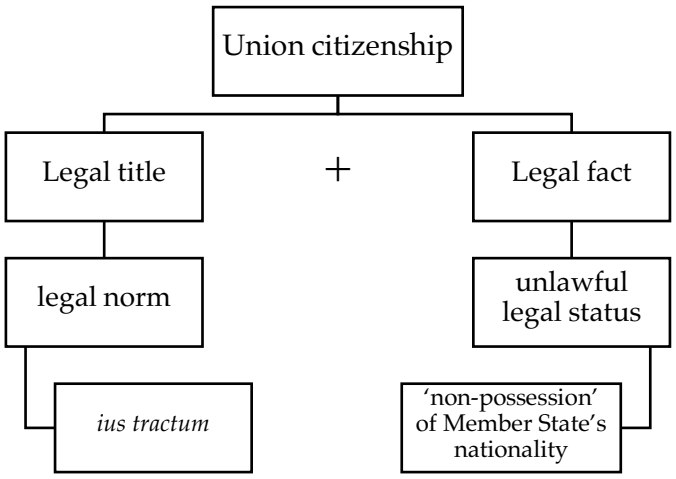
Through this lens, the first premise has been refuted, and the second confirmed. Wherefore, *ius tractum* is the legal title, again. It firstly demarcates the circle of addressees—Union citizens since the form-status has to exist first to terminate once, it secondly defines legally relevant circumstances—'non-possession' of the Member State's nationality, and it thirdly enshrines legal effect—termination of the legal relationship of Union citizenship. The legal title is subsequently that 'non-possession' of the Member State's nationality, which must be categorised as an unlawful legal status since it is the situation which is objectively contrary to the law as the law provided for and stipulated the exact opposite. At the point when the legal title intersects with the legal fact, the public legal relationship of Union citizenship terminates, as a result of which an individual loses his or her citizenship of the Union. In this context, the form-status of Union citizenship at the point of the termination is once again derivative from the nationality of a Member State.[245, 246]

[244] M. Svobodová shares the same conclusion. To that effect, see Magdaléna Svobodová, *Občanství Evropské Unie* (Auditorium 2021) 271.

[245] Therefore, the author does not agree with W. T. Worster that only the emergence of Union citizenship is derivative since it is also the termination. To that effect, see note 235 above. Neither does the author agree with S. Lashyn, who claims: 'The wording of those provisions, however, tells nothing about the loss of Union citizenship or its retention.'. For this purpose, see Serhii Lashyn, 'Sacrificing EU citizenship on the altar of Brexit', (2022) 29/6 Maastricht Journal of European and Comparative Law 736 <https://doi.org/10.1177/1023263X221146465> accessed 10th June 2023. The author of this master's thesis insists that the wording of those provisions does tell, thus, enshrine the legal title for the termination of Union citizenship as a public legal relationship.

[246] One might come to a different conclusion if the article at issue is read the way that the specific usage of the wording '**shall be** a citizen of the Union' enshrines only the *pro futuro* emergence and acquisition. That one is W. T. Worster, for this purpose, see note 199 above. Nevertheless, by comparison with other language versions—French: '**est** citoyen de l'Union', German 'Unionsbürger **ist**', Czech: '**je** občanem Unie'—it is more than obvious that it does not enshrine only the acquisition, but the whole institute from the emergence to the termination.

Figure VIII. – Termination of Union citizenship



Furthermore, the legal title for the termination of the public legal relationship of Union citizenship has recently been confirmed by the Court of Justice's judgements in cases regarding the situations of the nationals of the United Kingdom who have sought their lost citizenship of the Union.[247] The Court states that 'the loss of [Union citizenship] is an automatic consequence of the sole sovereign decision taken by the United Kingdom to withdraw from the European Union, by virtue of Article 50(1) TEU and not of the Withdrawal Agreement or the decision at issue.'[248] In other words, the legal title for the termination of the public legal relation of Union citizenship in the case of Britons was not enshrined in the Withdrawal Agreement or other related acts but in the simple fact that the United Kingdom has become the Third State; wherefore, its nationals have lost the Member State's nationality whereby they find themselves in the unlawful legal status of 'non-possession' of the nationality of a Member State.

To conclude this chapter; the answer to the question of whether the form-status of Union citizenship may be considered autonomous depends on about which part of the form-status one poses the question. By the postulates of the normative legal theory on legal relationships, the author has found that the emergence and the termination of Union citizenship as a public legal relationship is of a derivative nature as a result of *ius tractum*. Citizenship of the Union cannot be

[247] To that effect, see Case C-499/21 P *Silver and Others v Council* [2023] ECLI:EU:C:2023:479; Case C-501/21 P *Shindler and Others v Council* [2023] ECLI:EU:C:2023:480; Case C-502/21 P *Price v Council* [2023] ECLI:EU:C:2023:482.
[248] Case C-499/21 P *Silver and Others v Council* [2023] ECLI:EU:C:2023:479 paragraph 45.

acquired differently than by the acquisition of a Member State's nationality; wherefore, it cannot emerge autonomously. At the same, an individual, whose nationality of a Member State has been lost, cannot be a Union citizen beyond the point of that loss; therefore, it terminates derivatively. The only part and the only segment of the form-status of Union citizenship, which the author hence considers autonomous, is the sole existence between the point of the emergence and the termination of that public legal relationship. Once the intersection of the legal title and the legal fact for the emergence appears, citizenship of the Union exists autonomously and is not affected by any action of a Member State, nevertheless, only up to the point when the intersection of the legal title and the legal fact for the termination occurs. The element of the bond of the direct bond is present in citizenship of the Union only during this autonomous existence. Once the nationality of a Member State is lost, the bond does not exist any longer.

On the scope of the derivative emergence and termination, the author agrees with the Court of Justice, which states: 'By Article 9 TEU and Article 20 TFEU, the authors of the Treaties thus established an inseparable and exclusive link between possession of the nationality of a Member State and not only the acquisition, but also the retention, of the status of citizen of the Union.'.[249] In other words, the authors of the Treaties established the legal title not only for the emergence but also for the termination of the form-status of Union citizenship. Nonetheless, the author finds a little disagreement in the understanding of the sole existence of the form-status of Union citizenship with the Court since it declares that 'possession of the nationality of a Member State is an essential condition for a person to be able to […] retain the status of citizen of the Union'.[250] It cannot be said that the Court of Justice would be completely erroneous; however, the devil is in detail. According to the theory of legal relationships and the framework abovepresented, possession, respectively, 'non-possession' of the Member State's nationality are relevant only at the point of the emergence or at the point of the termination. Whence it follows that possession of the nationality of a Member State is indeed crucial to retain the form-status of Union citizenship because the latter is lost with the loss of the former; nonetheless, between those

[249] Case C-118/20 *Wiener Landesregierung* [2021] EU:C:2022:34, paragraph 48.
[250] Ibid 57.

two points in time—the emergence and the termination of such a legal relationship—the form-status is completely autonomous on the Member State's nationality.

Yet, these little nuances may be crucial since 'grau, teurer Freund, ist alle Theorie und grün des Lebens goldner Baum'.[251] For the green tree of life creates circumstances which theoretics cannot foresee, the legal practice might face a case where this fine distinction finds its place. The author would consider a situation, *exempli gratia*, when a Member State would introduce some sort of semi-nationality whereby it would intend to suspend access to citizenship of the Union, either to the form-status or, more practically, to the content-rights. In such a case, the Court of Justice ought to promulgate that access either to the form-status or to the content-rights must be secured on the basis of the autonomous existence of the legal relationship, moreover, in this constellation, by virtue of the qualified legal relation in the form of the direct bond. And that is because the legal relationship of Union citizenship would not be terminated as the legal title for termination would not intersect with the relevant legal fact of 'non-possession' of the Member State's nationality.

The last point aims eventually to the beginning. In the assessment of the matter at issue, the author has decided to assume a pure and formalistic approach, the approach which is closest to his perception of the law as it derives from the letter of the law. Nevertheless, he does not deny that different authors might come to a different conclusion in terms of the autonomy by different methods. Those might argue instead by the spirit of the law; hence, they might interpret the wording of Article 20 theologically with the emphasis on the intention of the authors of the Treaties, on the social purpose of Union citizenship or on the protection of human rights. For such an approach, the following chapter may serve well. If the Court of Justice takes such an approach and promulgates that a former Member State's national does not lose Union citizenship, the author's interpretation would also be affected since the legal title for the derivative termination would disappear; consequently, Union citizenship would no longer be of a derivative nature in the termination. However, until it happens so, the

[251] 'All theory, dear friend, is grey, but the golden tree of actual life springs ever green.' To that effect, see Johann W von Goethe, *Faust. Der Tragödie erster Teil* (1808) Studierzimmer. For the purpose of the translation, see Susan Ratcliffe (ed), *Oxford Essential Quotations* (6th edition, Oxford University Press 2018).

author of this master's thesis must insist, from the presented point of view, that the only autonomous part or segment of the form-status of citizenship of the Union is the sole existence in between the emergence and the termination of Union citizenship as a public legal relationship. Ergo, the bond exists only during this sole autonomous existence. The question of the directness is further examined in the next chapter.

4. Legal Character of Union Citizenship: ¿Nonvicariousness?

The premise that either the factual relation or the legal relation should provide protection for a citizen of the Union against an involuntary deprivation of his or her Union citizenship unreservedly by a Member State has been presented in Chapter 2. Nonetheless, the factual relation in the form of the genuine link has not been found. What remains is the legal relation in the developed concept of the direct bond. Hence, if the presence of the direct bond in Union citizenship is found, such a legal relation could not be severed by any legal entity other than the European Union or a Union citizen. To find the direct bond in citizenship of the Union, two prerequisites must be met—whether the form-status of Union citizenship may be considered autonomous, and whether the content-rights of Union citizenship may be considered nonvicarious. The former is the focal point of this chapter.

In contrast with the form-status, as has been indicated several times, the historical evolution of the content-rights of Union citizenship is deliberately omitted in this master's thesis due to the numerous other research works that have done so, elaboration of which would thus be redundant. Therefore, this master's thesis stands on the shoulders of giants.[252] On this basis, the assessment of whether the nonvicarious content-rights is present in citizenship of the Union is constructed, firstly, upon a reasonably brief overview of legal scholarship in terms of the possibility of imagining rights springing from a structure other than a 'nation-state';[253] and, secondly, if that is proven, which particular rights directly and *nonvicariously* stream from the European Union towards a Union citizen and thus give rise to the content-rights complement—directness—of the direct bond in citizenship of the Union. The considerations are given more to the non-interference of Member States' legal orders with the Union's one than to the actual organisation of the exercise of rights.

[252] See note 13 above.
[253] As the European Union definitely is not a 'nation-state'.

4.1. Nonvicarious Rights Springing from 'Non-Nation-State'

The whole doctrine of citizenship has been, for a long time, dictated by the approach of assessing citizenship purely through the lens of its content—its rights, as has already been mentioned,[254] primarily by the grandiose promoter of this method, T. H. Marshall.[255] Yet, what is crucial to this section is the argument of his and his followers that rights may originate only in a 'nation-state', and only a 'nation-state' is the guarantor of them.[256] One might not wonder why with respect, on the one hand, to the background of T. H. Marshall in the Anglo-Saxon cultural sphere, which M. Mann criticises as the ethnocentric bias which may have caused he had taken perspective only from the Anglo-Saxon history in terms of the evolution of rights.[257] And on the other hand, with respect to the period when this interpretation was developed—early after the Second World War.

Nevertheless, already during that time, the European[258] and international[259] legal systems of protection of human rights and fundamental freedoms, as legal sources, were evolving; hence, it might have already seemed somewhat anachronic then.[260] Albeit these international and regional regimes have established rights, the citizens' access to them has still been in the hands of 'nation-states'; thus, they could not be considered nonvicarious. However, it is apparent that rights do not only stream from a structure of a 'nation-state', as T. H. Marshall and his followers argued, but also from the international regimes

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254 See note 156 above.

255 Thomas H Marshall, 'Citizenship and Social Class' in *Citizenship and Social Class and other essays* (Cambridge University Press 1950).

256 *Exempli gratia*, T. H. Marshall, D. Held or M. Mann. To that effect, see Linda Bosniak, 'Citizenship Denationalized' (2000) 7/2 Indiana Journal of Global Legal Studies 466 <www.jstor.org/ stable/20644737> accessed 19th April 2023.

257 Michael Mann, 'RULING CLASS STRATEGIES AND CITIZENSHIP' (1987) 21/3 Sociology 340 <www.jstor.org/stable/42853996> accessed 19th April 2023.

258 Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR).

259 International Covenant on Civil and Political Rights (adopted 16th December 1966, entered into force 23rd March 1976) 999 UNTS 171 (ICCPR), and International Covenant on Economic, Social and Cultural Rights (adopted 16th December 1966, entered into force 3rd January 1976) 993 UNTS 3 (ICESCR).

260 According to Y. Soysal, '[w]ith the breakdown of the link between the national community and rights, we observe multiple forms of citizenship that are no longer unequivocally anchored in national political collectivities. These forms [of citizenship], [he] called "postnational"'. To that effect, see Yasemin Soysal, 'Changing Parameters of Citizenship and Claims-Making: Organized Islam in European Public Spheres' (1996) 96/4 EUI Working Paper EUF 5 <www.jstor.org/stable/657859> accessed 19th April 2023. In addition, see Jo Shaw, 'Citizenship of the Union: Towards Post-National Membership?' (1997) 97/6 Harvard Jean Monnet Working Paper <https://hdl.handle.net/1814/3014> accessed 19th April 2023.

of protection of human rights and fundamental freedoms. Yet, vicariously through 'nation-state' legal orders. A different story is nevertheless in the case of the European Union, which is not only another type of international legal regime but the entity *sui generis*. Wherefore, a closer look is taken at it and at the rights conferred onto its citizens.

4.2. Nonvicarious Rights Springing from European Union

To prove the existence of the directness—content-rights complement in Union citizenship, it is necessary to ascertain whether there are rights provided to Union citizens nonvicariously by the Member States but directly by the European Union. Since it is not in the capacity of this master's thesis to assess every individual right which is conferred onto Union citizens, attention is paid exclusively to political rights,[261] namely: the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides,[262] the right to vote and to stand as a candidate at elections to the European Parliament,[263] and the right of the European citizens' initiative.[264] H. van Eijken and P. Phoa understand the entire concept of Union citizenship as 'the "right to have rights" within the EU legal framework';[265] for such a general view would

[261] Political rights are selected from others because of their exclusivity for Union citizens; unlike them, the rights to good administration, of access to documents, to refer to the European Ombudsman, and to petition the European Parliament are not granted only to citizens of the Union, instead to any natural or legal person residing or having its registered office in a Member State. To that effect, see Charter of Fundamental Rights of the European Union [2008] OJ 326/391, articles 41-44. Moreover, L. Bosniak states that voting, respectively, political rights are nowadays more than associated with citizenship; for this purpose, see Linda Bosniak, 'Constitutional Citizenship Through the Prism of Alienage' (2002) 63/5 Ohio State Law Journal 1307 <https://doi.org/10.7282/00000142> accessed 19th April 2023.

[262] Consolidated version of the Treaty on the Functioning of the European Union [2008] OJ 326/47, article 22(1); and Charter of Fundamental Rights of the European Union [2008] OJ 326/391, article 40.

[263] For Union citizen who votes or stands as a candidate at elections in a Member State of his or her nationality: Charter of Fundamental Rights of the European Union [2008] OJ 326/391, article 39(2), in conjunction of Consolidated version of the Treaty on European Union [2008] OJ 326/1, article 14(3), and Act concerning the election of the representatives of the Assembly by direct universal suffrage [2002] OJ L 278/5, article 1(3). For Union citizen who votes or stands as a candidate at elections in a Member State in which he or she resides: Consolidated version of the Treaty on the Functioning of the European Union [2008] OJ 326/47, article 22(2); and Charter of Fundamental Rights of the European Union [2008] OJ 326/391, article 39(1).

[264] Consolidated version of the Treaty on the Functioning of the European Union [2008] OJ 326/47, article 24(1); and Consolidated version of the Treaty on European Union [2008] OJ 326/1, article 11(4).

[265] Hanneke van Eijken and Pauline Phoa, 'Nationality and EU citizenship: strong tether or slipping anchor?' in *Civil Rights and EU Citizenship* (Edward Elgar Publishing 2018) 100.

not be sufficient, the author sticks to the former presented approach through political rights.

4.2.1. Right to Vote and to Stand as Candidate

The matter at issue exists in two dimensions. The first is the voting rights of Union citizens participating in municipal elections of a Member State different from the Member State of their nationality, for which legal provisions are enshrined in the secondary law, by the Council Directive.[266] Nonetheless, at a glance, it is more than inconceivable that this right could be considered nonvicarious. Since the main objective of it is to provide Union citizens with access to participation in the political decision-making process in municipalities, the exercise of which, although guaranteed by the *acquis communautaire,* could be barely regulated directly by the European Union. Also, given that the posts elected are of Member States' structures,[267] and elections are organised internally by the Member States. As a result of that, if it were not for Member States, the exercise of this right would be unrealisable. Whence it follows that the voting rights of Union citizens participating in municipal elections cannot be considered nonvicarious.

The second dimension subsequently concerns the voting rights of Union citizens at elections to the European Parliament. The guarantee of this right differs whether a citizen of the Union votes or stands as a candidate in a Member State of his or her nationality, or in a Member State in which he or she only resides;[268] the latter is more detailly regulated in the form of the Council

[266] Council Directive 94/80/EC of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals [1994] OJ L 368/38.

[267] In addition, D. Kochenov mentions evident inequality that 'it is up to the Member States to decide which elections to classify as municipal [, which results] in notable discrepancies'; for instance, Union citizens residing in Vienna cannot participate in the city-level elections since the city of Vienna is classified as *Land*, the legislative body of which can be elected only by Austrian nationals. In contrast, Union citizens who reside in Prague possess such a right to vote. To that effect, see Dimitry Kochenov, 'Ius Tractum of Many Faces: European Citizenship and the Difficult Relationship between Status and Rights' (2009) 15/2 Columbia Journal of European Law 202.

[268] In Case C-650/13 *Delvigne* [2015] ECLI:EU:C:2015:648, the Court of Justice stated that the right to vote and to stand as a candidate for citizens in the former situation is not guaranteed by Article 22(2) TFEU and Article 39(1) CFR, as these secure the right only to Union citizens residing in a Member State different from their nationality, but by Article 39(2) CFR in accordance with Article 14(3) TEU and Article 1(3) of the 1976 Act.

Directive,[269] which however concerns only 3.3% of Union citizens.[270] The assessment of the *nonvicariousness* of these voting rights appears somewhat ambiguous as, on the one hand, mandates are thoroughly Union-like in the meaning of individual politicians representing only citizens of the Union,[271] not the Member States. Nevertheless, on the other, same as in municipal elections, these are organised solely by the Member States, not by the Union, which might be secondary; more importantly, even these elections are not regulated by any uniform European election act but instead on the basis of a plethora of Member States' electoral legislations.[272] The situation might change with the legislative resolution of the European Parliament in 2022 on the proposal for a Council Regulation on the election of the members of the European Parliament by direct universal suffrage, which would establish, amongst others, the European electoral authority to conduct and monitor elections.[273] Nevertheless, the author inclines to hold the view that until the uniform electoral procedure for the European Parliament is enacted, whereby the Member States would be dispensable in terms of that, it is not indeed possible to regard the voting rights related to the European Parliament elections as the nonvicarious content-rights.

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269 Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals [1993] OJ L 329/34.

270 According to Eurostat's data from 2020, only 3.3% of citizens of the Union reside in a Member State different from their nationality. For this purpose, see Eurostat (online data code: lfst_lmbpcita and demo_pjangroup), <https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Archive:EU_citizens_living_in_another_Member_State_-_statistical_overview> accessed 20th April 2023.

271 Consolidated version of the Treaty on European Union [2008] OJ 326/1, article 10(2).

272 Although Article 223 TFEU obliges the European Parliament to submit a proposal on provisions necessary for the election of its members by universal and direct suffrage according to a uniform procedure in all Member States or according to principles common to all Member States, it has not happened yet. Because of the difficulty to harmonise such a procedure, the Council Decision 2002/772/EC is still in use; to that effect, see Council Decision of 25 June and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom [2002] OJ L 283/1. That also results in another inequality, whilst citizens of the Union residing in Austria are entitled to active suffrage from the age of sixteen years old and to passive suffrage from the age of eighteen years old, Union citizens residing in the Czech Republic possess active voting right from the age of eighteen years old and the passive voting right from the age of twenty-one years old. To that effect, compare § 10 des Bundesgesetzes über die Wahl der Mitglieder des Europäischen Parlaments, BGBl Nr. 117/1996, and § 5 and § 6 zákona č. 62/2003 Sb., o volbách do Evropského parlamentu a o změně některých zákonů.

273 European Parliament legislative resolution of 3 May 2022 on the proposal for a Council Regulation on the election of the members of the European Parliament by direct universal suffrage, repealing Council Decision (76/787/ECSC, EEC, Euratom) and the Act concerning the election of the members of the European Parliament by direct universal suffrage annexed to that Decision (2020/2220(INL) — 2022/0902(APP)) [2022] OJ C 465/171 Article 28 paragraph 1.

4.2.2. Right of European Citizens' Initiative

Only the Treaty of Lisbon has introduced a concept of the initiative of Union citizens who are, in the spirit of that, empowered to nudge the European Commission, within the framework of its powers, to propose an actual legislative initiative. Whereby the role of Union citizens *per se* has stepped into the well-established tringle of the European Parliament, the Council, and the Commission. The verb 'nudge' is used for a purpose as the Commission is not obliged to follow the demands of such an initiative, as they are neither in the case of the Council nor of the Parliament.[274, 275] The issue is further regulated by the secondary law recently redeveloped in the form of Regulation,[276] which lays down the conditions for exercising this right.[277] In contrast to the aforepresented political rights, the entire legal structure is regulated at the Union level, thus, without any interference of the Member States with regards to national legal regulations into the exercise of this right. Therefore, a citizen of the Union finds himself or herself in a direct relationship with the Union, its legal order and with the European Commission; wherefore, the Member States' role could be scarcely considered as of 'intermediaries' of this right. Ergo, were it not for the Member States, Union citizens would continue to enjoy the right of European citizens' initiative. Whence it might be concluded that the right of European citizen's initiative is truly nonvicarious.

One might however doubt whether this right exists for the whole period of time when an individual is a citizen of the Union, or whether this right comes into being only when an individual reaches the age to be entitled to vote in

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[274] Anastasia Karatzia, 'The European Citizens' Initiative and the EU institutional balance: On realism and the possibilities of affecting EU lawmaking' (2017) 54/1 Common Market Law Review 180 <http://repository.essex.ac.uk/id/eprint/21971> accessed 23rd April 2023.

[275] F. Timmermans hence describes the European citizens' initiative as an instrument of participatory democracy instead of direct democracy. To that effect, see ECI Watch, 'AFCO and PETI committees—Exchange of views with first vice-president Frans Timmermans' (2017) <https://ecas.org/eci-watch-december-2/> accessed 23rd April 2023.

[276] Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative [2019] OJ L 130/55.

[277] Such as that an initiative must be registered at and by the Commission; the required number of signatories is specified—an initiative must receive support from at least one million citizens of the Union from at least one-quarter of the Member States, for which thresholds are also stated; organisers have twelve months to collect the required number of signatories either in paper format or online; after a valid initiative is submitted, it is officially published, and the public hearing can be organised by the European Parliament at a request; and within six months from the publication, the Commission is supposed to set out its legal and political conclusions; the measures are subsequently assessed by the European Parliament. For this purpose, see ibid.

elections to the European Parliament[278] as the Regulation enshrines.[279] The Court of Justice stated in Case of Ruiz Zambrano that the relevant and crucial issue was not whether an individual—a child—had already exercised the right, but instead the potential 'genuine enjoyment of the substance of the rights attaching to the status of European Union citizen'.[280] Through a fairly analogical approach to it, the author is of the opinion that the right of European citizens' initiative exists in individual cases for the entire period when an individual is a Union citizen; nevertheless, in the tacit form.

To conclude this chapter; the author has had no intention to submit exhaustive research on the European Union citizens' rights, but instead a narrow assessment of selected ones through the lens of nonvicarious formula. An important aspect was not, primarily, the organisation of the exercise of those rights itself but rather the exclusivity of the European Union legal order, of *acquis communautaire*. From the political rights abovepresented, the gradual nonvicariousness and directness is more than palpable. The municipal voting rights, under the current form of government, will never be nonvicarious by the Member States since they are in a straight line with their structures and legal orders. However, the European Parliament voting rights, under the same form of government, might be one day—the day when they are held on the basis of one uniform European electoral act. In the end, the right of citizens' initiative is the only one the exercise of which is truly nonvicarious by the Member States hitherto. Hence, it is this character of this right[281] that gives rise to the content-rights complement—directness—of the direct bond in Union citizenship.

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[278] The age to be entitled to vote in elections to the European Parliament is eighteen in all Member States, except of Greece with seventeen, and Malta and Austria with sixteen. For this purpose, see <www.europarl.europa.eu/factsheets/en/sheet/21/the-european-parliament-electoral-procedures> accessed 15th June 2023.

[279] Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative [2019] OJ L 130/55 Article 2 paragraph 1.

[280] Case C-34/09 *Ruiz Zambrano* [2011] ECLI:EU:C:2011:124 paragraph 45.

[281] Besides the other rights which are not exclusively connected to Union citizens; such as the rights to good administration, of access to documents, to refer to the European Ombudsman, and to petition the European Parliament. The exercise of them is also nonvicarious by the Member States. To that effect, see Charter of Fundamental Rights of the European Union [2008] OJ 326/391, articles 41-44. These rights give rise to the content-rights complement—directness also, but they can even exist on their own without the form-status complement—bond, as their addressee is not only a Union citizen but also any natural or legal person residing or having registered office in a Member State. This leads to situations when rights are autonomous on the status of citizenship; for this purpose, see Linda Bosniak, 'Constitutional Citizenship Through the Prism of Alienage' (2002) 63/5 Ohio State Law Journal 1307.

Conclusion

The objective of this master's thesis has been to examine the factual relationship and the legal relationship between the European Union and a Union citizen, namely, whether their qualities are of such grade that they would give rise to the factual relation in the form of the genuine link, respectively, to the legal relation in the form of the direct bond. Whereby they would provide a citizen of the Union with protection against an involuntary deprivation of his or her Union citizenship unreservedly by a Member State, the rationale of which the reader may find in Introduction. To answer the central research question—whether the essence of Union citizenship is the factual relation in the form of the genuine link, and whether the essence is the legal relation in the form of the author's established concept of the direct bond—the author must state, on the basis of the developed research, that the essence of Union citizenship be neither the genuine link nor the direct bond, at least without further.

The examination framework has been constructed upon the outcomes of the judgement in Case Nottebohm, where the International Court of Justice defined the rule of real and effective nationality consisting of the social fact of attachment on the one hand and reciprocal rights and duties on the other.[282] The former is broadly rather known as the very genuine link, requirements of which the author has abstracted from the judgement, namely, the mutual societal attachment and shared political interests. In addition, the author is of the opinion that the genuine link through these requirements mirrors the concept of *demos*. Wherefore, the examined has become with the factual relationship between the European Union and a Union citizen also, consequently by the same framework, the existence or non-existence of *europaios demos*. On the basis of relevant data from the Eurobarometer, the author has found answers for both aspects of the genuine link. Regarding the mutual societal attachment, the data has shown a striking disproportion between the attachment of Union citizens to their Member States and to the European Union; whence the author implies that this requirement has not been met. In terms of shared political interests, the data from the Eurobarometer for the interest of Union citizens in either local, national or European politics do not differ fundamentally. Nevertheless, what differs is the

[282] *Nottebohm Case (Liechtenstein v Guatemala) (second phase)* [1955] ICJ Rep 4, 23.

interest of Union citizens in either national or European elections. For these outcomes, it must be stated that the requirements of the genuine link have not been fulfilled. Therefore, the factual relationship between the European Union and a citizen of the Union is not of such quality that it would give rise to the factual relation in the form of the genuine link.

The rule of real and effective nationality, by virtue of the ruling in the Nottebohm case, comprises two aforementioned elements—the genuine link and reciprocal rights and duties. On the basis of the latter, the author developed a theory of the direct bond in order to examine the quality of the legal relationship between the European Union and a citizen of the Union. Nonetheless, the element of reciprocal rights and duties, as stated by the International Court of Justice, has been augmented by the status as they together constitute the direct bond between an entity and an individual. Wherefore, the direct bond is that form of the sought legal relation. The direct bond consists of two complements: the content and the form, which reflect in its very name. The complement of the *directness* materialises by the nonvicarious content, thus, by the rights that are not vicarious by any intermediate subject or entity. On the other hand, the complement of the *bond* is given rise by the autonomous form, hence, by the autonomous status. Therefore, the author in the following two chapters has examined whether the form-status of Union citizenship may be considered autonomous, and whether the content-rights of Union citizenship may be regarded as nonvicarious.

In assessing the former, ergo, the potential autonomous character of the form-status of Union citizenship, the author has firstly observed the nature of the acquisition of citizenship of the Union. He agrees with the opinion of D. Kochenov that Union citizenship is not acquired on the basis of different *iura* of different Member States' nationalities but rather by virtue of *ius tractum*.[283] An endemic *ius* amongst others which stands on the derivative nature of the acquisition of Union citizenship. There is no other way to become a Union citizen than by becoming the Member State's national. In the following section, the author has drawn on this perspective in the final examination of the form-status. On the basis of the postulates of the normative legal theory of H. Kelsen, Union

[283] Dimitry Kochenov, 'Ius Tractum of Many Faces: European Citizenship and the Difficult Relationship between Status and Rights' (2009) 15/2 Columbia Journal of European Law 181.

citizenship has been defined as a public legal relationship. On top of this, the author has introduced in English the Czech jurisprudence in the person of V. Knapp and A. Gerloch, on whose basis, the author has described how such a legal relationship emerges and terminates. From the perspective of this theory, citizenship of the Union as the public legal relationship emerges when the legal title in the form of *ius tractum* intersects with the legal fact of possession of the Member State's nationality; *vice versa*, it terminates at the point when the legal title of *ius tractum* intersects the legal fact of 'non-possession' of the nationality of a Member State. Whence it follows that just as the emergence of Union citizenship is not autonomous on the nationality of a Member State, neither is the termination. Nevertheless, what the author has newly discovered is that the sole existence of Union citizenship between those two points—between the emergence and the termination—is of an autonomous nature. The possible consequences of which the author described hereinabove. However, the form-status in its entirety cannot be considered autonomous since its existence is demarcated, from the one side, by possession of the Member State's nationality and, from the other, by 'non-possession' of the same.

In assessing the character of the content-rights of Union citizenship, whether they are of a nonvicarious nature, the author has initially confirmed that rights do not spring only in the 'nation-states' but also in several international regimes for the protection of human rights and fundamental freedoms; wherefore, such source can be the European Union also, moreover, since it is an entity *sui generis* and not only an international regime. In the following section and in the examination, attention has primarily been paid to political rights enshrined in primary law of the European Union, as these are distinctly exclusive to Union citizens. The author has come to the conclusion that the only true nonvicarious right is the right of European citizens' initiative since that is directly guaranteed and provided by the European Union without any vicariousness by the Member States and their legal orders. Therefore, the *acquis communautaire* may stand in this regard by itself. On the basis of these findings, the author argues that—albeit the content-rights element of citizenship of the Union reaches the nonvicarious character to some degree, and albeit the element of the form-status of Union citizenship is autonomous during its sole existence—the legal relationship between the European Union and a citizen of the Union is not of such quality that

it would give rise to the qualified legal relation in the form of the direct bond. That is a result of the incomplete autonomous and nonvicariousness character.

This master's thesis has nevertheless outlined a plethora of paths out of this situation. Were it for the genuine link, a formation of *europaios demos* would be needed, on which politicians and other publicly acting persons might elaborate if it were their objective. Were it for the direct bond, the author has introduced a hypothesis that the only necessity for the autonomy would be an abolishment of the legal title for the derivative termination of Union citizenship—that also former Member State's national may retain their citizenship of the Union. In terms of the other element of the direct bond, another nonvicarious right of Union citizens might, one day, be the right to vote at elections to the European Parliament just when the uniform electoral procedure for the European Parliament is enacted.

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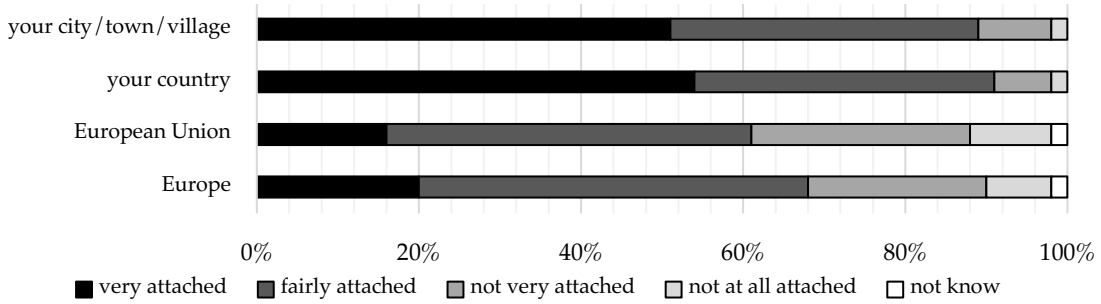
Annexes

Figure I. – Levels of attachment to the different entities

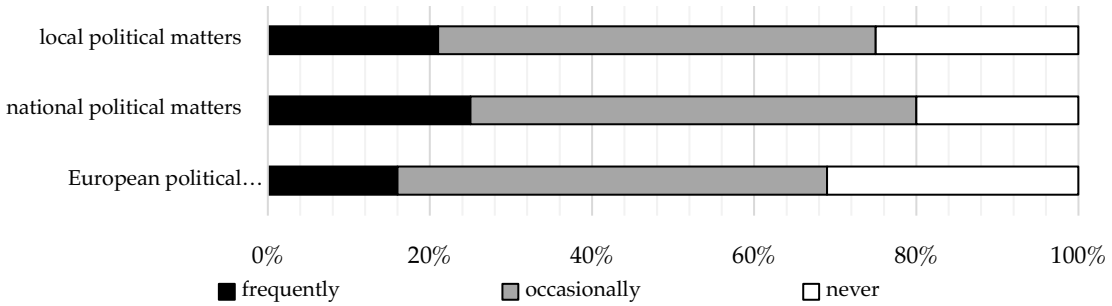
How attached do you feel to:



Source: Standard Eurobarometer 98 - Winter 2022-2023

Figure II. – Levels of interest in different political matters

When you get together with friends or relatives, would you say you discuss:



Source: Standard Eurobarometer 98 - Winter 2022-2023

Figure III. – Real and effective nationality as said by International Court of Justice

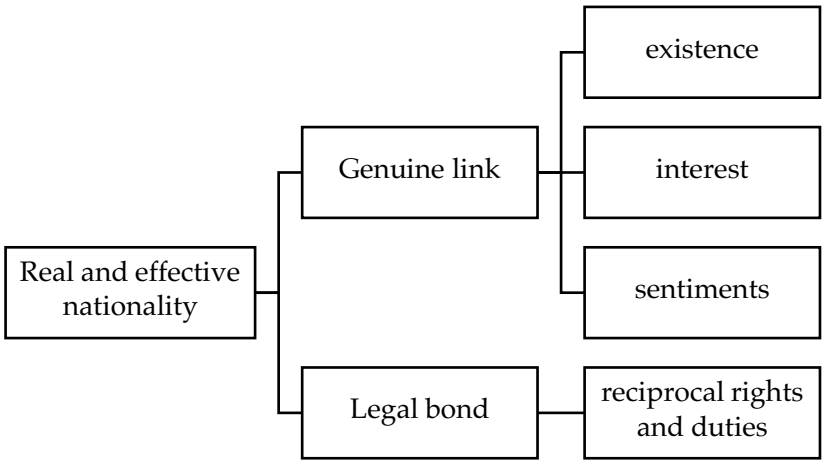


Figure IV. – Real and effective nationality according to the author

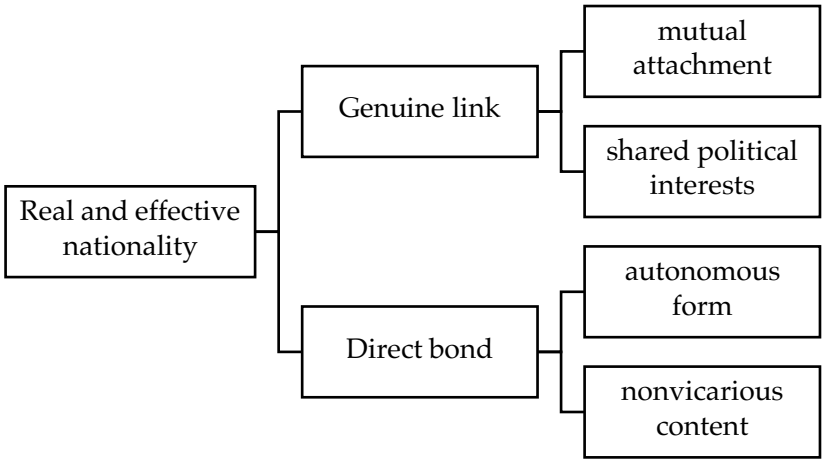


Figure V. – Theory of Legal Relationships

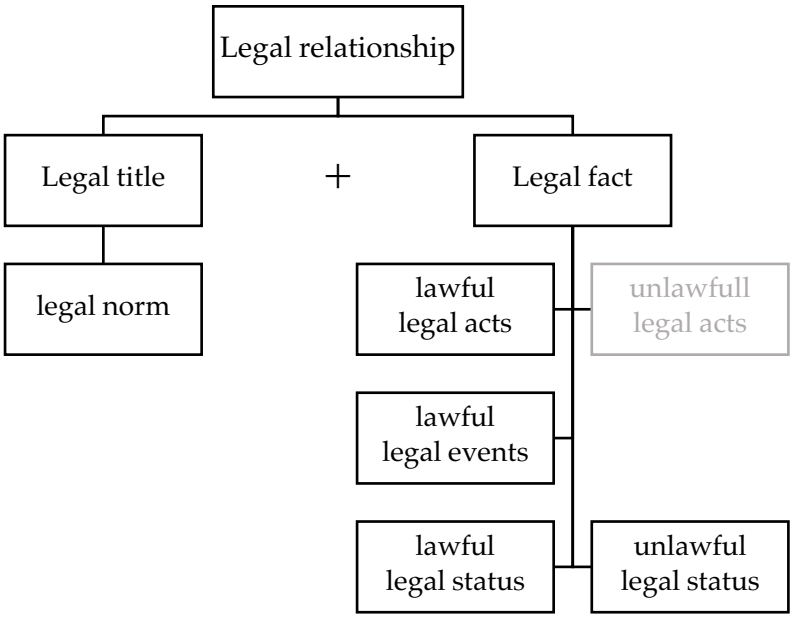


Figure VI. – Emergence of Member State's nationality

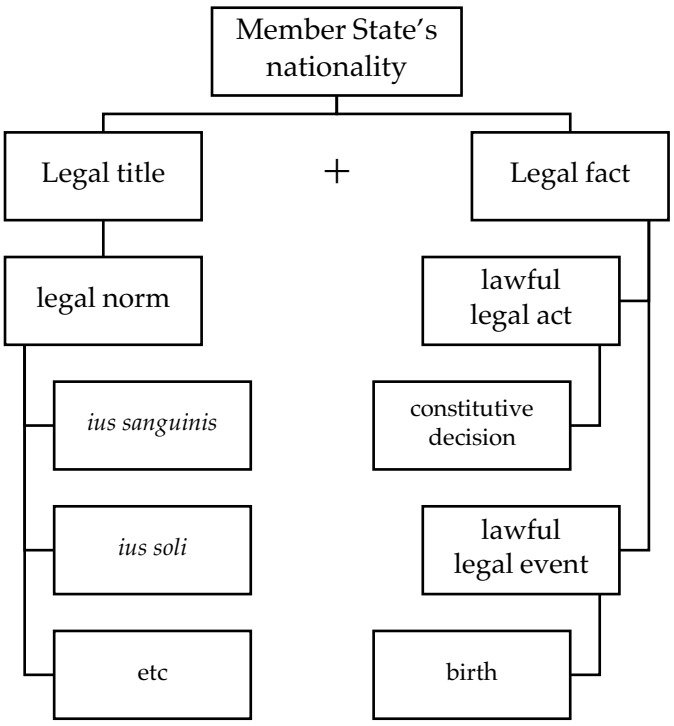


Figure VII. – Emergence of Union citizenship

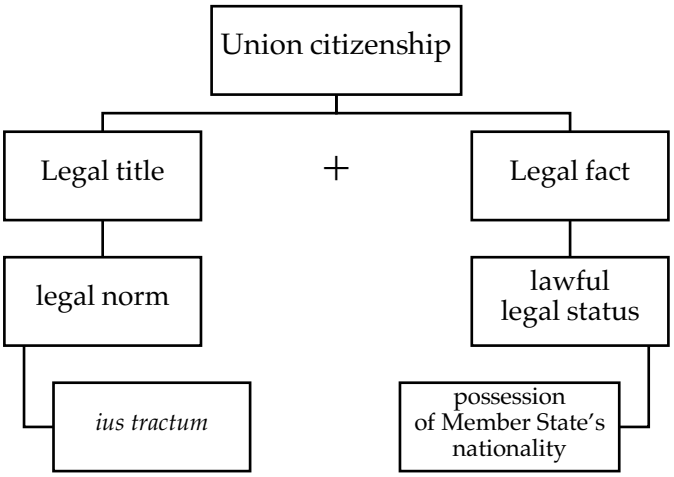
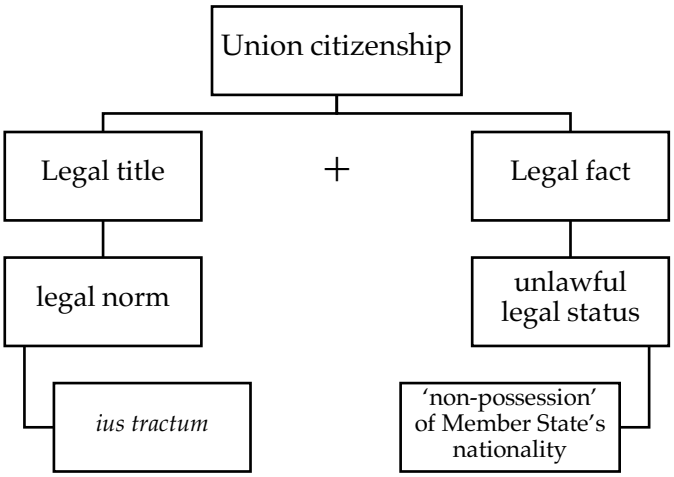


Figure VIII. – Termination of Union citizenship



Abstract

Protecting an Individual from Deprivation of Citizenship of the Union

This master's thesis poses a central research question of whether the factual relationship between the European Union and a Union citizen is of such quality that it gives rise to the factual relation in the form of the genuine link, respectively, whether the legal relationship between the same subjects is of such quality that it gives rise to the legal relation in the form of the direct bond. As for the genuine link, the assessment is constructed on the basis of two aspects, namely—the mutual societal attachment of Union citizens to the European Union, and the shared political interests of Union citizens, in the sense of shared concern in politics and of shared political objectives. On the other hand, in terms of the direct bond, the legal relationship between the European Union and a Union citizen is examined through two prisms, namely—the autonomy of the form-status of Union citizenship, and the nonvicariousness of the content-rights of Union citizenship.

The actual assessment of the factual relationship is conducted on the data from the Eurobarometer, and turnouts of the European Parliament elections in 2019 and of national elections by that time. The examination of the legal relationship is performed by virtue and postulates of the normative legal theory with an emphasis on the theory of legal relationships, logical argumentation, and legal analysis of the rights of a Union citizen. The research shows that the mutual societal attachment and shared political interests are not to be proven. Moreover, albeit the sole existence of Union citizenship between the emergence and termination is of an autonomous character, in its entirety, it is still more than dependent on the life and death—the emergence and termination of the nationality of a Member State. Nonetheless, what is proven is a nonvicarious nature of a particular right of a Union citizen—the right of European citizens' initiative. On the basis of the developed research, the author comes to the conclusion that neither the genuine link nor the direct bond is to be found in Union citizenship. Therefore, neither is the factual relationship between the European Union and a Union citizen of such quality that it gives rise to the factual relation in the form of the genuine link, nor is the legal relationship between same subjects of such quality that it gives rise to the legal relation in the form of the direct bond.

Keywords

Citizenship of the Union

Union citizenship

EU citizenship

Autonomy

Nonvicariousness

Genuine link

Statelessness

Abstrakt

Ochrana jednotlivce před zbavením občanství Unie

Tato diplomová práce předkládá následující ústřední výzkumnou otázku: zda je faktický vztah mezi Evropskou unií a občanem Unie takové kvality, že dává vzniku kvalifikovanému faktickému vztahu v podobě *genuine linku*, respektive zda je právní vztah mezi stejnými subjekty takové kvality, že dává vzniku kvalifikovanému právními vztahu v podobě *přímého pouta*. Pro posouzení genuine linku je vycházeno ze dvou hledisek, a to—ze vzájemné společenské vazby občanů Unie k Evropské unii a ze společných politických zájmů občanů Unie ve smyslu zájmu o společnou politiku a společných politických cílů. Na druhé straně, z hlediska přímého pouta je právní vztah mezi Evropskou unií a občanem Unie zkoumán dvěma hledisky, a to—autonomií formy-statusu občanství Unie a nezprostředkovanosti obsahu-práv občanství Unie.

Samotné posouzení faktického vztahu je provedeno na základě dat získaných z Eurobarometru a volební účasti ve volbách do Evropského parlamentu v roce 2019 a v národních volbách do té doby. Zkoumání právního vztahu je provedeno na základě postulátů normativní právní teorie s důrazem na teorii právních vztahů, logickou argumentaci a právní analýzu práv občana Unie. Z výzkumu vyplývá, že vzájemnou společenskou vazbu a společné politické zájmy nelze prokázat. Navíc, i přestože je samotná existence mezi vznikem a zánikem občanství Unie autonomního charakteru, ve své celistvosti je forma-status Unijního občanství stále více než závislá na životě a smrti—vzniku a zániku státního občanství členského státu. Nicméně, co je prokázáno, je nezprostředkovaná povaha jednoho z práv občana Unie—práva na evropskou občanskou iniciativu. Na základě vypracovaného výzkumu autor dospívá k závěru, že v občanství Unie nelze nalézt jak genuine link, tak ani přímé pouto. Pročež faktický vztah mezi Evropskou unií a občanem Unie není takové kvality, že by dal vzniku kvalifikovanému právnímu vztahu v podobě genuine linku, ani však právní vztah mezi stejnými subjekty není takové kvality, že by dal vzniku kvalifikovanému právnímu vztahu v podobě přímého pouta.

Klíčová slova

Občanství Unie

Unijní občanství

Občanství EU

Autonomie

Nezprostředkovanost

Genuine link

Apatridismus