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NATURALIZATION LAW AND PRACTICE IN CERTAIN EU MEMBER STATES

Edited by dr. Matjaž Tratnik[1]
Faculty of Law, University of Maribor and ISCOMET Institute, Maribor

1 Introduction

By the introduction of EU citizenship in Treaty of Maastricht the EU became the first international organization with its own citizenship. Even though the EU citizenship did not replace the nationality[2] of the MS, it created a new status, which is unprecedented in international law and which moved the boundaries between the concepts of own subjects and foreigners. From the perspective of MS, it meant a shift of Copernican dimensions, since it underpinned the already existing prohibition of discrimination on grounds of nationality. From 1993 on the MS are forbidden to discriminate nationals of other MS not because they posses another MS nationality, but because they are just like their own nationals, citizens of the EU.

The introduction of EU citizenship has very important repercussions for persons, who reside in the MS and do not possess the EU citizenship, namely the third country nationals (hereinafter: TCNs). It may be assumed that EU citizenship rendered them even more foreign than before. From the perspective of most of them, who are migrant workers, they find themselves in much worse position than EU migrant workers. Especially taking into account that almost ¾ migrant workers in the EU are TCNs and not migrating EU citizens. The only possibility the TCNs have to overcome the differentiation between them and EU citizens is, to acquire the EU citizenship themselves. For the first generation of immigrants this means naturalization in the MS of residence, since the only path to the EU citizenship leads through the nationality of a MS. It is not possible to acquire EU citizenship directly. So the TCNs wishing to

[1] Sections 2-4 of this paper are to a large extent a compilation of Tratnik M and Weingerl P 'Investment Migration and State Autonomy: A Quest for the Relevant Link' *Investment Migration Working Papers* IMC-RP 4 (2019).
[2] The terms citizenship and nationality can be used as synonyms. To make the text more clear we speak of Member State nationality and EU citizenship.

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acquire equal right with EU citizens must take one of the 27 paths to it. On each of these paths they are confronted with the principle of national autonomy that leave the MS a large portion of discretion as to the determination of the naturalization conditions, as well as regards their application in practice.

In this paper we will first introduce the EU citizenship. Since the national naturalization rules oft the EU Member State are based on the principle of national autonomy in matters of nationality, this principle will be discussed in the second section, as well as its boundaries in international as well as in EU law. Here the principles of EU law play a dominant role. Follows an overview of naturalization requirements in MS that are especially relevant for TCNs coming from the Western Balkans, namely Austria, Croatia, Germany, Italy and Slovenia.

2 Citizenship of the EU

The citizenship of the EU and the nationality of the Member States are two independent legal concepts, yet they are closely connected. Article 20 TFEU reads: '*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.*' Thus, the EU does not provide for its own rules on the acquisition and loss of Union citizenship. Rather, it is 'dependent' on the national laws of the Member States. It is the Member States that indirectly, through the application of their own citizenship rules, decide about the acquisition and loss of EU citizenship. Consequently, the Member States by their national rules on nationality do not only decide to whom they will grant the rights attached to the nationality in their internal legal systems, but also who will enjoy the rights under EU law, attached to the possession of the EU citizenship. This is a significant difference as compared to national citizenship rules in international law.

3 National Autonomy in matters of nationality

Under international law, it belongs in principle to the reserved domain of each State to decide who its citizens are.[3] States are free to establish the rules on acquisition and loss of their citizenship. This principle of so-called national autonomy has been codified in international conventions[4] and confirmed by the Permanent Court or International

[3] *Cf.* J Crawford, *Brownlie's Principles of Public International Law*. 8th ed. (OUP 2012) 509.
[4] See Article 3(1) of the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws (LNTS Vol. 179, 89) and Article 3 of the 1997 European Convention on Nationality (CETS 166).

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Justice (PCIJ),[5] the International Court of Justice (ICJ),[6] as well as the Court of Justice of the EU (CJEU).[7] This autonomy is however not absolute. States, when exercising this competence, need to observe a number of important rules deriving from international law, mainly from international human rights law and EU Member States also from EU law.

The State autonomy in matters of nationality has two aspects: an internal (national) one and an international one. The first refers to the right of States to autonomously lay down the rules on acquisition and loss of their nationality in their domestic legal orders.[8] The latter refers to the question of effects of the grant of nationality of a State as against other States especially the question whether and in how far other States have the obligation to recognize the grant or loss of the nationality of a certain State. The two aspects of national autonomy can be illustrated by the *Nottebohm* case,[9] as the ICJ made a clear distinction between the validity of the grant of Liechtenstein nationality to Nottebohm (corresponding to the internal aspect) and the effects of this grant *vis à vis* Guatemala (corresponding to its international aspect). As to the first issue, the Court fully recognized the principle of national autonomy.[10] Due to a lack of genuine link between Liechtenstein and Nottebohm, Guatemala did not have the obligation to recognize his nationality, and the claim of Liechtenstein to grant diplomatic protection to Nottebohm vis-à-vis Guatemala was not admissible because the requirement of nationality of the claim was not fulfilled.

The *Nottebohm* decision is by several authors, as well as by the European Commission, largely overestimated and even misinterpreted. As Spiro argues, ‘‘genuine link’ is not and never was a requirement for international recognition of the attribution of nationality’.[11] It might even be considered as a false decision. By ignoring the fact that Nottebohm possessed only the Liechtenstein nationality, the ICJ put him in the situation

[5] See PCIJ Advisory Opinion of 7 February 1923 on *Nationality Decrees Issued in Tunis and Morocco*, Series B No 4 (1923).
[6] See ICJ, *Nottebohm Case* (*Liechtenstein v. Guatemala)* [1955] ICJ Reports 4.
[7] See Case C-369/90, *Mario Vicente Micheletti and others v Delegación del Gobierno en Cantabria,* ECLI:EU:C:1992:295.
[8] *Cf* Crawford (2012) 510.
[9] *Nottebohm Case* (*Liechtenstein v. Guatemala)* [1955] ICJ Reports 4. See recently about this decision Spiro P J ‘*Nottebohm* and ‘Genuine Link’: Anatomy of a Jurisprudential Illusion’ *Investment Migration Working Papers* IMC-RP 1 (2019) 1–23; Tratnik M and Weingerl P ‘Investment Migration and State Autonomy: A Quest for the Relevant Link’ *Investment Migration Working Papers* IMC-RP 4 (2019).
[10] ‘*It is for Liechtenstein, as it is for every sovereign State, to settle by its own legislation the rules relating to the acquisition of its nationality, and to confer that nationality by naturalization granted by its own organs in accordance with that legislation*.’
[11] Spiro (2019) 2.

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of a stateless person. Moreover, the 2006 Draft Articles on Diplomatic Protection (Draft) prepared by the International Law Commission (ILC)[12] expressly rejected the genuine link criterium for the exercise of diplomatic protection, since it would exclude millions of persons living in a foreign State and possessing similarly as Nottebohm only a 'non-genuine' nationality.

The genuine link requirement was also disregarded by the CJEU in its first decision in the field of nationality in the *Micheletti* case, decided in 19902, thus before the Treaty of Maastricht introduced the concept of the EU citizenship. Since Italy has granted to Micheletti its nationality, Spain had to unconditionally recognise Micheletti's Italian nationality and treat him as an Italian national as regards his rights under EU law. It could not restrict the effects of the acquisition of Italian nationality by imposing an additional condition for recognizing that nationality, such as the condition of habitual residence in Italian territory. It can be assumed that Micheletti did not have a genuine link with Italy.

States enjoy a very large autonomy in regulating the acquisition and loss of their citizenship under international law (the internal aspect of State autonomy). This is easy to explain. Firstly, the rules about the 'membership of the club' belong to the very core of State sovereignty; they are one of the four elements of Statehood. Secondly, States attach to their citizenship certain rights and duties in their internal legal systems. It is more than logical that States may enjoy the upmost freedom in deciding to whom they will confer or withdraw those rights, as long as their rules do not violate human rights law. Consequently, States must draft their rules on the acquisition of nationality in a non-discriminatory manner and in such a way that statelessness will not occur. Deprivation of citizenship may not be arbitrary, even if it does not amount to statelessness. To this end, limitations encroaching on State autonomy in matters of nationality require inclusive rules on citizenship, *e.g.* when the issue of statelessness or discrimination is in question. However, these limitations do not impose restraints on States as regards the possible grounds for the attribution of citizenship.

As regards the external dimension of State autonomy in international law, other States may only refuse the recognition of foreign acquired nationality if it is acquired in violation of international law. Here the external aspect of State autonomy meets the internal one. It has been established in the foregoing that with the exception of a few very specific cases, there is no relevant case law to demonstrate some examples of acquisitions of nationality that would be in violation of international law. Opposite to

[12] Available at http://legal.un.org/ilc/texts/instruments/english/draft_articles/9_8_2006.pdf accessed 13 March 20121.

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what some authors and the European Commission mistakenly contend, the criterion of genuine link in *Nottebohm* was only applied as regards the recognition of the Liechtenstein nationality for the purpose of diplomatic protection. As to the attribution, the ICJ expressly recognized the right of Liechtenstein to naturalize Nottebohm or any other person by its own nationality rules. Nonetheless, when speaking of diplomatic protection as the most important application of the external aspect of State autonomy, it has been established above that the *Nottebohm* case has lost all its relevance (if it ever had some in this respect). The only real limitation is that in cases of multiple nationalities, diplomatic protection cannot be exercised against the other national State(s) of the injured person. Moreover, the principle of exclusivity allows States to disregard foreign nationalities that their nationals might also possess, when exercising jurisdiction on their own territory. It may be concluded from the foregoing that international law does not affect the power of (Member) States to adopt citizenship by investment programmes and at the same time requires from other (Member) States to recognize under such programmes acquired nationality.

4 Limitations of national autonomy in EU law

The Member States were very reluctant to confer to the EU institutions any part of their sovereign rights as regards nationality. Therefore, at least on the level of the primary and secondary legislation, EU law does not encroach upon the national autonomy of the Member States because of the lack of competence. Yet it would be desirable to adopt at least common minimum standards for the acquisition and loss of the Member States nationalities at the EU level to ensure that some minimum guarantees are observed in granting a ticket to equal treatment in all other Member States.[13] Such a harmonization would be a limitation of sovereign rights of the Member States, but at the same time, it might serve their interests as well.

4.1 The principle of proportionality

It follows from the *Micheletti* decision that Union law sets direct limitations to the competence of the Member States to determine their rules on nationality. Even though the Court kept repeating its dictum that: '*it is for each Member State, having due regard to Community law, to lay down the conditions for the acquisition and loss of nationality'* in several decisions,[14] it had not clarified its meaning until the CJEU

[13] Tratnik M *Pravo državljanstva*, GV Založba, Ljubljana, 2018, 98–99.
[14] Case C-179/98, *Belgian State v Fatna Mesbah*, ECLI:EU:C:1999:549; Case C -192/99, *The Queen v. Secretary of State for the Home Department, ex parte: Manjit Kaur*, ECLI:EU:C:2001:106; Case C-200/02, *Kunqian Catherine Zhu and Man Lavette Chen v Secretary of State for the Home Department,* ECLI:EU:C:2004:639 (*Zhu and Chen*). See Kochenov D and Plender R 'EU Citizenship: From an Incipient Form to an Incipient Substance? The Discovery of the Treaty Text' *European Law Review* 37 (012) fn 123.

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decision in the *Rottmann* case in 2010.[15] Janko Rottmann was an Austrian citizen by birth. In 1995, criminal proceedings were initiated against him in Austria, because of major frauds. In the same year he moved to Germany and in 1999 acquired the German citizenship by naturalisation. Pursuant the Austrian law he automatically lost his Austrian citizenship.[16] A short time after the naturalisation the Austrian authorities informed the German authorities about the criminal proceedings against Rottmann in Austria, and the competent German authority (the *Freistaat Bayern*) withdrew Rottmann's naturalisation with retroactive effect. The reason for the withdrawal was that Rottmann had not disclosed during the naturalisation procedure that he was subject of a criminal procedure and therefore obtained the German citizenship by fraud. Rottmann appealed against the withdrawal, because it would render him stateless, meanwhile the criminal proceedings in Austria would make it extremely difficult to regain the Austrian citizenship.[17] The CJEU hat to answer the question whether the loss of the German citizenship which would cause statelessness was in accordance with EU law and in particular with the rules on the EU citizenship. The view of the German and Austrian Government, as well as of the European Commission, was that this case falls out of the scope of EU law because it was a purely internal situation between the German State and its citizen. The Court, however, dismissed this argument, stating:

> '*The situation of a citizen of the Union who [...] is faced with a decision withdrawing his naturalisation [...] placing him [...] in a position capable of causing him to lose the status conferred by Article 17 EC [now 20 TFEU] and the rights attaching thereto falls, by reason of its nature and its consequences, within the ambit of European Union law.*'[18]

The Court found that deprivation of citizenship that has been acquired by fraud is not contrary to EU law and in particular to Article 17 EC [now 20 TFEU] even if it amounts to statelessness. Such is also allowed under the general international law.[19] It stressed, however, that the authorities of a Member State taking a decision in such a case, must observe the principle of proportionality under Union law, and where applicable, under national law.[20] The German *Bundesverwaltungsgericht* decided on November 11th

[15] Case C-135/08, *Janko Rottmann v. Freistaat Bayern*, ECLI:EU:C:2010:104.
[16] See Article 27(1) of the Austrian *Staatsbürgerschaftsgesetz* (BGBl. 1985, 31).
[17] Only the normal naturalisation procedure was possible, but his criminal past would be an obstacle for the naturalisation. See Article 10(1) of the Austrian *Staatsbürgerschaftsgesetz.*
[18] Para. 42.
[19] Namely under Article 15(2) UDHR, Article 8(2)(b) of the 1963 Convention on the Reduction of Statelessness and Article 4(c) ECN.
[20] *Rottmann* paras 56–58.

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2011,[21] applying the test of proportionality, that the withdrawal of the German citizenship was final.

While the *Rottmann* case was about the proportionality of a loss of nationality through a *decision of a State organ*, nine years later, the proportionality of a *Member State's legislation* on the loss of nationality was at issue in the *Tjebbes* case.[22] It concerned four applicants who were Dutch citizens, but possessed also the Swiss,[23] Canadian and Iranian nationality. When they applied for the (renewal of) Dutch passports, the Dutch authorities refused to issue them, because they established that these persons lost their Dutch nationality *ex lege*. Pursuant to Art. 15(1)(c) of the Dutch Nationality Act 1983 (hereinafter DNA), an adult automatically loses his Dutch nationality, if he/she possesses another nationality, after having permanent residence *outside* the Kingdom of the Netherlands (which also includes the six Dutch Caribbean Islands), for an uninterrupted period of 10 years. Pursuant to a 2003 amendment, the Dutch nationality is not lost if the concerned person lives in another Member State of the EU.

Under Art. 16(1)(d) DNA, also minors lose the Dutch nationality if their father or mother lost his/her nationality under Art. 15(1)(c).[24] The 10 years period can be interrupted by the issuing of a declaration regarding the possession of Dutch nationality, a travel document or a Dutch identity card. In such cases, new period of 10 years starts to run as from the day of issue.[25] This exception is only available to adults.

The Court ruled that Article 20 TFEU, read in the light of Articles 7 and 24 of the Charter, does not preclude such national legislation:

> *'in so far as the competent national authorities, including national courts where appropriate, are in a position to examine, as an ancillary issue, the consequences of the loss of that nationality and, where appropriate, to have the persons concerned recover their nationality ex tunc in the context of an application by those persons for a travel document or any other document showing their nationality.'*

In the context of that examination, it must be determined whether the loss of the nationality of the Member State concerned, when it entails the loss of the EU citizenship, 'has due regard to the principle of proportionality so far as concerns the

[21] BverwG, Case 5 C 12.10.
[22] C-221/17, *Tjebbes and Others*, ECLI:EU:C:2019:189 (*Tjebbes*).
[23] Dutch/Swiss mother and her Dutch/Swiss daughter who was under age.
[24] As to minors certain exceptions provided for in Art. 16(2) are applicable.
[25] Art. 15(4) DNA.

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consequences of that loss for the situation of each person concerned and, if relevant, for that of the members of their family, from the point of view of EU law.'

It is obvious, that the possibility of an individual assessment and, where appropriate, the recovery of the nationality *ex tunc* are the most important safeguards that keep a Member State's rules on the loss of nationality by the operation of the law compatible with EU law. As regards the individual assessment, the loss of nationality must be consistent with the right to family life (Article 7 of the Charter) and with the obligation to take into consideration the best interests of the child (Article 24).[26] The individual circumstances to be considered are, inter alia, possible limitations to the exercise of the right to move and reside freely within the territory of the Member States, to pursue professional activity, possibility to renounce the nationality of a non-EU country etc.[27]

The Dutch regulation, no matter how bad, unreasonable and disproportional one might consider it, is a matter of national autonomy and is in principle off limits for the CJEU. The CJEU can only interpret EU law, with regard to national legislation. Several scholars are of the opinion that the CJEU already went too far in cases regarding citizenship.

4.2 The principle of sincere cooperation

The principle of sincere cooperation (Art. 4(3) TEU) can be used as a shield against national measures affecting nationality by other Member States and by the EU itself.[28] For example, Ireland changed its Nationality and Citizenship Act following the *Zhu and Chen* case, because it was deemed to be too lenient. According to the old rule, everyone who was born on the island of Ireland (in the Republic Ireland or in Ulster) became an Irish citizen (so-called *birthright citizenship*). A highly pregnant Chinese woman went to Belfast to give birth to her daughter and soon after the birth they went to live in England. The CJEU ruled that the child, being an EU citizen, and her non-EU mother had the right to live in the UK. After this decision, Ireland rapidly changed its legislation, also after consulting the UK. The Irish example shows that Ireland, as a Member State, also took into account interests of the UK, which was probably most affected by the former Irish citizenship regime. This can be seen as a *political* expression of the principle of sincere cooperation. While this principle also encompasses a concrete *duty* of sincere cooperation, a *legal* obligation to change legislation that allows for birthright citizenship cannot be derived neither from primary

[26] *Tjebbes* para 45.
[27] *Tjebbes* para 46.
[28] See Weis P *Nationality and Statelessness in International Law*, London, Stevens & Sons, 1979) 110.

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or secondary EU legislation nor from the case law of the CJEU. It is the same under international law.

The principle of sincere cooperation can be used as a shield against national measures affecting nationality by other Member States and the EU itself. This principle could be affected if a Member State was to carry out, without consulting Brussels or the other Member States, an unjustified mass naturalisation of nationals of non-Member States or nationals of another Member State.[29] Another, even more clear example offers the Maltese citizenship-for-sale affair. In 2013 the Maltese government announced an amendment to the Maltese Citizenship Act to introduce the so-called Individual Investor Programme (IIP). Under this programme foreigners and their families would be granted the Maltese citizenship in exchange for a considerable donation to the State or investment in the country, without any other requirement. This programme was severely criticised by the European Parliament in the resolution adopted on January 16th 2014, that condemned Member States' citizenship-for-sale programmes, specifically referring to Malta[30] and called upon Malta to bring its current citizenship scheme into line with the EU's values.[31] Under the threat of an infringement procedure under Article 258 TFEU, the Maltese authorities reached an agreement with the DG Justice of the European Commission about some amendments to the IIP. In order to acquire the Maltese nationality, the donor/investor would have to reside in Malta for at least 12 months prior to the naturalisation. The Maltese example demonstrates another possible limit to the national autonomy, as well as the readiness of the political EU institutions to take action against a Member State not exercising its autonomy in observance of EU law.

Based on the analogy with the reasoning of the CJEU in the cases of *Rottmann* and *Tjebbes*, discussed above, it is for national authorities and courts to ensure that in granting nationalities EU law is observed – and thus also the principle of sincere

[29] *Cf.* the Opinion of AG Poiares Maduro, ECLI:EU:C:2009:588, Para. 30. See G R De Groot, 'Towards a European Nationality Law', in H Schneider (ed.), *Migration, Integration and Citizenship: A Challenge for Europe's Future*. Volume I (Forum Maastricht 2005) 26. This situation could be roughly compared to the situation of Turkish Cypriots, who are considered citizens of the EU as the EU considers them Cypriot citizens. See, *e.g.*, https://ec.europa.eu/cyprus/about-us/turkish-cypriots_en.

[30] At least two other Member States offer their citizenship for sale, namely Bulgaria and Cyprus.

[31] In this resolution was expressly stated, that: *'that this way of obtaining citizenship in Malta, as well as any other national scheme that may involve the direct or indirect outright sale of EU citizenship, undermines the very concept of European citizenship.'* http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0038+0+DOC+XML+V0//EN [accessed on 14 April 2 2021].

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cooperation and values enshrined in Article 2 TEU. If other Member States believe that EU law has not been observed in a certain case, they could initiate the infringement proceeding against a Member State that is deemed to violate EU law with granting its nationality (either based on Arts. 258 or 259 TFEU), *e.g.* through investment migration schemes. In October 2020 the Commission announced tombegin infringement proceedings against Malta and Cyprus (that is also operating a citizenship by investment scheme). It remains to be seen what would be the position of the CJEU.

4.3. Conclusion

In the EU context, the function of the rules on nationality is different than in international law. The individual Member States do not only decide to whom they will grant the rights attached to nationality in their internal legal systems, but even more importantly, they decide to whom the *other Member States* will have to grant rights provided for in EU law. These specific circumstances have consequences for the Member States granting their nationality, as well as for the Member States hosting EU citizens from other Member States. The first do enjoy in principle their national autonomy in granting their nationality, but they must exercise it with due regard to Union law, as has been underlined by the CJEU. They, being the 'gatekeepers' to the EU citizenship, must bear in mind that they are not granting only their own internal but also the EU citizenship. Since the 'receiving' Member States have the obligation to grant the EU citizens rights under EU law, they cannot unilaterally decide which nationality to recognize in case of multiple nationalities. They may also not rely on the genuine link and the notion of prevailing or effective nationality.

Consequently, the Member States' autonomy in matters of citizenship, as compared to international law, is subject to additional limitations. The Member States must observe general principles of EU law, most notably the principle of proportionality. This principle plays a more important role in case of loss than in case of acquisition of nationality, as the cases *Rottmann*, *Kaur* and *Tjebbes* have demonstrated. Yet, the role of EU law and of the CJEU is very limited. The *Rottmann* and even much more evidently the *Tjebbes* case have shown that even when required to apply the proportionality test, the Member States enjoy a very large portion of autonomy in choosing the grounds for the loss of their nationality.

The principle of sincere cooperation plays a role as regards defining the grounds for the acquisition of Member State nationality. It is therefore necessarily connected with citizenship by investment programmes. It follows from the very core of the Member States autonomy in matters of nationality to define the relevant links that are the basis for the attribution of their nationality. It is therefore their sovereign right to decide that

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making a considerable investment in that Member State is one of the relevant links. This part of their sovereignty was not transferred to the EU. Hence, the reactions of the European Parliament and the Commission might be considered overblown.

5 Naturalization requirements in selected Member States

This paper focuses to the requirements for ordinary naturalization. Most countries also provide for privileged naturalizations of certain categories persons, e.g. stateless persons, persons born on their territory of foreign parents, 'coethnics', former nationals, spouses of nationals, important scientists, sportsmen, in some countries even investors etc.

5.1 Croatia

The naturalization requirements are set out in Article 8 of the Croatian Citizenship Act.[32] Croatian nationality can be acquired upon a request of the person concerned, who must fulfill the following requirements:

- 18 years of age;
- release from /renounce the existing nationality or provide a proof that he /she will lose the nationality f he/she is granted the Croatian nationality;
- uninterrupted registered residence for at least 8 years in Croatia before the submission of the request and he/she must be been granted permanent residence;
- proficiency in the Croatian language and Latin script, and familiarity fwith Croatian culture and social arrangement (not applicable to persons over 60 years of age);
- respect of the Croatian legal order by paying public contributions, and by the fact that there are no security obstacles to receive the Croatian nationality;

The requirement of release/renouncement fro the existing nationality is met in cases the applicant loses this nationality automatically by naturalization in Croatia. If the foreign national country of the applicant does not permit release/renouncement, or sets requirements that are impossible to fulfill, a statement of the applicant renouncing his/her foreign nationality is sufficient.

As regards the requirement of loss of the existing nationality, the Croatian Citizenship Act was amended in 2019 by Article 8A, for the case that the national country of the applicant would only grant release from its nationality if the applicant proves that he/she acquired or that he/she has certainty that he/she will acquire the Croatian nationality. Pursuant to Article 8A, an applicant who fulfills all the other naturalization

[32] Official Gazette 53/91, 70/91, 28/92, 113/93, 4/94, 130/11, 110/15, 102/19 – in force on 01/01/2020.

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conditions, may be issued a guarantee of acceptance to Croatian citizenship, in order to be able to prove the probable naturalization in Croatia, to his/her national authorities. Such guarantee is issued for two years. In this time the applicant should be able to acquire release from his/her existing nationality.

5.2 Slovenia

The Slovenian nationality Act[33] regulates the acquisition of Slovenian nationality by (ordinary) naturalization in Article 10. It is interesting to observe that pursuant to the text of this provision the competent authority, that is the Ministry of the Interior, may, within its discretion, grant the Slovenian nationality to a person requesting naturalization if it is in the national interest of Slovenia. This applies even in cases where all the statutory requirements are met. The discretion of the competent authority is reiterated 13(!) times in the provisions dealing with naturalization.[34]
The requirements are detailed set out in Article 10:

- 18 years of age;
- release/renouncement of the existing nationality or provide a proof that he/she will lose the nationality if he/she is granted the Slovenian nationality;
- legal residence in Slovenia for 10 years, of which 5 years prior to the submission of the application must continuous;
- sufficient means that enable material and social security;
- a command of the Slovenian language for the purposes of everyday communication, which he/she shall prove with a certificate verifying that he/she successfully passed a basic level exam in Slovenian;
- not having been sentenced to an unconditional imprisonment longer than three months, or to a conditional prison sentence with a trial period longer than one year;
- the applicant's residence permit may not be annulled;
- the applicant's naturalization may mean no threat to the public order, security or defense of the State;
- all tax obligations must be settled;
- a declaration to respect the free democratic constitutional order, founded in the Constitution of the Republic of Slovenia.

The already extensive naturalization conditions set out in Article 10 are supplemented by four government regulations, which provide for detailed rules how the conditions of Article 10 must be applied.

[33] Official Gazette 1/91, Latest consolidated version 24/07, latest amendment 40/17.
[34] Articles 10-12.

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The condition of release/renunciation of the existing nationality is subject to several exceptions. Pursuant to Article 10(2) this requirement does not apply to nationals of EU Member States under the condition of reciprocity, that is, if also the national MS of the applicant does not require release/renunciation of Slovenian nationality in case of naturalization of Slovenian applicants. This reciprocity requirement is only met by Germany and Latvia, however a large number of MS does not require loss of existing nationality at all, not only from EU nationals, namely: Belgium, Czech Republic, Finland, France, Greece, Hungary, Ireland, Italy, Luxembourg, Poland, Portugal, Romania, Slovakia and Sweden. Moreover, the loss of existing nationality is not required if the applicant proves that his/her nationality is automatically lost by naturalization in Slovenia, or if he/she submits evidence that his/her country has not decided on the application for release of citizenship within a reasonable period of time. If the person proves that his/her country will not grant the release of citizenship or that the voluntary acquisition of foreign citizenship is considered an act of disloyalty, which pursuant to the country's regulations is sanctioned, a declaration of the applicant that he/she will renounce foreign citizenship if he/she is granted citizenship of the Republic of Slovenia is sufficient.

Pursuant to Article 11 a guarantee may be issued to a person who fulfills all the other requirements of Article 10, but a proof of loss of current nationality. By this guarantee he/she proves to his/her national authorities the probability of acquisition of Slovenian nationality. If the applicant subsequently does not present a proof of loss oh his/her nationality within two years he/she is considered to have withdrawn the application. If he furnishes such proof, the requirements as to his/her criminal record and possible threat to the public order, security or defense of the State, are assessed again.

5.3 Italy

The requirements for ordinary naturalization are set out in Article 9 of the Nationality Act 91/1992:[35]

- legal residence of at least 10 years, as to EU citizens, the residence requirement is only 4 years;
- adequate knowledge of the Italian language (at least level B1)
- integration agreement referred to in Article 4-bis of the Legislative Decree 25 July 1998, n. 286;

No renunciation of previous citizenship is required, but a declaration of renunciation of diplomatic protection by Italian diplomatic-consular authorities towards the country of

[35] Official Gazette No 38 of 15 february 1992.

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origin's authorities must be provided with the application.[36]

The assessment of the applications for ordinary naturalization follows a discretionary procedure. Fulfillment of all the requirements by the applicant is a necessary but not automatically sufficient condition to be granted nationality. [37]

5.4 Austria

The requirements for ordinary naturalization are set forth in Article 10 of the Austrian Nationality Act:[38]

- lawful residence for an uninterrupted period of at least 10 years, including at least 5 years as a settled resident (to EEA nationals a residence requirement of 6 years applies);
- not having been sentenced to a term of imprisonment;
- no criminal proceedings pending liable to a sentence of imprisonment
- the international relations of Austria may not be significantly impaired by the granting of nationality;
- On the basis of his/her conduct, the applicant must guarantee that he or she has a positive attitude towards the Republic and neither represents a danger to law and order and public safety nor endangers other public interests as stated in Article 8, paragraph 2, of the European Convention on Human Rights;
- the applicant's livelihood must be sufficiently ensured;
- the applicant does not have relations with foreign States of such a nature that the granting of nationality would be detrimental to the interests of the State.
- Under Article 10(2) the nationality must not be granted to an applicant if:
    - he/she was sentenced for a series of certain administrative offences
    - a procedure for termination of residence is pending against the alien;
    - a residence ban is in force against the applicant;
    - a residence ban has been imposed on the applicant by another EEA State;
    - a final expulsion order has been issued against the applicant in the last twelve months ;

[36] Tintori, G., Naturalisation Procedures for Immigrants, RSCAS/EUDO-CIT-NP 2013/13 Italy, p. 10.
[37] Ibid p. 12.
[38] Federal Law Gazette of the Republic of Austria, FLG No. 311/1985, amended by FLG No. 386/1986, FLG No. 685/1988, FLG No. 521/1993, FLG No. 505/1994, FLG I No. 109/1997, FLG I No. 30/1998, FLG I No. 123/1998, FLG I No. 124/1998 and FLG I No. 37/2006.

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- the applicant has close links with an extremist or terrorist group and, having regard to its existing structures or expected developments within its environment, the possibility of extremist or terrorist activities by such group cannot be excluded.

- Under Article 10(3) an applicant possessing foreign nationality may not be granted the Austrian nationality if he/she:
  - fails to take the necessary steps to relinquish his or her previous nationality even though such steps are possible and reasonable, or
  - On the basis of his/ her application or otherwise deliberately retains his or her previous citizenship.
- Article 10a also requires:
  - knowledge of the German language (at least level B1);
  - basic knowledge of the democratic system and the history of Austria and of the federal province concerned.

5.5 Germany

The requirements for ordinary naturalization are set forth in Article 10 of the German Nationality Act of 2000.[39] It is important to observe, that the German statute speaks of entitlement to naturalization,[40] if the requirements are fulfilled:

- legal capacity;
- legal residence in Germany for 8 years ;
- a declaration of loyalty;
- having been granted permanent residence;
- sufficient means without recourse to social benefits;
- renunciation of previous nationality (several exceptions apply under Article 12. Among others this requirement does not apply to EU and Swiss nationals);
- clean criminal record;
- adequate knowledge of German (at least B1);
- knowledge of the legal system, society and living conditions in Germany.

Moreover, under Article 11 the naturalization shall not be allowed:

- if there are concrete, justifiable grounds to assume that the applicant poses danger for the State;
- if a ground for expulsion under the Residence Act applies to the applicant.

[39] Staatsangehörigkeitsgesetz (StAG) of 15 July, 1999, Federal Law Gazette, vol. I, p. 1618.
[40] The German text provides: ' *ist auf Antrag einzubürgern'*, whic meant that the competen authorityb has the obligation to naturalize.

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It must be added, that under Art. 12a(4**)** Convictions abroad and criminal investigations and proceedings, which are pending abroad, must be stated in the application for naturalization. If the applicant does not provide this information, the naturalization may be revoked, which was the case in the *Rottmann*.[41]

5.6 Assessment

5.6.1 General remarks

All countries included in this paper foresee for a statutory regulation of naturalization. It may be observed that the most detailed regulation can be found in Slovenia, followed by Austria, Germany, Croatia, Italy, being the most concise. In all countries with the exception of Germany, the naturalization is not a right of an applicant who fulfills all the requirements, but remains in the discretion of the competent authority. This discretion is at widest in Slovenia. The Slovenian Nationality act is also the only to provide, that an ordinary naturalization[42] may be granted if it is in the interest of the State.

The naturalization requirements are in all discussed countries similar. The prerequisite of legal residence in the country of naturalization varies from 8 years in Croatia and Germany to 10 years in Austria, Italy and Slovenia, which is relatively long. Several Member States require a shorter stay from 3 years in Poland, 5 years e.g. in Czech Republic, Finland, France, Netherlands, Sweden Finland. A 10-years residence is also required in Spain. All discussed countries demand a basic knowledge of the language and society, and they set requirements as regards possible criminal and even administrative offences. Slovenia is the only one that requires that the applicant has no outstanding tax liabilities. Prerequisites as to sufficient means are expressly set in all discussed countries, with the exception of Italy.

All discussed countries with the exception of Croatia offer privileged naturalization possibilities for nationals of EU Member States. While Austria and Italy satisfy themselves with a considerably shorter residence requirement (Italy 4 and Austria 6 instead of 10 years) Germany and Slovenia do not demand that the applicant relinquishes his/her current nationality. These possibilities are very seldom used in practice. Why should a migrating EU citizen, seek naturalization in his (foreign) Member State of residence when he/she must be treated equally with the nationals of that Member State already on grounds of his/her EU citizenship? Nevertheless, the existence of a privileged naturalization of EU citizens means a clear discrimination of

[41] See *supra* under 4.2.
[42] Such is commonn State practice in case of privileged naturalizations of sportsmen, scientists etc.

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applicants who are third country nationals. Here must be added that in general, EU nationals easier fulfill the requirements of legal residence and sufficient funds.

Such discrimination is however permissible on grounds of national autonomy of the MS. The prohibitions of discrimination on grounds of nationality in Article 18 TFEU and Article 21(1) EU Charter are limited to the application of the Treaties and do not apply to areas not regulated in the Treaties such as the acquisition of Member State nationality.[43] However, it might be argued, that the acquisition of a MS nationality is in case of TCNs in fact the acquisition of the EU citizenship. Therefore, it the application of those provisions not on beforehand excluded. The main problem lies elsewhere. The CJEU is namely not willing to apply those provisions to differences in treatment between EU citizens and TCNs. It ruled in *Vatsouras*[44] that: Ar*t. 12 EC (now18 TFEU) ... is not intended to apply to cases of a possible difference in treatment between nationals of Member States and those of third countries*.' As to possible infringement of the ECHR, the ECtHR ruled that differential treatment of TCNs in comparison with EU citizens is justified by the special legal order among EU Member States.[45]

5.6.2 Renunciation of the existing nationality

All MS that are included in this paper, with the exception of Italy, require that the applicant relinquishes his/her existing nationality. This condition, which has been quite common in the past, in order to limit cases of multiple nationality, is not (anymore) applied in 16 of 27 EU Member States. Germany and Slovenia waive this requirement however in favor of EU citizens and Germany in favor of Swiss nationals as well. Slovenia hereby demands, that the national country also does not set this requirement as regards Slovenian nationals. This is met by 16 MS. [46] Austria, Croatia Germany and Slovenia provide however for reasonable exceptions, especially for cases where the national State sets requirements that are impossible to fulfill or it does not allow their nationals to relinquish its nationality.

Since many countries only allow for renunciation of their nationality it the person in question already has another nationality or if he/she furnishes proof that he/she will acquire another nationality, Austria, Croatia and Slovenia provide for the possibility

[43] Article 18 TFEU and Article 21(1) Charter provide: ''*Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.*'
[44] Case C-22/08, *Vatsouras* (EU:C:2009:344).
[45] Mou*staquim v. Belgium*, Appl.no. 12313/86, 18 February 1991, ECtHR, *C. v. Belgium*, Appl. no. 21794/93, 7 August 1996.
[46] BE, CZ, CY, EL, FI, FR, HU, IE, IT, LU, LV, MT, PL, PT, SE, SK.

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that after assessment of the naturalization conditions the applicant is issued a guarantee of naturalization, which can be presented to his/her national authorities in order to be able to relinquish his/her nationality. Such guarantee is in Austria and Slovenia however conditional, since before the final decision on naturalization, the requirements as to possible (new) criminal and/or administrative offenses are assessed again. In case they are not met, the naturalization does not take place. This means that it is possible that the applicant successfully renounces his/her nationality, becomes stateless and is subsequently not naturalized in Austria or Slovenia. This means that the person in question remains stateless.

Before the CJEU is the case *C-118/20 JY v. Wiener Landesregierung* pending, where the Court will decide about such a conditional guarantee issued in Austria upon the request for a preliminary ruling by the Supreme Administrative Court of Austria. The facts of the case are the following: Mrs. JY is an Estonian national living in Austria. In 2008 she applied for naturalization. In March 2014, the authorities granted her a guarantee of the grant of Austrian nationality, which would enable acquisition of Austrian nationality on condition of providing proof that the previous nationality had been relinquished. She subsequently relinquished her Estonian citizenship on 27 August 2015 and became stateless, awaiting the promised acquisition of Austrian nationality, which did not take place. On 6 July 2017, the Austrian authorities revoked the original guarantee of the grant of Austrian nationality and rejected her application for Austrian citizenship. The reason was, that JY had committed two serious administrative offences since the decision on the guarantee of the grant of Austrian nationality. These, in combination with eight prior offences (all speeding offences), made her ineligible for naturalization. The two serious administrative offences concerned a failure to provide a compliant vehicle inspection disk and driving under the influence of alcohol. The Supreme Administrative Court referred the following questions to the CJEU:

- Is the revocation the guarantee of grant of citizenship subject to EU law?
- If yes, is the revocation of the guarantee that prevented the recovery of citizenship of the Union compatible with the principle of proportionality under EU law?

Advocate general Szpunar concluded in his opinion, that the situation of JY falls within the scope of EU law. The Austian decision which entails the permanent loss of citizenship of the Union by JY, on the ground of administrative offences related to roadsafety, specifically offences which do not entail the withdrawal of the individual's driving licence, is not in compliance with the principle of proportionality under EU

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law.[47]

6. Conclusion

As has been established above, the rules regarding naturalization are to a very large extent subject to the principle of national autonomy. This gives the naturalizing Member State a very large margin op appreciation as to the defining the requirements for naturalization, as well as the application of the naturalization rules in practice. In the countries that were subject to this survey as well as in almost all other EU Member States, an applicant, who fulfills all the naturalization requirements, has no right to be naturalized. The decision is firmly in hands of the competent authorities. As far as the discussed legal orders are concerned, the upmost portion of discretion enjoy Slovenian authority. Quite unprecedented is also the requirement in Article 10(1) of the Slovenian Nationality Act pursuant to which even an ordinary naturalization must be in the interest of the State. The privileges enjoyed by nationals of EU Member States in all discussed legal orders with the exception of Croatia make the situation of TCN applicant even worse, since they are discriminated as regards essential naturalization requirements. The privileged naturalization of nationals of other Member States may seem hypocritical, since very few migrating EU citizens are interested in the naturalization in their Member State of residence. They enjoy basically the same rights as the own nationals of that Member State already on grounds of their EU citizenship. This means that some Member States, especially Austria, Italy and Slovenia, who provide for otherwise very strict naturalization requirements as to TCNs offer privileged naturalization possibilities for which there is almost no demand, to make the whole picture look better. The conditional naturalization guarantees in Austria and Slovenia, with the possibility of reassessment of some naturalization requirements may be problematic from the viewpoint of EU law. This would be the case, if decision of the competent authority to revoke the naturalization guarantee is unproportionate, as it has been proposed by the AG Szpunar in the pending case *JY v. Wiener Landesregierung*.and will (hopely) be confirmed by the CJEU.

[47] ECLI:EU:C:2021:530.

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