CRITICS AND ASPECTS OF THE EUROPEAN CITIZENSHIP ACCORDING TO THE CJEU: FROM ROTTMANN TO TJEBBES AND OTHERS

This work seeks to analyze and deepen the argument of European citizenship once again based on the jurisprudence of the CJEU. In particular, the latest Rottmann and Tjebbes and others judgments present elements of continuity in relation to the proportionality test required by the CJEU to the courts and authorities of the Member States, if the loss of the citizenship of a Member State also causes the loss of European citizenship. And after Brexit? The authors are also applying to British citizens after the last positions of the CJEU in European citizen politics.

Keywords: European citizenship, Brexit, CJEU, test of proportionality, European Union law, TFEU

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1. Introduction

The establishment of European citizenship with the Maastricht Treaty represented one of the most interesting forms of redefining the notion of citizenship. In fact, today the articles 9 TEU and 20 TFEU¹ establish that a citizen of a Member State is also a citizen of the Union, it being understood that, while giving his beneficiaries rights and duties, European citizenship is added to and dependent on that of a Member State.

The ruling of 12 March 2019, Tjebbes and others², made in the context of a preliminary question raised by the Council of State of the Netherlands, offers an opportunity for reflection on European citizenship³ and, in particular, in the event that such citizenship is lost as a result of the loss of that of a Member State. In order to highlight the most interesting profiles of the aforementioned ruling, it is worth recalling the previous Rottmann judgment⁴, to which the Advocate General (AG) Mengozzi made extensive reference, not without some critical remarks, in the conclusions presented in the Tjebbes and others case⁵. In this regard, account will also be taken of the jurisprudential practice of some Mem-

¹ A. Mangas Martin, (2018): *Tratado de la Unión Europea, Tratado de Funcionamiento*, ed. Marcial Pons, Madrid.

² CJEU, C-221/17, Tjebbes and others of 12 March 2019, ECLI:EU:C:2019:189, published in the electronic reports of the cases. H. Van Boven, (2019): "Tjebbes in Wonderland: On European citizenship, nationality and fundamental rights: ECJ 12 March 2019, Case C-221/17, M.G. Tjebbes and others v. Minister van Buitenlandse Zaken, ECLI:EU:C:2019:189", *European Constitutional Law Review*, 15 (4), pp. 718ss. C. Barnard, (2019): *The substantive law of the EU*, Oxford University Press, Oxford, pp. 36ss.

³ A. Von Bogdandy, F. Arndt, (2017): "European citizenship", *Max Planck Encyclopedia of Public International Law*. 2017. S. Carrera Nuñez, G.R. De Groot, (eds.), (2015): *European citizenship at the crossroad. The role of the European Union on Loss and acquisition of nationality*. CEPS/Oistewijk. B. Nascimbene, (2014): *Le droit de la nationalité et le droit des organisations d'intégration régionale. Vers de nouveaux statuts de résidents?*, in *Recueil des cours*, ed. Brill, The Hague, vol. 367, pp. 253. P. Mindus, (2017): *European citizenship after Brexit. Freedom of movement and rights of residence*, ed. Springer, Berlin. I. Govaere, S. Garben, (2019): *The interface between EU and international law. Contemporary reflections*, Bloomsbury Publishing, New York, pp. 94ss. J. Bast, (2011): *Aufenthaltsrecht und Migrationssteuerung*, Mohr Siebeck, pp. 238ss.

⁴ CJEU, C-135/08, Rottmann of 2 March 2010, ECLI:EU:C:2010:104, I-01449. D. Kochenov, (2013): "The essence of EU citizenship emerging from the last ten years of academic debate: Beyond the cherry blossoms and the moon?", *International & Comparative Law Quarterly*, 62 (1), 2013, pp. 100ss. R. Schütze, (2018): *Globalisation and governance: International problems, European solutions*, Cambridge University Press, Cambridge, pp. 308ss. C. Matias, (2016): *Citizenship as a human right: The fundamental right to a specific citizenship*, ed. Springer, Berlin.

⁵ See the conclusions of the AG Mengozzi in case: C-221/17, Tjebbes and others of 2 July 2018, ECLI: EU:C:2018:572.

ber States following the Rottmann judgment and of another ruling, made by the CJEU in 2015, in the Delvigne case⁶.

2. The new principles with the case Rottmann

In the Rottmann case, the question arose for the first time of the extent of the discretion of the Member States to determine their citizens. Mr. Rottmann, born an Austrian citizen, and who became a European citizen when Austria joined the European Union in 1995, had applied for naturalization in Germany. In early Mr. Rottmann obtained German citizenship, in early 1999, but simultaneously lost Austrian citizenship in accordance with Austrian citizenship legislation. Subsequently, the German authorities were informed by the Austrian authorities that Mr Rottmann was the subject of an arrest warrant in their country and had already been questioned as a defendant in July 1995. In the light of this information, the German authorities withdrew the naturalization as Mr. Rottmann had quieted the investigation procedure pending in Austria, obtaining German citizenship by deception. The German authorities' decision resulted in an administrative dispute which prompted the German Federal Administrative Court to raise two issues.

The German Court asked whether EU law precluded the legal consequence of the loss of European citizenship resulting from the fact that the withdrawal, in itself legitimate under national law, of a naturalization as a citizen of a Member State obtained by deception it had the effect, in combination with national legislation on the nationality of another Member State, of rendering the person concerned stateless. If the first question was answered in the affirmative, the German Court asked whether the Member State which naturalized the citizen of the Union and who intended to withdraw the naturalization obtained fraudulently should, in compliance with Union law, abstain totally or temporarily by such revocation, if or as long as the latter has the legal consequence of the loss of citizenship of the Union, or if the Member State of the previous citizenship was required, in compliance with Union law, to interpret and apply or even to modify their national law in order to avoid the occurrence of the aforementioned consequence.

⁶ CJEU, C-650/13, Delvigne of 6 October 2015, ECLI:EU:C:2015:648, published in the electronic reports of the cases. C. Warin, (2019): *Individual rights under EU law: A study on the relation between rights, obligations and interests in the case law of the Court of Justice*, Nomos Verlag, Baden-Baden.

3. The conclusions of the Advocate General Poiares Maduro

As observed by AG Poiares Maduro, the question that the referring court essentially asked was to understand whether the power of the Member States to fix the conditions for acquiring their nationality could be exercised beyond any control by the legal order of the Union or if, due to the fact that the enjoyment of the citizenship of a Member State derives from that of the European Union, it had an impact on the legislative power of that State⁷.

In its conclusions, after recalling that the Court had already ruled that matters falling under national jurisdiction must be governed by the Member States in compliance with Union law⁸, and that this solution was also to be accepted as regards the discipline of the conditions of purchase and loss of national citizenship, the AG Poiares Maduro examined the issues on the merits. The AG noted that the fact that a State withdraws the citizenship obtained by deception responds to a legitimate interest, namely the need to ascertain the loyalty of its citizens. From this, the AG has concluded that an individual who intentionally provides false information during the process of acquiring citizenship cannot be considered loyal to the State he has chosen. The AG concluded that EU law does not impose any obligation of this type, even if, without it, the plaintiff in the main proceedings remains stateless and therefore, without Union citizenship. The AG stressed that a different decision would have meant ignoring that the loss of Austrian citizenship is a consequence of the Union citizen's personal decision to intentionally acquire a different citizenship and that European Union law does not preclude Austrian law, according to which a Austrian loses his citizenship when he acquires, upon his request, a foreign citizenship⁹.

⁷ See the conclusions of the AG Poiares Maduro presented in case: C-135/08, Rottmann of 30 September 2009, ECLI:EU:C:2009:588, par. 1.

⁸ Before the Rottmann case, the CJEU of justice had already specified that although falling within the scope of national jurisdiction, a series of issues, including, by way of example, those relating to direct taxes (C-446/03, Marks & Spencer of 13 December 2005, ECLI:EU:C:2005:763, I-10837, par. 29), the patronymic (C-148/02, Garcia Avello of 2 October 2003, ECLI:EU:C:2003:539, I-11613, pt. 25) and pensions for civilian war victims (C-192/05, TasHagen and Tas of 26 October 2006, ECLI:EU:C:2006:676, I-10451, par. 23), had to be regulated by the Member States in compliance with European Union law. For further details see: D. Chalmers, G. Davies, G. Monti, (2019): *European Union law*, Cambridge University Press, Cambridge. P. Harris, D. Oliver, (2010): *International commercial tax*, Cambridge University Press, Cambridge, pp. 336ss. L. Azoulai, (2014): *The question of competence in the EU*, Oxford University Press, Oxford, pp. 169ss. E. Ros, (2016): *EU citizenship and direct taxation*, Kluwer Law International, New York, H. Micklitz, (2014): *Constitutionalization of European private law*, Oxford University Press, Oxford, pp. 92ss.

⁹ In this regard, the AG Poiares Maduro in case Rottmann observed that it could have been considered that, being the withdrawal of the German retroactive naturalization, Mr. Rottmann had never possessed German citizenship, with the consequence that the event that led to the loss of Austrian citizenship would never have taken place. Mr. Rottmann

The Rottmann judgment highlighted its progressive and evolutionary character, in that it irreparably affected the paradigm of the independence of the Member States in a matter, that of citizenship, which by its nature expresses the closest link between the individual and the State¹⁰. Although the CJEU has been rather careful to delimit its sphere of action from a principle point of view, remembering that national citizenship remains the main one and that European citizenship is subsidiary to the former, part of the doctrine has not failed to advance reservations on the nature of the proportionality test imposed by the CJEU on national authorities. In fact, it was pointed out that the proportionality

would have been entitled to the automatic reviviscence of Austrian citizenship. However, the AG itself pointed out that this is a reasoning whose application depends on Austrian law which cannot be imposed by any Community law, unless that law provided for a similar solution in similar cases. In this case, this solution should have been applied under the equivalence principle.

- ¹⁰ K. Kruma, (2012): "How do we get more out of the EU citizenship?", in M. Pascouau, T. Strik, (eds.), *Which integration policies for migrants? Interaction between the EU and its Member States*, Wolf Legal Publisher, Tilburg, pp. 185ss. H.U. Jessurun D'Oliveira, (2011): "Decision of 2 March 2010, Case C-135/08, Janko Rottman v. Freistaat Bayern-Case Note I-Decoupling nationality and Union citizenship?", *European Constitutional Law Review*, 11 (1), 2011, pp. 138ss. G.R. De Groot, A. Selings, (2011): "Decision of 2 March 2010, Case C-135/08, Janko Rottman v. Freistaat Bayern-Case Note II-The consequences of the Rottman judgment on Member State autonomy-The European Court of Justice's avant-gardism in nationality matters", *European Constitutional Law Review*, 11 (1), 2011, pp. 150ss. A. Selings, (2010): "Case C-135/08 Janko Rottmann v. Freistaat Bayern, Judgment of the Court of Justice (Grand Chamber) of 2nd March 2010, nyr-Towards a direct "droit de regard"?", *Maastricht Journal of European and Comparative Law*, 17, 2010, pp. 470ss. J.M. Cortès Martín, (2010): "Jurisprudencia del Tribunal de Justicia de la Unión Europea", *Revista Derecho Comunitario Europeo*, 14, 2010, pp. 5ss. C. O'Brien, (2018): *Unity in adversity*, Bloomsbury Publishing, New York. D. Thym (ed.), (2017): *Questioning EU citizenship*, Bloomsbury Publishing, New York. D. Kochenov (ed.), (2017): *EU citizenship and federalism*, Cambridge University Press, Cambridge. E. Spaventa, (2008): "Seeing the wood despite the trees: On the scope of Union citizenship and its constitutional effects", *Common Market Law Review*, 45, 2008, pp. 13ss. D. Kochenov, M. Van Den Brink, (2015): "Pretending there is no union: Non-derivative quasi-citizenship rights of third-country nationals in the EU", in D. Thym, M. Zoetewij Turhan (eds), *Degrees of free movement and citizenship*, Brill & Martinus Nijhoff Publishers, Leiden, Boston, pp. 66ss. D. Kochenov, R. Plender, (2012): "EU citizenship: From an incipient form to an incipient substance? The discovery of the treaty text", *European Law Review*, 18, 2012, pp. 369ss. D. Kochenov, (2013): "The right to have what rights? EU citizenship in need of clarification", *European Law Journal*, 19, 2013, pp. 502ss. D. Kochenov, G. De Búrca, A. Williams (eds), (2015): *Europe's justice deficit?*, Hart Publishing, Oxford, Oregon, Portland, pp. 460ss. P. Weil, (2012): *The sovereign citizen. Denaturalization and the origins of the American Republic*, Pennsylvania University Press, Pennsylvania, PA. P.J. Spiro, (2010): "Dual citizenship as human right", *International Journal of Constitutional Law*, 8, pp. 111ss. D. Kostakopoulou, (2018): "Scala civium: Citizenship templates post-Brexit and the European Union's duty to protect EU citizens", *Journal of Common Market Studies*, 56, 2018, pp. 854ss. S. Iglesias Sánchez, (2010): "¿Hacia una nueva relación entre la nacionalidad estatal y la ciudadanía europea?", *Revista de Derecho Comunitario Europeo*, 14, 2010, pp. 933ss.

test indicated by the CJEU is substantially left to the national authorities rather than carried out by the CJEU itself on the basis of criteria specific to the European legal order¹¹.

4. The practice of national courts following the Rottmann judgment

As regards the Rottmann judgment, a collection of case-law practices has been published for some Member States, which shows a not particularly encouraging figure. This collection shows that only the courts of Germany and Austria, the two Member States involved in the dispute relating to the Rottmann case, have given relevance to the judgment, in particular with regard to the proportionality test.

In Germany, the Federal Administrative Court applied the principles contained in the Rottmann judgment to the case that gave rise to the preliminary question, carefully checking whether the German legislation guaranteed the principle of proportionality, as defined in the preliminary ruling¹². Upon the outcome of this verification, the Federal Administrative Court concluded that the German legislation complied with the principle of proportionality¹³.

¹¹ D. Kochenov, (2011): "Two sovereigns states vs. a human being: CJUE as a guardian of arbitrariness in citizenship matters", in J. Shaw (ed. by), *Has the European Court of Justice challenged member state sovereignty in national law?*, in EUI RSC WP, pp. 12ss. D. Kochenov, (2019): *Citizenship*, MIT Press, Cambridge MA. P.G. Van Wolleghem, (2018): *The EU's policy on the integration of migrants. A case of soft Europeanization?*, ed. Springer, Berlin. P.G. Van Wolleghem, (2016): "Where is the EU's migrant integration policy heading? A neofunctionalist take on three multiannual financial frameworks", *International Review of Public Policy*, 1(2), pp. 220ss. E. Guild, C. Gortázar Rotaèche, D. Kostakopoulou, (2014): *The reconceptualization of EU citizenship*, Martinus Nijhoff Publishers, The Hague, pp. 67ss.

¹² N. Cambien, (2011): "Janko Rottman v Freistaat Bayern", *Columbia Journal of European Law*, 18, 2011, pp. 375ss. L. Della Torre, T. De Lange, (2018): "The "importance of staying put": For country nationals limited intra EU mobility rights", *Journal of Ethnic and Migration Studies*, 44 (9), 2018, pp. 1412ss. S. Bonjour, (2014): "The transfer of pre-departure integration requirement for family migrants among member States or the EU", *Comparative Migration Studies*, 2, 2014, pp. 208ss. J. Groon-Gestefeld, (2017): *Reconceptualising European equality law: A comparative institutional analysis*, Bloomsbury Publishing, New York.

¹³ K. Lenaerts, I. Maselis, K. Gutman, (2014): *EU procedural law of the European Union*, Oxford University Press, Oxford, pp. 48, 215 and 456ss. V. Kronenberger, (2014): "Actualité du renvoi préjudiciel: de la procédure préjudicielle d'urgence et de la procédure accélérée: quo vadis?", in S. Mahieu (sous la direction de), *Contentieux de l'Union européenne*, ed. Larcier, Bruxelles, pp. 397ss. M. Broben, N. Fenger, (2010): *Preliminary references to the European Court of Justice*, Oxford University Press, Oxford. A. Barav, (2008): "Déformations préjudicielles", in A. De Walsche, *Mélanges en hommage à Georges Vandersanden*, ed. Bruylant, Bruxelles, pp. 21ss. G. Vandersanden, (1999): "La procédure préjudicielle: à la recherche d'une identité perdue", in M. Dony, A. De Walsche, M.

Equally attentive to the Rottmann judgment were the Austrian courts, which, indeed, alone among the various jurisdictions examined, went further in applying the principles set out by the European judge. Indeed, in a case involving the loss of Austrian, and therefore European, citizenship of a Macedonian citizen, who had fraudulently acquired Austrian citizenship, while annulling the decision of the administrative authorities on the basis of other provisions, the Court Administrative Supreme has dedicated an obiter dictum to the Rottmann judgment. In it, the Austrian judge stated that the administrative authority's decision violated the principle established by that judgment, as that authority had not taken into consideration the proportionality of the national rule relating to the revocation of citizenship. In essence, the Austrian judge considered that the proportionality test requested by the Court should not be limited to the hypothesis of statelessness, but to all the hypotheses in which the loss of the European one derives from the loss of the citizenship of a Member State, even if, as in the present case, the individual subject to the measure retains the citizenship of a third State¹⁴.

Apart from these two examples, the value of which must in any case be relativized as they concern the Member States at the origin of the preliminary question concerning the Rottmann case, in the other Member States considered in the collection, this judgment did not have the same impact¹⁵.

Waelbroeck (sous la direction de), *Mélanges M. Waelbroeck*, ed. Bruylant, Bruxelles, pp. 619ss.

¹⁴ S. Carrera Nuñez, G.R. De Groot (eds.), 28ss.

¹⁵ See the sentences: Court of Appeal, *Gr v Secretary of State for the Home Department* (2012, EWCA Civ. 867) and of Supreme Court, *Pham v. Secretary of State for the Home Department* (2015, UKSC 10), v. S. C.M. Smyth, R. Lang, (2017): *The future of human rights in the UK*, Cambridge Scholars Publishing, Cambridge, pp. 42ss. C. Paulussen, M. Scheinin, (2019): *Human dignity and human security in times of terrorism*, ed. Springer, Berlin, pp. 50ss. T. Horsley, (2018): *The Court of Justice of the EU as an institutional actor: Judicial lawmaking and its limits*, Cambridge University Press, Cambridge, pp. 240ss. K. Lenaerts, C. Bechicot, H. Kanninen, (2019): *An ever changing Union? Perspectives on the future of EU law in honour of Allan Rosas*, Bloomsbury Publishing, New York, pp. 63ss. S. Mantu, (2015): *Contingent citizenship: The law and practice of citizenship deprivation in international, European and national perspectives*, ed. Brill, The Hague, pp. 226ss. D. Kochenov, (2017): *EU citizenship and federalism*, Cambridge University Press, Cambridge, pp. 213ss. P. Koutrakos, N.N. Schuibhne, P. Syrpis, (2016): *Exceptions from EU free movement law: Derogation, justification and proportionality*, Bloomsbury Publishing, New York, pp. 308ss. J. Schultz, (2018): *The international protection alternative in refugee law*, ed. Brill, The Hague. S. Carrera, (2016): *Implementation of EU readmission agreements: Identity determination dilemmas and the blurring of rights*, ed. Springer, Berlin, pp. 19ss. K. Bianchini, (2018): *Protecting stateless persons: The implementation of the Convention relating to the status of stateless persons across EU states*, ed. Brill, The Hague. S. Vogenauer, S. Weatherill, (2017): *General principles of law: European and comparative perspectives*, Bloomsbury Publishing, New York, pp. 191ss. P.F. Scott, (2018): *The national security constitution*, Bloomsbury Publishing, New York, pp. 163ss.

5. Between Rottmann and Tjebbes and others: Delvigne and the proportionality test in the abstract

The judgment of 6 October 2015 in the Delvigne case, pronounced by the CJEU in the Grand Section, deserves to be examined in this paper because, despite the different factual circumstances and legal problems raised, the CJEU proposed a different application of the proportionality test in it¹⁶.

In this case, the question arose of the application of national legislation, which automatically deprived a citizen of the Union, sentenced to a criminal sanction, of the right to vote in the European Parliament elections.

The CJEU has checked the compliance of the deprivation of the voting right with the right guaranteed by art. 39, par. 2, of Charter of the Fundamental Rights of the European Union (CFREU) and, in particular, with respect for the principle of proportionality, pursuant to art. 52, par. 1, of the same¹⁷, concluding that this deprivation was proportionate. To arrive at such a conclusion, the CJEU judged that, firstly, the deprivation took into account the nature and seriousness of the criminal offense committed, as well as the duration of the sentence¹⁸. The CJEU stressed that national law expressly offered condemned persons the opportunity to request and obtain the lifting of the sanction for civic degrada-

¹⁶ M. Pelletier, (2018): “La CJUE et le principe non bis in idem: un pas en arrière, deux pas en avant”, *Revue de Droit Fiscal*, 37, pp. 2 ss. S. Coutts, (2017): “Delvigne: A multi-levelled political citizenship”, *European Law Review*, 42, 2017, pp. 867ss. H. Van Eijken, J.W. Van Rossem, (2016): “Prisoner disenfranchisement and the right to vote in elections to the European Parliament: Universal suffrage key to unlocking political citizenship?”, *European Constitutional Law Review*, 12 (1), 2016, pp. 114ss. R. Tinière, (2016): “Arrêt “Delvigne”: le droit de vote des (ex)-prisonniers devant la Cour de justice de l’Union européenne”, *Journal de Droit Européen*, 225, 2016, pp. 14ss. A. Rigaux, (2015): “Droit de vote et d’éligibilité aux élections européennes”, *Europe*, 12, 2015, pp. 18ss. D. Berlin, (2015): “Un problème de compétence escamoté?”, *La Semaine Juridique*, 2015, pp. 2232ss. R. Bieber, (2013): “La perception allemande de la notion de souveraineté”, *L’Europe en Formation*, 368 (2), 2013, pp. 12ss. T. De Montbrial, T. Gomart, (2017): *Notre intérêt national: Quelle politique étrangère pour la France?*, Odile Jacob, Paris. S. Coutts, (2019): “The shifting geometry of Union citizenship: A supranational status from transnational rights”, *Cambridge Yearbook of European Legal Studies*, 21, 2019, pp. 320ss. S. Coutts, (2019): *Citizenship, crime and community in the EU*, Bloomsbury Publishing, New York. J. Van der Harst, G. Hoogers, G. Voerman, (2018): *European citizenship in perspective: History, politics and law*, Edward Elgar Publishers, Cheltenham.

¹⁷ L. Khadar, J. Shaw, (2014): “Article 39”, in S. Peers, T. Hervey, J. Kenner, A. Ward (eds.), *The EU Charter of fundamental rights: A Commentary*, Oxford University Press, Oxford, pp. 1027ss. J. Schwarze, V. Becker, A. Hatje, J. Schoo, (2019): *EU-Kommentar*, ed. Nomos, Baden-Baden. M. Kellerbauer, M. Klamert, J. Tomkin, (2019): *Commentary on the European Union treaties and the Charter of fundamental rights*, Oxford University Press, Oxford.

¹⁸ In particular, the CJEU recalled that the interdiction from the right to vote was applicable, in accordance with the national legislation in question, only to persons convicted of an offense punishable by a penalty deprivation of liberty ranging from five years to life sentence. See also from the CJEU, C-650/13, Delvigne of 6 October 2015, cit.

tion which led to the deprivation of the right to vote. The CJEU therefore concluded that the national legislation in question was not contrary to the principle of proportionality and stated that art. 39, par. 2, CFREU¹⁹ did not preclude such legislation, which excluded from the beneficiaries of the right to vote in elections to the European Parliament the category of citizens of the Union to which the applicant belonged.

6. Abstract proportionality v. concrete proportionality test

The reported case originates from a dispute between four third-country nationals, three adults and one minor, and the Netherlands Minister of Foreign Affairs, who decided not to examine their passport renewal application due to the fact that they had lost Dutch citizenship in accordance with the citizenship law.

As for adults, art. 15, par. 1, lett. c) of this law requires that an adult over 18 lose Dutch citizenship if he also has a foreign national and has his main residence outside the Netherlands and the territories to which the TEU is applicable for an uninterrupted period of ten years during his age of majority and while in possession of both citizenships. The minister, to whom the applicants had been asked to renew their passports, rejected them on the grounds that they had lost citizenship of the Netherlands pursuant to art. 15, par. 1, lett. c) of the Citizenship Law²⁰.

As regards minors, art. 16 of the Dutch citizenship law states that a minor loses Dutch citizenship if the father or mother loses Dutch citizenship pursuant to, in particular, art. 15, par. 1, lett. c) of this law.

Following the minister's refusal to examine their application, the applicants filed an appeal before the Hague Tribunal, which was rejected. They therefore filed an appeal before the Council of State, which in the order for reference noted that it had been called upon to judge whether the loss of right of Dutch citizenship is compatible with EU law, in particular with Articles 20 and 21 TFEU²¹, read in the light of the Rottmann judgment. After noting that this ruling does not clarify how the proportionality assessment should be conducted, the Council of State questioned the question of knowing whether compliance with the prin-

¹⁹ K. Stern, M. Sachs, (2016): *Europäische Grundrecht Charta*, ed. C.H. Beck, München, pp. 756ss.

²⁰ In this regard, the Minister noted: i) that all the applicants had, for an uninterrupted period of at least ten years, their principal residence outside the Netherlands and the territory to which the EU Treaty applies, ii) that each of them also had another citizenship and (iii) that no Dutch travel document, no Dutch identity card or no declaration of possession of Dutch citizenship had been issued to them at that time. CJEU, C-221/17, Tjebbes and others of 12 March 2019, op. cit., parr. 51-59

²¹ A. Mangas Martin, 48ss.

ciple of proportionality of a national legislation, which provides for the loss of the right of citizenship, could be examined in a general way, or if this principle necessarily involves taking into consideration each specific case. In this regard, the Council of State has not failed to emphasize that, in its opinion, art. 15 of the citizenship law complies in the abstract with the principle of proportionality. Despite this finding, the referring court observed that it cannot be excluded that the examination of compliance with the principle of proportionality requires a case-by-case assessment, with the consequence that remains the doubt as to whether this law is compatible with articles 20 and 21 TFEU.

As for compatibility with art. 20 TFEU of the loss of citizenship of adult citizens provided for in art. 15, par. 1, lett. c) of the Dutch Citizenship Law, the AG Mengozzi has taken up the CJEU approach in the *Rottmann* case, pronouncing, first, on the existence of a reason of public interest and, then, on the proportionality of the decision of the Dutch foreign minister. After having clarified, in his opinion, the existence of this plea, the AG examined the question of proportionality, observing that from the question addressed to the CJEU by the Dutch Council of State it appears that this jurisdiction considers that the *Rottmann* judgment “would impose, in general, that, regardless of the connecting factor chosen by the legislature of a Member State to grant or revoke the nationality of that Member State, the national court must examine all the personal circumstances of each species suitable for demonstrating the maintenance of an effective link with the Member State such as to allow the interested party to retain the latter’s citizenship”²².

The AG specified that it did not share this position in the first place, because there is no obstacle on the level of principles to which, following a proportionality check in the light of Union law, a provision of legislation of a Member State, by its general nature, may prove to comply with the principle of proportionality. In this regard, he cited the *Delvigne* judgment, examined above, which shows that the examination of the proportionality of a national legislation need not be conducted in the light of the personal circumstances of each individual case, which would allow the exclusion of the application of the limitation provided by this legislation²³.

Although AG Mengozzi tried to make a summary, which led him to say that, despite some ambiguities of the reasoning of the CJEU in the *Rottmann* case, the control of the compliance of the national legislation with the principle of proportionality does not seem contrary to that proposed by him²⁴, in essence,

²² CJEU, C-221/17, *Tjebbes and others* of 12 March 2019, op. cit., par. 61

²³ In fact, in the *Delvigne* judgment, AG Mengozzi continues, the CJEU “limited itself to noting that Mr. Delvigne fulfilled the conditions of application of the national legislation (...) without going into the analysis of the adequacy of the limitation of the right to vote with respect to the individual penalty to which Mr. Delvigne had been convicted or, even more so, in consideration of any specific mitigating circumstances in that person’s situation (...)”. CJEU, C-221/17, *Tjebbes and others* of 12 March 2019, op. cit., par. 67.

²⁴ CJEU, C-650/13, *Delvigne* of 6 October 2015, op. cit., parr. 71-74

from the subsequent analysis the critical issues contained in the Rottmann judgment emerge. The AG stressed that a decision to withdraw naturalization has direct and indirect consequences. As regards the latter, the MA observed that these consequences do not derive from the decision to revoke the naturalization of the person concerned, but from subsequent administrative decisions that may or may not be taken, and which can in any case be subject to judicial appeal and, if where appropriate, a proportionality check, including with respect to Union law²⁵. In essence, according to the MA, the indirect, secondary or even hypothetical consequences on the situation of the person concerned, and of lesser gravity than the loss of this fundamental status and related rights, should not prevent the adoption of the decision to withdraw citizenship.

The AG came to the conclusion that the proportionality check of art. 15, par. 1, c), of the Dutch citizenship law must be carried out in the abstract and, in any case, regardless of the consequences and personal circumstances that would have the effect of excluding the application of the grounds for loss of citizenship chosen by the Dutch legislator.

After having clarified the proportionality test in its view to be performed, the AG applied it in the present case and concluded that the Dutch legislation does not raise problems²⁶. In particular, it is useful to dwell on the examination in detail and the rejection by the AG of the applicants' argument that the national judge is required to consider all the individual's personal circumstances. The AG did not hesitate to evoke "the particularly dangerous consequences" of such an approach. Indeed, he noted that under the pretext of asking for consideration of compliance with the principle of proportionality in EU law, the national court is ultimately required to disapply the reason identified by the legislature for determining the loss of citizenship, in favor of other criteria for connection to the Member State concerned, which are certainly conceivable, but which the national legislator did not consider relevant in order to demonstrate the maintenance of an effective link with the Member State concerned²⁷.

²⁵ In particular, the AG noted that "or the adoption of a decision to withdraw citizenship can be 'neutralized' due to the loss of Union citizenship status that it entails-which certainly raises a number of difficulties with regard to the ancillary nature of that status with respect to the nationality of the Member States, as provided for in Article 9 of the TEU and in Article 20 (1) of the TFEU, but which, in my opinion, is not impossible-, or the adoption of such a decision cannot be "neutralized" by the loss of the status of citizen of the Union (...)". CJEU, C-221/17, Tjebbes and others of 12 March 2019, op. cit., par. 80.

²⁶ According to the AG Mengozzi, firstly, the application of art. 15, par. 1 of Dutch law may not automatically cause the loss of European citizenship (pt. 93). Secondly, art. 15, par. 4 contemplates various hypotheses of interruption of the ten-year term of uninterrupted residence in a third country, which are easily achievable (pt. 94). Third, the loss of European citizenship is not irreversible due to the fact that an individual who has lost the citizenship of the Netherlands can reacquire it on more favorable conditions than an individual who has never had it. CJEU, C-221/17, Tjebbes and others of 12 March 2019, op. cit., par. 95

²⁷ CJEU, C-221/17, Tjebbes and others of 12 March 2019, op. cit., par. 106

With regard to the second question, which concerns the automaticity of the loss of citizenship for a minor by reason of that of the adult parent, after having clarified that in his opinion also for minors the Dutch legislation pursues an objective of legitimate interest²⁸, the AG examined its proportionality. In this regard, although I have recognized that art. 16, par. 2 of the Dutch Citizenship Law provides for exceptions to the principle set out in par. 1 of that article according to which the minor lost citizenship, as a consequence of the loss of that of the parent, these exceptions are not sufficient, in his opinion, to make this law conform to the principle of proportionality²⁹.

The AG Mengozzi pointed out that, in his reasoning on the loss of citizenship of minors, he did not replace a criterion set by the national legislator of a Member State with a criterion that was not adopted by the latter, but limited himself to verifying whether the criterion chosen by that legislator to achieve a general interest objective complied with the principle of proportionality. Ultimately, the proportionality test was carried out on the basis of only the abstract discipline of the Dutch legislation without examining other circumstances and/or criteria not foreseen by the legislator.

7. Problematic profiles and criticism of the proportionality test in practice: The Tjebbes and others case

The Grand Section of the CJEU made its sentence on 12 March 2019, a sentence that raises some doubts and on which the doctrine, despite some positive comments³⁰, has already expressed various reservations. The CJEU has taken up the principles set out in the Rottmann judgment, indeed, according to some going far beyond³¹ and has re-proposed the proportionality test specifically established in that ruling.

In a first part of the Tjebbes judgment, as it did in the Rottmann judgment, the CJEU held that EU law does not preclude Dutch citizenship legislation which,

²⁸ The AG considers that art. 16, par. 1 of the Dutch citizenship law pursues a reason of public interest insofar as it has as its objective to guarantee or restore the unity of citizenship in the family, while including taking into consideration the best interests of the minor. CJEU, C-221/17, Tjebbes and others of 12 March 2019, op. cit., par. 126

²⁹ Indeed, the AG Mengozzi believes that “by failing to provide that the best interests of the minor, a citizen of the Union, will be taken into account in any decision that could result in the loss of that minor’s citizenship of the Union, with the exception of certain exceptional hypotheses provided for by Article 16 (2) of the Dutch Citizenship Law, the Dutch legislator has exceeded what is necessary to achieve the objective of the unity of citizenship within the family, taking into account the best interests of the minor (...)”. CJEU, C-221/17, Tjebbes and others of 12 March 2019, op. cit., par. 146.

³⁰ CJEU, C-221/17, Tjebbes and others of 12 March 2019, op. cit.

³¹ CJEU, C-135/08, Rottmann of 2 March 2010, op. cit.,

for both adults and minors, provides for reasons of general interest the loss of citizenship, even when it implies the consequent loss of European citizenship.

The CJEU added that the competent authorities of the Member States must verify whether the loss of citizenship, if it entails the loss of the status of citizen of the Union and of the rights that derive from it, respects the principle of proportionality as regards the consequences that it determines on the situation of the data subject and, where appropriate, of his family members, from the point of view of Union law. The CJEU in fact held that if the national rules did not allow “at any time, an individual examination of the consequences of the loss (of citizenship) for data subjects from the point of view of Union law”³², this loss would be incompatible with the principle of proportionality. The CJEU also found that the referring court essentially acknowledged that all Dutch authorities are called under national law to examine the possibility of retaining Netherlands nationality in the context of the procedure for applications for renewal of passports by carrying out a full assessment in the light of the principle of proportionality enshrined in Union law³³.

The CJEU concluded that the individual examination of the consequences deriving from the loss of citizenship translates with reference to adults over the assessment of the fact that the interested party: i) Would be exposed to limitations in the exercise of his right to move and reside freely in the territory Member States; ii) could not have renounced the citizenship of a third State and, for this reason, art. 15, par. 1, c) of the Citizenship Law and, finally, iii) would suffer a substantial deterioration in security or freedom of movement due to the impossibility of benefiting, in the territory of the third State in which he resides, from consular protection pursuant to art. 20, par. 2, lett. c), TFEU³⁴. As regards the minor citizens, the CJEU has established that, in the individual examination of the consequences deriving from the loss of citizenship of the latter due to that of the parents, the national authorities must consider the conformity of this loss with the the best interests of the child as enshrined in art. 24 CFREU³⁵.

According to our opinion, we can observe that the CJEU does not seem to adequately take into consideration the scope of art. 20 TFEU, the decision taken by the heads of state and government meeting within the European Council in Edinburgh and the declaration on citizenship of a Member State annexed to the Maastricht Treaty³⁶. In fact, on the one hand, according to art. 20 TFEU (and

³² CJEU, C-221/17, Tjebbes and others of 12 March 2019, op. cit., par. 41.

³³ D. Kochenov, M. Van Den Brink, 409ss.

³⁴ CJEU, C-221/17, Tjebbes and others of 12 March 2019, op. cit., par. 46.

³⁵ X. Groussot, G.T. Petursson, (2015): “The EU Charter of the Fundamental Rights five years on. The emergence of a new constitutional framework?”, in S. De Vries, U. Bernits, S. Weatherill, *The EU Charter of Fundamental Rights as a binding instrument. Five years old and growing*, Oxford University Press, Oxford. J. Meyer (ed.), (2014): *Charta der Grundrechte der Europäischen Union*, ed. Nomos, Baden-Baden, pp. 813-826

³⁶ D. Kochenov, M. Van Den Brink, 412ss.

also in article 9 TEU)³⁷, European citizenship is added to that of a Member State, not replacing it and, on the other hand, the Edinburgh decision and the declaration annexed to the Maastricht Treaty, in essence, recognize the Member States the freedom to determine how they acquire and lose their citizenship. Of course, this freedom is not absolute and uncontrolled because, as in other areas, Member States must exercise their competences in compliance with Union law. However, despite these limitations in the exercise of the competences recognized to him, if the European citizenship is added to that of a Member State, and is therefore ancillary to the national one, it raises some doubts the CJEU statement that “the status of citizen of the Union (...) is destined to be the fundamental status of citizens of the Member States”³⁸. Indeed, taking into account the rules of primary law devoted to the discipline of citizenship, it is difficult to understand how one status ancillary to another can condition it to the point of becoming a parameter of its maintenance.

As in the Rottmann judgment, the proportionality test proposed by the CJEU constitutes a kind of delegation to the national authorities, which are required to examine all the individual consequences on the addressees of the decision, beyond the proportionality of the law in general. The CJEU appears to solve the problem by pointing out in paragraph 42 of the Tjebbes and others judgment that the referring court himself acknowledges that the national authorities are called upon to examine a full proportionality test before deciding on the application. This presumption, on which the CJEU bases its reasoning, does not seem to be reflected in Dutch law³⁹. Indeed Dutch law does not provide that authorities are required to verify all individual circumstances arising from the loss of citizenship in the light of a concrete test of proportionality. On the contrary, the citizenship law explicitly identifies art. 15 the causes of loss of citizenship and the exceptions for its maintenance. Therefore, this point of the sentence, on which the CJEU still has its subsequent reasoning, raises some questions.

³⁷ A. Mangas Martin, 145ss.

³⁸ CJEU, C-221/17, Tjebbes and others of 12 March 2019, op. cit., par. 31. According to part of the doctrine, in qualifying as fundamental the status conferred by European citizenship “Tjebbes simply violates (article 20 TFEU and declaration on the nationality of a Member State, and Declaration no. 2 annexed to the Maastricht Treaty) without even mentioning them”, according to D. Kochenov, M. Van Den Brink, 412ss. P. Eleftheriadis, (2014): “The content of EU citizenship”, *German Law Journal*, 15, 2014, pp. 780ss. A. Schachar, R. Bauboeck, I. Bloemraad, (2017): *The oxford handbook of citizenship*, Oxford University Press, Oxford, pp. 678ss. E. Gill-Pedrop, (2019): *EU law, fundamental rights and national democracy*, Routledge, London & New York. R. Bauböck, (2018): *Debating European citizenship*, ed. Springer, Berlin, pp. 159ss. It should however be noted that there is no shortage of authors who have expressed a favorable opinion on the configurability of European citizenship as a fundamental status, which is based, on the one hand, on the development of such citizenship, first in secondary and then in primary law and, other, on the fact that on other occasions the CJEU has considered it a fundamental status.

³⁹ D. Kochenov, M. Van Den Brink, 411ss.

In addition to this doubt on the presumption identified by the CJEU in par. 43 of the Tjebbes and others judgment there are other concerns related to the proportionality test developed by the latter. Indeed, if the Member States have jurisdiction over the acquisition and loss of citizenship, it is difficult to understand how the CJEU, after recognizing that in principle a national law does not raise problems, can then impose an examination of all the circumstances and the consequences on an individual, thus obliging national authorities to analyze which may lead them to derogate from the criteria laid down by the legislator in a matter within its competence.

The obligation imposed by the CJEU is not necessarily without practical drawbacks. Indeed, it is legitimate to ask whether the Dutch authorities, and more generally, the authorities of the other Member States who will have to draw the lessons from the Tjebbes and others judgment in their respective national systems, will come to the same conclusions. Obviously, it could be objected that the risk of a discrepancy in the application of a principle established by the CJEU in the exercise of its preliminary ruling function, due to the assessment of the scope of this principle carried out by the authorities (judicial and otherwise) of a Member State, it can always come true.

8. (Follows) The question of the applicability of the principles inferable from the Tjebbes and others judgment to Brexit

The Tjebbes and others judgment could also have repercussions on a very topical issue, namely that relating to the consequences of Brexit on British citizens⁴⁰. Indeed, starting from the assumption that in this ruling the CJEU recognized that that of European citizen “is destined to be the fundamental status of citizens of the Member States”⁴¹, according to some authors, in the event that the United Kingdom’s withdrawal if the Union were to materialize, this principle could be extrapolated from the present case and raised before the CJEU, in order to claim the maintenance of the status of European citizen in favor of British citizens⁴².

Due to the uncertainty about the outcome of Brexit and, in particular, about the possibility that it will occur without the negotiated agreement being ratified

⁴⁰ The consequences on British citizens of Brexit because of their functions and titles have already been analyzed by the doctrine. For an examination of the impact of the United Kingdom’s withdrawal from the Union on British-born officials and agents of the European Union. H. Hofmann, (2017): *The impact of Brexit on the legal status of European Union officials and other servants of british nationality*, Study for the Juri Committee, PE 596-837, November 2017. M. Condinanzi, (2018): “Brexit: quelles sont les conséquences pour les avocats?”, *Revue des Affaires Européennes*, 2018 n. 4, pp. 697ss.

⁴¹ P. Eleftheriadis, 784ss.

⁴² D. Kochenov, M. Van Den Brink, 415ss

by the United Kingdom, it is useful to ask ourselves about the scenarios that can be assumed if this eventuality materializes. Indeed, in the absence of an agreement on withdrawal, the question of the status of British citizens (and that of the citizens of the Member States in the United Kingdom) would become topical again, lacking the legal basis contained in that agreement.

Moreover, practical concerns have also been raised with regard to an accessory thesis, which configures the possibility of maintaining certain rights acquired by them in favor of British citizens, as a consequence of the use of the status of European citizen⁴³. Still, a third thesis, taking up a proposal presented before the European Parliament's Committee on Constitutional Affairs, envisaged the establishment of an "associate citizenship", which would allow British citizens to retain European citizenship⁴⁴.

The proposal to extend the scope of the CJEU jurisprudence on loss of citizenship to British citizens does not adequately take into account the fact that this jurisprudence concerns the loss of citizenship of a Member State, hence the European one, and not the loss of the regional citizenship. These considerations confirm the difficulty of configuring an accessory status, that of a European citizen, as fundamental. In fact, it does not seem possible that a citizen of a state that has ceased to be a member of EU can continue to be a citizen of it, because it would imply that, contrary to the provisions of art. 20 TFEU⁴⁵, regional citizenship would not only no longer be ancillary to national citizenship, but would even become autonomous with respect to the latter. Thus the argument that British citizenship status could be recognized as "associated citizens" therefore seems to be excluded, since such a status has no basis in primary law. In this regard, it should be noted that the thesis itself considers that the institution of this citizenship *sui generis* is subject to a revision of art. 20 TFEU, such as to allow the attribution of citizenship of the Union not only to citizens of the Member States⁴⁶.

Despite the shared reservations expressed by the doctrine, which has rightly observed that a solution contained in the withdrawal agreement would be preferable, it cannot be excluded that, in the absence of such an agreement, it could find application to British citizens through the theory of the acquired rights, rights which according to some would be protected in Union law by virtue of a general principle⁴⁷. In this hypothesis, the theory of questioned rights should be

⁴³ M. Benlolo Carabot, (2017): "Les conséquences du Brexit sur les droits des citoyens. Un bref état des lieux", *L'observateur de Bruxelles*, pp. 20ss.

⁴⁴ O. Garnier, (2016): "After Brexit: protecting European citizens and citizenship from fragmentation", *EUI WP*, 2016, pp. 19ss.

⁴⁵ A. Mangas Martin, 208ss

⁴⁶ A. Mangas Martin, 209ss.

⁴⁷ In this sense see the conclusions of the AG Bobek presented in case: C-80/15 of 18 February 2016, Fuchs, ECLI:EU:C:2016:104, par. 69; and of the AG Mengozzi in case: C-482/16,

applied with two limitations. The problem arises of determining which rights deriving from the status of European citizen could be granted to British citizens. In this regard, if the rights of active and passive electorate in the European Parliament and of free movement in all Member States of the Union⁴⁸, seem to be excluded, it seems reasonable to consider that British citizens could be guaranteed the rights related to the fundamental status of citizen of the Union exercised by them in a Member State before Brexit, such as, for example, those of free movement and residence in that State.

9. Concluding remarks

The reasoning of the CJEU in the Tjebbes and others judgment and, in particular, the proportionality test actually imposed on national authorities in the event of loss of European citizenship as a consequence of that of a Member State does not seem to be without criticism. If it is true that even in matters in which Member States retain their competence they are required to comply with the obligations deriving from their participation in the European Union, it is equally true that the proportionality test adopted by the CJEU, with which it imposes itself on national authorities to assess the possibility of derogating from the criteria established in a matter falling within the competence of the Member States raises some doubts. According to our opinion the proportionality test in the abstract, applied by the CJEU in the previous Delvigne case and proposed by AG Mengozzi in its conclusions, should also have applied in the Tjebbes and others judgment. This proportionality test, on the one hand, contrary to the proportionality test in practice, seems more in line with primary law, according to which European citizenship is added to that of a Member State.

The Tjebbes and others ruling offers more general food for thought on the role of the CJEU in the legal order of the European Union. In fact, it is clear that in

Stollwitzer of 23 November 2017, ECLI:EU:C:2017:893, par. 45, above the cases published in the electronic reports of the cases. In the former, AG Bobek explicitly recognizes that the protection of acquired rights expresses a general principle of Union law. In the latter, while not arriving at such a position, the AG Mengozzi states that the protection of the acquired rights of a category of people constitutes an imperative reason of general interest. See also: F. Dorsemont, K. Lörcher, S. Clauwaert, (2019): *The Charter of fundamental rights of the EU and the employment relation*, Bloomsbury Publishing, New York. F. Picod, S. Van Droogbenbroeck, (2018): *Charte des droits fondamentaux de l'Union européenne*, ed. Bruylant, Bruxelles, pp. 142ss. B. Havelková, M. Möschel, (2019): *Anti-discrimination in civil law jurisdictions*, Oxford University Press, Oxford.

⁴⁸ J.C. Piris, (2015): "Should the UK withdraw from the EU: Legal aspects and effects of possible options", *European Issues*, n. 355 (5), 2015, pp. 10ss. C. Barnard, S. Peers, (2017): *European Union law*, Oxford University Press, Oxford, pp. 586ss. E. Berry, M. J. Homewood, B. Bogusz, (2019): *Complete EU law: Text, cases and materials*, Oxford University Press, Oxford.

the integration process the CJEU played a fundamental role and the evolution of this legal order is indebted to the interpretations it has proposed⁴⁹. Consequently, it is absolutely consistent with its role in the system that the CJEU advances evolutionary interpretations of Union law in an integrationist key⁵⁰. However, in the present case, what might seem to be an interpretation of the treaties that responds to this purpose, in reality, is likely to create some difficulties.

The idea that it is possible to systematically neutralize any decision to withdraw national citizenship does not seem to be based on the treaties. Secondly, as noted above, the national authorities of the Member States have not systematically applied the Rottmann judgment. Therefore, in concrete terms, in implementing the Tjebbes and others judgment, the national authorities could carry out the proportionality test required by the CJEU and conclude that their legislation complies with this principle. Otherwise, if the CJEU had applied the proportionality test in the abstract, thus limiting the discretion of the national authorities, at the time of the preliminary ruling, the compliance or otherwise of the national legislation with EU law would have been clear for the referring jurisdiction (and for all the authorities of the Member States), through a proportionality test carried out directly by the CJEU and not left to the authorities of the individual Member States.

Literature

- Azoulai, L., (2014): *The question of competence in the EU*, Oxford University Press, Oxford, pp. 169ss.
- Barav, A., (2008): “Déformations préjudicielles”, pp. 21ss: in A. De Walsche, *Mélanges en hommage à Georges Vandersanden*, ed. Bruylant, Bruxelles.
- Barnard, C., Peers, S., (2017): *European Union law*, Oxford University Press, Oxford, pp. 506ss.
- Barnard, C., (2019): *The substantive law of the EU*, Oxford University Press, Oxford, pp. 26ss.
- Bast, J., (2011): *Aufenthaltsrecht und Migrationsssteuerung*, Mohr Siebeck, pp. 238ss.
- Bauböck, R., (2018): *Debating European citizenship*, ed. Springer, Berlin, pp. 159ss.

⁴⁹ L. Clement-Wilz, (2019): “Introduction: analyser juridiquement le rôle politique de la Cour de justice de l’Union européenne”, in L. Clement-Wilz, (sous la direction de), *Le rôle politique de la Cour de justice de l’Union européenne*, ed. Larcier, Bruxelles, pp. 13ss.

⁵⁰ A. Vauchez, (2013): *L’Union par le droit, l’invention d’un programme institutionnel pour l’Europe*, Les Presses de Sciences Po, Paris. S. Saurugger, F. Terpan, (2016): *The Court of Justice of the EU and the politics of law*, Macmillan International Higher Education, London. F. Martucci, (2019). *Droit de l’Union européenne*, LGDG, Paris.

- Benlolo Carabot, M., (2017): “Les conséquences du Brexit sur les droits des citoyens. Un bref état des lieux”, *L'observateur de Bruxelles*, pp. 20ss.
- Berlin, D., (2015): “Un problème de compétence escamoté?”, *La Semaine Juridique*, pp. 2232ss.
- Berry, E., Homewood, M.J., Bogusz, B., (2019): *Complete EU law: Text, cases and materials*, Oxford University Press, Oxford.
- Bianchini, K., (2018): *Protecting stateless persons: The implementation of the Convention relating to the status of stateless persons across EU states*, ed. Brill, The Hague.
- Bieber, R., (2013): “La perception allemande de la notion de souveraineté”, *L'Europe en Formation*, 368 (2), 2013, pp. 62ss.
- Bonjour, S., (2014): “The transfer of pre-departure integration requirement for family migrants among member States or the EU”, *Comparative Migration Studies*, 2, 2014, pp. 208ss.
- Broben, M., Fenger, N., (2010): *Preliminary references to the European Court of Justice*, Oxford University Press, Oxford.
- Cambien, N., (2011): “Janko Rottman v Freistaat Bayern”, *Columbia Journal of European Law*, 18, 2011, pp. 375ss.
- Carrera Nuñez, G., De Groot, G.R., (eds), (2015): *European citizenship at the crossroad. The role of the European Union on Loss and acquisition of nationality*, CEPS, Oisterwijk.
- Carrera, S., (2016): *Implementation of EU readmission agreements: Identity determination dilemmas and the blurring of rights*, ed. Springer, Berlin, pp. 19ss.
- Chalmers, D., Davies, G., Monti, G., (2019): *European Union law*, Cambridge University Press, Cambridge.
- Clement-Wilz, L., (2013): “Introduction: analyser juridiquement le rôle politique de la Cour de justice de l'Union européenne”, pp. 13ss: in L. Clement-Wilz, (sous la direction de), *Le rôle politique de la Cour de justice de l'Union européenne*, ed. Larcier, Bruxelles.
- Condinani, M., (2018): “Brexit: quelles sont les conséquences pour les avocats?”, *Revue des Affaires Européennes*, n. 4, 2018, pp. 697ss.
- Cortès Martín, J.M., (2010): “Jurisprudencia del Tribunal de Justicia de la Unión Europea”, *Revista Derecho Comunitario Europeo*, 14, pp. 5ss.
- Coutts, S., (2019): *Citizenship, crime and community in the EU*, Bloomsbury Publishing, New York.
- Coutts, S., (2017): “Delvigne: A multi-levelled political citizenship”, *European Law Review*, 42, 2017, pp. 867ss.
- Coutts, S., (2019): “The shifting geometry of Union citizenship: A supranational status from transnational rights”, *Cambridge Yearbook of European Legal Studies*, 21, 2019, pp. 320ss.
- De Groot, G.R., Selting, A., (2011): “Decision of 2 March 2010, Case C-135/08, Janko Rottman v. Freistaat Bayern-Case Note II-The consequences of the Rott-

- man judgment on Member State autonomy-The European Court of Justice's avant-gardism in nationality Matters", *European Constitutional Law Review*, 11 (1), 2011, pp. 150ss.
- De Montbrial, T., Gomart, T., (2017): *Notre intérêt national: Quelle politique étrangère pour la France?*, Odile Jacob, Paris.
 - Della Torre, L., De Lange, T., (2018): "The "importance of staying put": For country nationals limited intra EU mobility rights", *Journal of Ethnic and Migration Studies*, 44 (9), 2018, pp. 1412ss.
 - Dorssemont, F., Lörcher, K., Clauwaert, S., (2019): *The Charter of fundamental rights of the EU and the employment relation*, Bloomsbury Publishing, New York.
 - Eleftheriadis, P., (2014): "The content of EU citizenship", *German Law Journal*, 15, 2014, pp. 780ss.
 - Gill-Pedrop, E., (2019): *EU law, fundamental rights and national democracy*, Routledge, London & New York.
 - Govaere, I., Garben, S., (2019): *The interface between EU and international law. Contemporary reflections*, Bloomsbury Publishing, New York, pp. 94ss.
 - Groon-Gestefeld, J., (2017): *Reconceptualising European equality law: A comparative institutional analysis*, Bloomsbury Publishing, New York.
 - Groussot, X., Petursson, G.T., (2014): "The EU Charter of the Fundamental Rights five years on. The emergence of a new constitutional framework?", pp. 67ss: in S. De Vries, U. Bernits, C. Gortázar Rotaesche, C., Kostakopoulou, D., *The reconceptualization of EU citizenship*, Martinus Nijhoff Publishers, The Hague.
 - Harris, P., Oliver, D., (2010): *International commercial tax*, Cambridge University Press, Cambridge, pp. 35ss.
 - Havelková, B., Moscher, M., (2019): *Anti-discrimination in civil law jurisdictions*, Oxford University Press, Oxford.
 - Horsley, T., (2018): *The Court of Justice of the EU as an institutional actor: Judicial lawmaking and its limits*, Cambridge University Press, Cambridge, pp. 240ss.
 - Iglesias Sánchez, S., (2010): "¿Hacia una nueva relación entre la nacionalidad estatal y la ciudadanía europea?", *Revista de Derecho Comunitario Europeo*, 14, pp. 933ss.
 - Jessurun D'Oliveira, H.U., (2011): "Decision of 2 March 2010, Case C-135/08, Janko Rottman v. Freistaat Bayern-Case Note I-Decoupling nationality and Union citizenship?", *European Constitutional Law Review*, 11 (1), 2011, pp. 138ss.
 - Kellerbauer, M., Klamert, M., Tomkin, J., (2019): *Commentary on the European Union treaties and the Charter of fundamental rights*, Oxford University Press, Oxford.

- Khadar, L., Shaw, J., (2014): "Article 39", pp. 1027ss: in S. Peers, T. Hervey, J. Kenner, A. Ward (eds.), *The EU Charter of fundamental rights: A Commentary*, Oxford University Press, Oxford, 2014.
- Kochenov, D., (ed.), (2017): *EU citizenship and federalism*, Cambridge University Press, Cambridge.
- Kochenov, D., (2019): *Citizenship*, MIT Press, Cambridge MA.
- Kochenov, D., De Búrca, G., Williams, A., (eds), (2015): *Europe's justice deficit?*, Hart Publishing, Oxford, Oregon, Portland, pp. 460ss.
- Kochenov, D., (2017): *EU citizenship and federalism*, Cambridge University Press, Cambridge, pp. 213ss.
- Kochenov, D., Plender, R., (2012): "EU citizenship: From an incipient form to an incipient substance? The discovery of the treaty text", *European Law Review*, 18, pp. 369ss.
- Kochenov, D., (2013): "The essence of EU citizenship emerging from the last ten years of academic debate: Beyond the cherry blossoms and the moon?", *International & Comparative Law Quarterly*, 62 (1), 2013, pp. 100ss.
- Kochenov, D., (2013): "The right to have what rights? EU citizenship in need of clarification", *European Law Journal*, 19, 2013, pp. 502ss.
- Kochenov, D., (2011): "Two sovereign states vs. a human being: CJUE as a guardian of arbitrariness in citizenship matters", pp. 12ss: in J. Shaw (ed. by), *Has the European Court of Justice challenged member state sovereignty in national law?*, in EUI RSC WP.
- Kochenov, D., Van Den Brink, M., (2015): "Pretending there is no union: Non-derivative quasi-citizenship rights of third-country nationals in the EU", pp. 66ss: in D. Thym, M. Zostewij-Turnan (eds), *Degrees of free movement and citizenship*, Brill & Martinus Nijhoff Publishers, Leiden, Boston.
- Kostakopoulou, D., (2018): "Scala civium: Citizenship templates post-Brexit and the European Union's duty to protect EU citizens", *Journal of Common Market Studies*, 56, 2018, pp. 854ss.
- Koutrakos, P., Schubbe, N.N., Syrpis, P., (2016): *Exceptions from EU free movement law: Delegation, justification and proportionality*, Bloomsbury Publishing, New York, pp. 308ss.
- Kronenberger, V., (2014): "Actualité du renvoi préjudiciel: de la procédure préjudicielle d'urgence et de la procédure accélérée: quo vadis?", pp. 397ss: in S. Mahieu (sous la direction de), *Contentieux de l'Union européenne*, ed. Larcier, Bruxelles.
- Kruma, K., (2012): "How do we get more out of the EU citizenship?", pp. 185ss: in Y. Pascouau, T. Strik, (eds.), *Which integration policies for migrants? Interaction between the EU and its Member States*, Wolf Legal Publisher, Tilburg.
- Lenaerts, K., Bonichot, J.C., Kanninen, H., (2019): *An ever changing Union? Perspectives on the future of EU law in honour of Allan Rosas*, Bloomsbury Publishing, New York, pp. 63ss.

- Lenaerts, K., Maselis, I., Gutman, K., (2014): *EU procedural law of the European Union*, Oxford University Press, Oxford, pp. 48, 215 and 456ss.
- Mangas Martín, A., (2018): *Tratado de la Unión Europea, Tratado de Funcionamiento*, ed. Marcial Pons, Madrid.
- Mantu, S., (2015): *Contingent citizenship: The law and practice of citizenship deprivation in international, European and national perspectives*, ed. Brill, The Hague, pp. 226ss.
- Martucci, F., (2019): *Droit de l'Union européenne*, LGDG, Paris
- Matias, C., (2016): *Citizenship as a human right: The fundamental right to a specific citizenship*, ed. Springer, Berlin.
- Meyer, J., (ed.), (2014): *Charta der Grundrechte der Europäischen Union*, ed. Nomos, Baden-Baden, pp. 813-826
- Micklitz, H., (2014): *Constitutionalization of European private law*, Oxford University Press, Oxford, pp. 92ss.
- Mindus, P., (2017): *European citizenship after Brexit: Freedom of movement and rights of residence*, ed. Springer, Berlin.
- Nascimbene, B., (2014): *Le droit de la nationalité et le droit des organisations d'intégration régionale. Vers de nouveaux statuts de résidents?*, in *Recueil des cours*, ed. Brill, The Hague, vol. 367, pp. 253.
- O'Brien, C., (2018): *Unity in adversity*, Bloomsbury Publishing, New York
- Paulussen, C., Scheinin, M., (2019): *Human dignity and human security in times of terrorism*, ed. Springer, Berlin, pp. 59ss.
- Pelletier, M., (2018): "La CJUE et le principe non bis in idem: un pas en arrière, deux pas en avant", *Revue de Droit Fiscal*, 37, 2018, pp. 2ss.
- Picod, F., Van Drooghenbroeck, S., (2018): *Charte des droits fondamentaux de l'Union européenne*, ed. Bruylant, Bruxelles, pp. 142ss.
- Piris, J.C., (2015): "Should the UK withdraw from the EU: Legal aspects and effects of possible options", *European Issues*, n. 355 (5), 2015, pp. 10ss.
- Rigaux, A., (2015): "Droit de vote et d'éligibilité aux élections européennes", *Europe*, 12, 2015, pp. 18ss.
- Ros, E., (2016): *EU citizenship and direct taxation*, Kluwer Law International, New York
- Saurugger, J., Terpan, F., (2016): *The Court of Justice of the EU and the politics of law*, Macmillan International Higher Education, London.
- Schachar, A., Bauboeck, R., Bloemraad, I., (2017): *The oxford handbook of citizenship*, Oxford University Press, Oxford, pp. 678ss.
- Schultz, J., (2018): *The international protection alternative in refugee law*, ed. Brill, The Hague.
- Schütze, R., (2018): *Globalisation and governance: International problems, European solutions*, Cambridge University Press, Cambridge, pp. 308ss.
- Schwarze, J., Becker, V., Hatje, A., Schoo, J., (2019): *EU-Kommentar*, ed. Nomos, Baden-Baden.

- Scott, P.F., (2018): *The national security constitution*, Bloomsbury Publishing, New York, pp. 163ss.
- Seling, A., (2010): "Case C-135/08 Janko Rottmann v. Freistaat Bayern, Judgment of the Court of Justice (Grand Chamber) of 2nd March 2010, nyr-Towards a direct "droit de regard"?", *Maastricht Journal of European and Comparative Law*, 17, 2010, pp. 470ss.
- Smyth, C.M., Lang, R., (2017): *The future of human rights in the UK*, Cambridge Scholars Publishing, Cambridge, pp. 42ss.
- Spaventa, E., (2008): "Seeing the wood despite the trees? On the scope of Union citizenship and its constitutional effects", *Common Market Law Review*, 45, pp. 13ss.
- Spiro, P.J., (2010): "Dual citizenship as human right", *International Journal of Constitutional Law*, 8, pp. 111ss.
- Stern, K., Sachs, M., (2016): *Europäische Grundrecht Charta*, ed. C.H. Beck, München, pp. 756ss.
- Thym, D., (ed.), (2017): *Questioning EU citizenship*, Bloomsbury Publishing, New York.
- Tinière, R., (2016): "Arrêt "Delvigne": le droit de vote des (ex)-prisonniers devant la Cour de justice de l'Union européenne", *Journal de Droit Européen*, 225, 2016, pp. 14ss.
- Van der Harst, J., Hoogers, G., Voerman, G., (2013): *European citizenship in perspective: History, politics and law*, Edward Elgar Publishers, Cheltenham.
- Van Eijken, H., (2019): "Tjebbes in Wonderland: On European citizenship, nationality and fundamental rights: ECJ 12 March 2019, Case C-221/17, M.G. Tjebbes and others v. Minister van Buitenlandse Zaken, ECLI:EU:C:2019:189", *European Constitutional Law Review*, 15 (4), 2019, pp. 718ss.
- Van Eijken, H., Van Rossem, J.W., (2016): "Prisoner disenfranchisement and the right to vote in elections to the European Parliament: Universal suffrage key to unlocking political citizenship?", *European Constitutional Law Review*, 12 (1), 2016, pp. 114ss.
- Van Wolleghem, P.G., (2018): *The EU's policy on the integration of migrants. A case of soft Europeanization?*, ed. Springer, Berlin.
- Van Wolleghem, P.G., (2019): "Where is the EU's migrant integration policy heading? A neofunctionalist take on three multiannual financial frameworks", *International Review of Public Policy*, 1 (2), 2019, pp. 220ss.
- Vandersanden, G., (1999): "La procédure préjudicielle: à la recherche d'une identité perdue", pp. 619ss: in M. Dony, A. De Walsche, M. Waelbroeck (sous la direction de), *Melanges M. Waelbroeck*, ed. Bruylant, Bruxelles.
- Vauchez, A., (2013): *L'Union par le droit, l'invention d'un programme institutionnel pour l'Europe*, Les Presses de Sciences Po, Paris.
- Vogenauer, S., Weatherill, S., (2017): *General principles of law: European and comparative perspectives*, Bloomsbury Publishing, New York, pp. 191ss.

- Von Bogdandy, A., Arndt, F., (2017): "European citizenship", *Max Planck Encyclopedia of Public International Law*, 2017.
- Warin, C., (2019): *Individual rights under EU law: A study on the relation between rights, obligations and interests in the case law of the Court of Justice*, Nomos Verlag, Baden-Baden.
- Weatherill, S., (2015): *The EU Charter of Fundamental Rights as a binding instrument. Five years old and growing*, Oxford University Press, Oxford.
- Weil, P., (2012): *The sovereign citizen. Denaturalization and the origins of the American Republic*, Pennsylvania University Press, Pennsylvania, PA.

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KRITIKE I ASPEKTI EVROPSKOG DRŽAVLJANSTVA PREMA SUDU EVROPSKE UNIJE: OD ROTTMANNA DO TJEBBESA I DRUGIH

Cilj ovog rada je da analizira i produbi argument evropskog državljanstva na osnovu sudske prakse Suda Evropske unije. Konkretno, poslednje presude Rottmanna i Tjebbesa kao i drugih, predstavljaju elemente kontinuiteta u vezi sa testom proporcionalnosti koji zahteva Sud Evropske unije pred sudovima i vlastima država članica, ukoliko gubitak državljanstva države članice takođe prouzrokuje gubitak evropskog državljanstva i posle Brexita? Autori se fokusiraju i na britansko državljanstvo od poslednjih stavova Suda Evropske unije u evropskoj građanskoj politici.

Ključne reči: evropsko državljanstvo, Brexit, Sud Evropske unije, test proporcionalnosti, pravo Evropske unije, Ugovor o funkcionisanju Evropske unije