

EU CITIZENSHIP: AN ELEMENT OF NATIONAL, EUROPEAN IDENTITY OR ONLY AN ADDITIONAL STATUS OF MEMBER STATES' CITIZENS?*

DOMINIKA HARASIMIUK**

1. INTRODUCTION

The legal situation of an individual in the European Union is one of the key issues of the EU law at present. The European Union citizenship plays a special role in the process of the union development. Its establishment based on the Treaty of Maastricht (TEU), supported by the codification in the treaty of the general principle of the fundamental rights protection, started the process of strengthening the European Union as an organisation that is not only economic but also political in nature. The issue of the conflicting identities: the European one, which can be assigned to the EU, and the national one, typical of the particular Member States, has been a great challenge to the European integration up till now. Indeed, it has been developed in a specific way. Remaining on the borderline between the EU law and national laws, it is both an addition to and a derivative of the national citizenship. In accordance with Article 9 TEU, every national of a Member State is a citizen of the Union and the citizenship of the Union is additional to and not to replace national citizenship. The complicated relationship between the national and the Union citizenship, which translates into the issues of coexistence of the European and national identities will be the subject of a detailed analysis in the successive parts of this article.

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** PhD, Assistant Professor, Faculty of Law and Administration of Łazarski University in Warsaw

2. EU CITIZENSHIP – AN INSTITUTION ON THE BORDERLINE BETWEEN NATIONAL LAW, THE EU LAW AND INTERNATIONAL LAW

The institution of the EU citizenship was created as an autonomous term typical of the EU law, however, being in a strong correlation with national law. In fact, the issue concerning the acquisition and loss of the EU citizenship is determined in the regulations on national citizenship of the particular Member States. This way, the EU law accepts the general principle of international law, according to which it is the sovereign right of all states to determine the mutual relations between the state and an individual in accordance with nationality law.¹ In international law, the principle is confirmed in positive law, including the European Convention on Nationality of 6 November 1997, where Article 3 (1) lays down that “Each State shall determine under its own law who are its nationals”.² The above-mentioned rule was also specified at the Union level in Declaration no 2 annexed to the Treaty of Maastricht on nationality of a Member State, according to which the question whether an individual possesses the nationality of a Member State must be settled solely by reference to the national law of the Member State concerned.³ Due to a strong connection between the EU citizenship and national regulations of particular Member States, it is necessary to analyse general conceptions and rules concerning national citizenship.

Citizenship is an extremely complex institution, which is the subject of interest for jurisprudence as well as sociology or political studies. Basically, in the normative dimension, citizenship is treated as an expression of bounds between the state and an individual. It is an institution that determines formal membership of an individual in an organised political community based on the existence of mutual rights and obligations.⁴ As the Polish Constitutional Tribunal indicated, “citizenship consists in a strong legal bound between a given individual and a given state, the belonging of an individual to that state, and its essence is expressed in the entirety

¹ States’ competence to regulate citizenship was confirmed by the Permanent Court of International Justice in 1923 in an advisory opinion concerning Decrees on Citizenship of Tunisia and Morocco (P.C.I.J. Publications 1923, Series B, no. 4), and also by the International Court of Justice in the case *Nottebohm* (*Nottebohm Case (second phase)*), judgement of 6 April 1955, I.C.J. Reports 1955, p. 20.), compare D. Pudzianowska, *Obywatelstwo w procesie zmian* [Citizenship in the process of change], Warsaw 2013, pp. 53–65.

² The Republic of Poland did not ratify the European Convention on Nationality. The ECN text unofficial translation into Polish available on: <http://libr.sejm.gov.pl/tek01/txt/re/1997c.html> [accessed on 8 July 2016]. For more on the ECN and the limitation of states’ regulation freedom, compare W. Czaplinski, *Problematyka obywatelstwa w aktualnych pracach Rady Europy* [The problem of citizenship in the current work of the Council of Europe], *Studia Europejskie* No. 2, 1998, pp. 50–53.

³ OJ C 191 of 29 July 1992; the Declaration was adopted by the decision of the European Council in Edinburgh in 1992, concerning certain problems raised by Denmark in relation to the ratification of the Treaty on European Union. Compare, M. Condiñanzi, A.A. Lang, B. Nascimbene, *Citizenship of the Union and freedom of movement of persons*, Leiden 2008, p. 6; E. Gulid, S. Peers, J. Tomkin, *The EU Citizenship Directive. A commentary*, Oxford 2014, p. 23.

⁴ A. Bodnar, *Obywatelstwo wielopoziomowe. Status jednostki w europejskiej przestrzeni konstytucyjnej* [Multi-level citizenship: Status of an individual in the European constitutional space], Warsaw 2008, pp. 23–24.

of an individual and the state mutual rights and obligations, which are determined in the legal norms in force".⁵ The concept of citizenship is strictly connected with the concept of a nation as a community of citizens. From the historical perspective, one can distinguish two basic models of the development of bounds between an individual and a state. They originate from the period of the French Revolution and the process of national states development that it started. The above-mentioned models reflect different understanding of the concept of a nation. In France, a nation, and thus a citizenship as a legal institution indicating the belonging to it, was based on the political community (*demos*). As A. Bodnar indicates, a French citizen is a person sharing common political values, attached to the achievements of the French Revolution, the Declaration of the Rights of Man and of the Citizen, and the republican model of government with no reference to ethnic roots.⁶ The ethnic character of a nation (citizenship) is typical of the German model. It means that all citizens are members of a nation, which is not only understood as a political community but also a society based on common ethnic, historical, cultural, linguistic or religious roots. In the German model, the development of a state in a natural way precedes the development of a nation. In the French model, an ethnic element is of secondary importance and is not what forms citizenship.⁷ The two models exerted influence on the legal rules determining access to citizenship. The French model was connected with the territorial criterion for acquiring citizenship (*ius soli*), and the German model with the principle based on the ties of blood (*ius sanguinis*). As D. Pudzianowska notices, at present, with the determination of legal norms concerning nationality, such strict divisions connected with the perception of a nation lost their significance. Instead, the changing actual circumstances, connected with the inflow of immigrants and openness of states' immigration policies, are more often taken into consideration.⁸

Thinking about citizenship as a basic institution determining the relationship between an individual and a state, one can notice that from the point of view of the state, it is mainly a legal relation. From the perspective of individuals and determination of their own belonging to the state, actual circumstances that build their identity are often more important. The state, determining the rules of acquisition or loss of citizenship, more and more often decides to take into account also the elements connected with the facts that help to define bounds between an individual and the state. These elements include, e.g.: the domicile, the knowledge of a language, the birthplace or marriage to a citizen of a given state.⁹ This way,

⁵ Constitutional Tribunal judgement of 18 January 2012, Kp5/09.

⁶ A. Bodnar, *Obywatelstwo...* [Multi-level citizenship...], p. 29.

⁷ For more on the issue of constitutional models concerning a nation and the citizenship of France and Germany, see M. Rosenfeld, *The identity of the constitutional subjects. Selfhood, citizenship, culture and community*, London–New York, 2010, pp. 152–158.

⁸ D. Pudzianowska, *Obywatelstwo...* [Citizenship...], pp. 87–88.

⁹ *Ibid.*, pp. 65–65. In Polish law, in accordance with Article 34 of the Constitution of the Republic of Poland, the *ius sanguinis* principle was adopted; pursuant to it, Polish citizenship is acquired by birth to parents being Polish citizens. Apart from the acquisition of Polish citizenship by virtue of the law, the Act on citizenship of 2009 (Journal of Laws [Dz.U.] of 2012, item 161) lays down a possibility of granting citizenship of the Republic of Poland and recognition of a Polish

factual circumstances may have a significant impact on the existence of legal bounds resulting from regulations on citizenship.

Against that background, considering the relation of citizenship with a nation and bounds with a state, the EU citizenship acquires separate features. It is indeed supranational citizenship and its establishment cannot be treated as a moment that started the development of a nation at the Union level. Also, if we accept the opinion about ethnic roots of citizenship and a nation, in case of the Union citizenship, one cannot state that it was created based on the linguistically, culturally and historically bound community.¹⁰ The Federal Constitutional Court drew attention to that in its judgement concerning the Treaty of Lisbon. The construction of the Union citizenship indicates that it is not a basis for establishing a uniform nation-like community on the European level.¹¹ The national community remains an element strictly connected with sovereign state government, which is the legitimate source of democratic identity. Due to the fact that there is no uniform “European people”, the role of the EU citizenship is entirely different from that of its national equivalent. It is, through the establishment of rights typical of the EU citizens, to strengthen the position of an individual in the EU law and emphasise a political character of cooperation between the Member States. The creation of real bounds between a citizen and the EU as an international organisation is an extremely difficult task. In the initial period of the organisation’s existence, it was emphasised that its importance was mainly symbolic because of relatively limited scope of entitlements or the lack of clearly indicated obligations to be imposed on the EU citizens. Moreover, the EU citizenship was long treated as “a new robe” of the already existing model of a market citizen who, thanks to his/her economic activeness, could make use of the internal market freedoms.¹²

Despite the secondary and additional character of the EU citizenship in relation to domestic citizenship, it is necessary to take into consideration that the competence of the Member States to shape the subjective scope of the EU citizenship with the use of domestic regulations is limited to some extent. In case a given issue goes beyond the scope of the EU law, the Member States cannot apply the principle of “effective

citizen. In the two cases, factual circumstances laid down in statute are taken into consideration, including: sufficiently long residence in Poland, knowledge of the Polish language or information about sources of maintenance of the person concerned.

¹⁰ The European Union motto – United in diversity – indicates that cultural and historical diversity is the foundation of the EU.

¹¹ FCC judgement of 30 June 2009 in the case 2 BvE 2/08 (Lisbon case), para. 346; for more on this judgement, compare P. Bała, „Tożsamość konstytucyjna” a traktat z Lizbony. Tezy wyroku Federalnego Trybunału Konstytucyjnego z 30 czerwca 2009 r. [“Constitutional identity” versus the Treaty of Lisbon: Theses of the Federal Constitutional Court of 30 June 2009], *Ius Novum* No. 2, 2010, p. 7; K. Wójtowicz, *Zachowanie tożsamości konstytucyjnej państwa polskiego w ramach UE – uwagi na tle wyroku TK z 24.11.2010 r. (K32/09)* [Maintenance of constitutional identity of the Polish State within the EU: comments in the light of the Constitutional Tribunal ruling of 24 November 2010 (K32/09)], *Europejski Przegląd Sądowy* No. 11, 2011, p. 4; F. Mayer, *Rashomon à Karlsruhe*, *Revue Trimestrielle de Droit Européen* Vol. 46, No. 1, 2010, p. 77.

¹² For more on the issue, together with literature referred to therein, compare D. Kostakopoulou, *European Union citizenship: Writing the future*, *European Law Journal*, Vol. 12, No. 5, September 2007, p. 625.

citizenship". It was confirmed in *Nottebohm* case in accordance with international public law. Pursuant to its assumptions, in case of dual citizenship, a third state may determine which of the two citizenships prevails and the international effectiveness of citizenship depends on the effectiveness of citizenship that is determined based on material criteria.¹³ In *Micheletti* case, the Court of Justice of the EU rejected this approach.¹⁴ It ruled that Spanish authorities could use the rules of effectiveness and recognise the individual holding dual citizenship (Italian and Argentinian) as an Argentinian citizen and withhold his freedom of establishment. Limiting the application of the principle of effective citizenship in the EU law, the Court followed the principle of non-discrimination based on the state-related origin. *Micheletti* case, apart from the application dismissal based on the EU law principle of effective citizenship, started the application of an important interpretational formula, according to which, determining the rules of domestic citizenship acquisition or loss, the Member States should comply with the EU law.¹⁵ The above-mentioned rule was confirmed in *Rottmann* case,¹⁶ which concerned the scope of the Member States' discretion over decisions on domestic citizenship withdrawal in a situation when such a decision at the same time causes a loss of the EU citizenship. Facing a very difficult task, the Court emphasised that this type of problem, due to its nature and consequences, was subject to the EU law. This means that the national rules on national citizenship, due to its effect on the EU citizenship, fall within the ambit of the European Union law. The Member States should exercise their competences in this respect in accordance with the EU law and the principle of proportionality. As a result, the Member States' freedom with regard to withdrawal of domestic citizenship is, at least theoretically, limited. This means that a decision like that in *Rottmann* case, depriving a citizen naturalised in Germany of his citizenship on the grounds that it was obtained fraudulently should have been reviewed by a national court examining the criterion of proportionality of its consequences for the EU citizenship status of the person concerned.¹⁷ In its judgement, the Court

¹³ D. Pudzianowska, *Obywatelstwo...* [Citizenship...], pp. 60–61.

¹⁴ CJ judgement of 7 July 1992 in the case C-369/90, *Mario Vicente Micheletti and others v. Delegación del Gobierno en Cantabria*, ECLI:EU:C:1992:295.

¹⁵ *Ibid.*, para. 10.

¹⁶ CJ judgement of 2 March 2010, in the case C-135/08, *Janko Rottmann v. Freistaat Bayern*, ECLI:EU:C:2010:104. For detailed discussion of the judgement, compare D.E. Harasimiuk, *Rola przepisów państw członkowskich przy określaniu zakresu podmiotowego obywatelstwa UE – uwagi na tle wyroku TSUE z 2 marca 2010 r. w sprawie Janko Rottmann przeciwko Freistaat Bayern, sygn. C-135/08*, [Role of the Member States' regulations in determining the subjective scope of the EU citizenship: Comments in the light of the CJEU judgement of 2 March 2010 in the case *Janko Rottmann v. Freistaat Bayern*, C-135/08], [in:] D.E. Harasimiuk, M. Olszówka, A. Zinkiewicz (ed.), *Prawo UE i porządek konstytucyjny państw członkowskich. Problem konkurencji i wzajemnych relacji* [EU law and Member States' constitutional order: Competition and mutual relations issues], Warsaw 2014, pp. 42–54.

¹⁷ D. Pudzianowska, *Warunki nabycia i utraty obywatelstwa Unii Europejskiej. Czy dochodzi do autonomizacji pojęcia obywatelstwa Unii?* [Grounds for acquisition and loss of the European Union citizenship: Does the concept of the Union citizenship become autonomous?], [in:] G. Baranowska, A. Bodnar, A. Gliszczyńska-Grabias (ed.), *Ochrona praw obywateli i obywateli Unii Europejskiej. 20 lat – osiągnięcia i wyzwania na przyszłość* [Protection of the European Union citizens' rights: Twenty years of achievements and future challenges], Warsaw 2015, pp. 153–154.

indicated the elements that should be taken into consideration in the assessment of the proportionality of a legal measure of national citizenship withdrawal resulting in the loss of the EU citizenship. First of all, it is essential to examine whether the loss of citizenship is justified because of the seriousness of law violation by the citizen concerned, the length of time that has passed from the acquisition to the withdrawal of naturalisation, and also whether it is possible to recover the citizenship of the country of origin.¹⁸ It is hard to unambiguously assess how deep the analysis of the proportionality of the national court's decision on citizenship withdrawal was. The ruling of the Court of Justice referring the assessment of proportionality to the national court makes the assumed limitation of the Member States' competence in the sphere of citizenship (exercising this competence in compliance with the EU law) solely theoretical and conditional, depending on the assessment made at the national level. As a result, one cannot speak about more advanced autonomy of the EU citizenship in relation to the domestic one, and the secondary nature of the former still remains its essential constituting feature.¹⁹

3. THE PRINCIPLE OF RECOGNISING NATIONAL IDENTITIES OF THE MEMBER STATES VERSUS THE EU CITIZENSHIP

The complexity of the relations between the national law and the legal order of the European Union was formulated in the principle of recognising national identities of the Member States. A clear reference to national identities of the Member States was made as early as in Article F TEU, which was then changed into Article 6 (3) TEU of the Amsterdam Treaty. The provision that stipulated that: "The Union shall respect the national identities of its Member States" was not of big judicial significance then and was in fact a political signal intended to be a counterbalance to supranational tendencies dominating the Community at the time.²⁰ The real increase in the importance of the principle of recognition of national identities of the Member States took place after the Treaty of Lisbon entered into force. It regulates the issue in Article 4 (2) TEU in the wording that differs from the original. At present, the provision stipulates that: "The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional (...)". It is currently one of the most frequently commented provisions in the EU jurisprudence, and the

¹⁸ CJ judgement in the case C-135/08, *Janko Rottmann v. Freistaat Bayern*, para. 56.

¹⁹ W. Sadurski, *Obywatelstwo europejskie a legitymacja demokratyczna Unii Europejskiej* [European citizenship and democratic legitimation of the European Union], [in:] G. Baranowska, A. Bodnar, A. Gliszczyńska-Grabias (ed.), *Ochrona praw...* [Protection of the European Union...], p. 30.

²⁰ L.F.M. Besselink, *National and constitutional identity before and after Lisbon*, *Utrecht Law Review* Vol. 6, issue 3, 2010, pp. 40–41; available at: <http://ssrn.com/abstract=1714350> [accessed on 9 August 2016]; similarly V. Constantinesco, *La confrontation entre identité constitutionnelle européenne et identité constitutionnelles nationales. Convergence ou contradiction? Contrepoint ou hiérarchie?* [in:] J.-C. Masclet, H. Ruiz-Fabri, Ch. Boutayeb, S. Rodrigues (ed.), *Mélanges en l'honneur de Philippe Manin. L'Union européenne: Union de droit, Union des droits*, Ed. A. Pedone, Paris 2010, p. 83.

concept of national identity acquired fundamental significance for the determination of mutual relations between national and the EU law.²¹ As R. Toniatti notes, the increase in the importance of the concept of national identity in our times should be associated with the changing approach to the concept of the States' sovereignty.²² Sovereignty viewed in a traditional way,²³ in the face of challenges resulting from the processes typical of the European integration undergoes considerable transformations. Sovereignty stops being perceived as an unlimited possibility of influencing other States or an expression of power that is not subject to external influence.²⁴ For the Member States, the European Union membership is connected with the limitation of a part of their sovereign rights and passing them onto the level of a supranational, international organisation, which the EU forms. However, as it is indicated in the literature, the transfer of a Member State's powers to the EU does not mean a loss of its sovereignty.²⁵ Participation in integration processes, which is the Member States' conscious choice, is connected with the possibility of coping with a series of economic or legal problems more efficiently. According to J. Kranz, in case of the EU, the present crises are not an expression of the lack of instruments or problems connected with a State's sovereignty, but with the weakness of the political leadership.²⁶ S. Konopacki believes that, giving up some of its entitlements, a Member State improves its sovereignty. In the author's opinion, a State that actually depends on external factors limiting its sovereignty (such as international interdependence in the sphere of economy, security or environment

²¹ Compare, inter alia: M.R. Donnarumma, *Integration européenne et sauvegarde de l'identité nationale dans la jurisprudence de la Cour de Justice et des cours constitutionnelles*, *Revue française de droit constitutionnel*, 2010/4, No. 84, p. 719; D. Ritleng, *Le droit au respect de l'identité constitutionnelle nationale*, [in:] J.-Ch. Barbato, J.-D. Mouton (ed.), *Vers la reconnaissance de droits fondamentaux aux États Membres de l'UE? Réflexions à partir des notions d'identité et de solidarité*, Brylant Bruxelles 2010, p. 23; K. Wójtowicz, *Poszanowanie tożsamości konstytucyjnej państw członkowskich Unii Europejskiej* [Respect for the European Union Member States' constitutional identity], *Przegląd Sejmowy* No. 4, 2010, p. 9; A. von Bogdandy, S. Schill, *Overcoming absolute primacy: respect for national identity under Lisbon Treaty*, *Common Market Law Review* Vol. 48, 2011, p. 1417; G. van der Schyff, *The constitutional relationship between the European Union and its Member States: the role of national identity in Article 4 (2) TEU*, *European Law Review* Vol. 37(5), 2012, p. 563; A. Saiz Arnaiz, C. Alcobero Llivina (ed.), *National constitutional identity and European integration*, Intersentia, Cambridge-Antwerp-Portland 2013; K. Kowalik-Bańczyk, *Tożsamość narodowa – dopuszczalny wyjątek od zasady prymatu? [National identity: admissible exception to the rule of primacy?]*, [in:] S. Dudzik, N. Półtorak (ed.), *Prawo Unii Europejskiej a prawo konstytucyjne państw członkowskich* [European Union law vs. Member States' constitutional law], Warsaw 2013, p. 40; V. Constantinesco, *Le statut d'État européen: quelle place pour l'autonomie et l'identité constitutionnelle nationales?* *Revue des Affaires Européennes* No. 3, 2013, p. 447; E. Cloots, *National identity in EU law*, Oxford 2015.

²² R. Toniatti, *Sovereignty lost, constitutional identity regained*, [in:] A. Saiz Arnaiz, C. Alcobero Llivina (ed.), *National constitutional...*, p. 56.

²³ For more broadly on the concept of a state sovereignty in international law, compare R. Kwiecień, *Suwerenność państwa. Rekonstrukcja i znaczenie idei w prawie międzynarodowym* [State sovereignty: Reconstruction and significance of the idea in international law], Kraków 2004, p. 91 ff.

²⁴ For more on the issue, compare the Constitutional Tribunal judgement of 24 November 2010, K 32/09 (judgement concerning the Treaty of Lisbon), p. 16 ff.

²⁵ R. Kwiecień, *Suwerenność...* [State sovereignty...], p. 103.

²⁶ J. Kranz, *Pojęcie suwerenności we współczesnym prawie międzynarodowym* [Concept of sovereignty in contemporary international law], Warsaw 2015, p. 41.

protection leading to the States' dependence on global economy or regional systems), thanks to the EU membership, becomes more powerful in regulating its internal and foreign affairs.²⁷

The possibility of withdrawing from the EU, which is laid down in the Treaty (Article 50 TFEU), and the recognition of their national identity constitute a natural guarantee of traditionally formulated sovereign rights, which the States maintain. The provision of Article 4 (2) TEU indicates elements that to some extent define the concept. National identity, according to the Treaty, is inseparably connected with the political and constitutional structures of a Member State as well as with its fundamental functions related to ensuring public order and national security. This means that the European Union should not interfere in the constitutional structure of its Member States.²⁸ It is a narrow meaning of the concept of national identity, which can be associated with the concept of constitutional identity often applied by national constitutional courts.²⁹ As Advocate General, M. Poires Maduro, noticed in *Michaniki* case, "The national identity (...) clearly includes the constitutional identity of the Member State. That is confirmed, if such was necessary, by the explanation of the aspects of national identity (...) in Article 4 (2) TEU".³⁰ It is highlighted in the literature that the concept of national identity understood in a broader way is becoming a counterpoint to the process of the European integration. It contrasts the process of creating a closer and closer relation between the European nations with various national, linguistic or cultural traditions that should not be subject to integration.³¹ According to K. Kowalik-Bańczyk, national identity is an open concept that changes depending on the State which identity is analysed.³²

The concept of constitutional identity, which is closely connected with the national identity principle, was defined and popularised in the European legal space by the German Federal Constitutional Court (FCC).³³ In a judgement concerning the Treaty of Lisbon, the Court included, inter alia, the following areas in the German constitutional identity: citizenship, the civil and military monopoly on the use of force, revenue and expenditure or encroachment on fundamental rights.³⁴ Taking into consideration the aim of the present article, it is necessary to draw attention

²⁷ S. Konopacki, *Problem suwerenności w Unii Europejskiej* [Issue of sovereignty in the European Union], *Studia Europejskie* No. 3, 2008, pp. 16–17.

²⁸ K. Kowalik-Bańczyk, *Tożsamość narodowa...* [National identity...], p. 40.

²⁹ Fore more on the issue of the concept of constitutional identity in the rulings of constitutional courts of the EU Member States, compare A. Kustra, *Sądy konstytucyjne a ochrona tożsamości narodowej i konstytucyjnej państw członkowskich Unii Europejskiej* [Constitutional courts and protection of national and constitutional identity of the European Union Member States], [in:] S. Dudzik, N. Półtorak (ed.), *Prawo Unii Europejskiej...* [European Union law...], pp. 66–77.

³⁰ Opinion of Advocate General, M. Poiresa Madury, of 8 October 2008 in the case C-213/07, *Michaniki AE v. Ethniko Symvoulío Radiotileorasis, Ypoyrgos Epikrateias, Elliniki Technodomiki (TEVAE), former Pantechniki AE, Syndesmos Epicheiriseon Periodikou Typou, Somateio*, ECLI:EU:C:2008:544, para. 31.

³¹ M. Claes, *National identity: trump card or up for negotiation?* [in:] A. Saiz Arnaiz, C. Alcoberro Llivina (ed.), *National constitutional...*, p. 109.

³² K. Kowalik-Bańczyk, *Tożsamość narodowa...* [National identity...], pp. 40–41.

³³ A. Kustra, *Sądy konstytucyjne...*, p. 67.

³⁴ FCC judgement of 30 June 2009 in the case 2 BvE 2/08 (Lisbon case), para. 249; also compare K. Wójtowicz, *Zachowanie tożsamości...* [Maintenance of constitutional...], p. 7.

to the location of the citizenship of a Member State among the elements forming the national (constitutional) identity of the State. Undoubtedly, in the light of the former considerations regarding the relations between the national citizenship and the EU citizenship, the approach of the FCC is absolutely justified. The Member States have an opportunity to shape the subjective scope of the EU citizenship. It must be remembered, however, that there is a restriction introduced by the Court of Justice concerning the necessity of respecting the EU law when exercising a Member State's competences to grant or withdraw domestic citizenship. As a result, there is a dependence difficult to define clearly because the element of a Member State's national identity becomes one of the factors conditioning the scope of the EU citizenship.³⁵ The Court of Justice did not analyse the issue directly. The *Rottmann* case is, up to now, the only one where one can look for the Court's attempt to deal with the issue. It must be taken into account, however, that the judgement in the *Rottmann* case was issued in accordance with the provisions that were binding before the Treaty of Lisbon entered into force. Therefore, there could not be any reference made to Article 4 (2) TEU in its present wording. Only Advocate General, M. Poires Maduro, directly drew attention to the problem connected with national identity and referred to Article 6 (3) TEU (in its wording before the Treaty of Lisbon). Advocate General, analysing the dependencies between national citizenship and the EU citizenship, recognised that a potential introduction of a ban on withdrawing national citizenship of a specified person resulting in the loss of the EU citizenship would lead to the actual deprivation of a Member State of its competence to regulate its citizenship. In Advocate General's opinion, the adoption of such an approach would violate Article 6 (3) TEU, which lays down an obligation to respect national identities of the Member States.³⁶ Advocate General recognised that determination of the composition of the political community consisting in the possibility of deciding on granting or withdrawing national citizenship by the Member States is undoubtedly a significant element of national identity.³⁷ This analysis, although it is based on the provision that changed its wording and place in the Treaty, remains up-to-date also in accordance with the presently binding provision of Article 4 (2) TEU. It should be noted, however, that complete exclusion of the issues connected with the determination of national citizenship (the EU citizenship) from the rules the EU law is inadmissible because it can lead to considerable weakening of the EU competences to shape the rights and obligations of its citizens. That is why, the judgement of the Court of Justice in the *Rottmann* case confirms the necessity of respecting the EU law, especially the principle of proportionality, by the Member States when they take decisions having impact on the subjective scope of the Union citizenship. Respecting national identity in case of the Member States' competence

³⁵ S. Konopacki draws attention to a similar problem in *Problem suwerenności...* [Issue of sovereignty...], pp. 13–14. The author assumes that the paradox of the legal construction of the Union citizenship consists in the fact that citizenship of a Member State determines the scope of supranational categories such as the European law and citizenship. A national State sovereignty is a basic factor determining national citizenship, and thus the Union one, too.

³⁶ Opinion of Advocate General, M. Poiresa Madury, in the case *Rottmann*, para. 24–25.

³⁷ *Ibid.*

to grant or withdraw national citizenship is, therefore, limited by the obligation to respect the Union law by the Member States. Indeed, the issues cannot be completely excluded from the scope of the EU law and the secondary and additional institution (the Union citizenship) cannot determine the existence of the primary institution (national citizenship).³⁸

The above-presented considerations refer to the influence of the principle of respecting national identity of a Member State on the subjective scope of the Union citizenship. After the Treaty of Lisbon entered into force with its new Article 4 (2) TEU included in the scope of jurisdiction of the Court of Justice, the principle of respecting national identity started to be applied by the Court, inter alia, in cases connected with the subjective scope of the Union citizenship. As it is indicated in the literature, the Member States may use reference to national identity at present in order to justify making exceptions to the treaty guarantees and to exclude the effectiveness of the EU regulations violating national identity of a Member State.³⁹ This is the context in which the Court of Justice referred to the principle of national identity in two cases: *Sayn-Wittgenstein*⁴⁰ and *Runevič-Vardyn*⁴¹. Both of them concerned issues connected with the Member States' competence to establish the rules of giving and registering natural persons' names, and spelling them with the use of specific characters of a language.⁴² The *Sayn-Wittgenstein* case concerned the Austrian authorities' decision to correct the name of an Austrian citizen in civil status documents. The Austrian citizen, following her adoption by a German citizen, acquired his name, i.e. Fürstin von Sayn-Wittgenstein. The name in this original form was entered into the Austrian register of civil status and the applicant used it based on the identity documents issued by the Austrian authorities (a passport) and German authorities (a driving licence). Moreover, the applicant registered a business in Germany under the name Fürstin von Sayn-Wittgenstein. The situation took 15 years until the Austrian Constitutional Court issued a ruling on similar

³⁸ *Ibid.*, para. 24 and 26.

³⁹ Compare M. Safjan, P. Mikłaszewicz, *Granice uprzywilejowania wyrównawczego*, *Przegląd Sejmowy* 2011/6, p. 43; K. Kowalik-Bańczyk, *Tożsamość narodowa...* [National identity...], p. 48; A. von Bogdandy and S. Schill draw attention that the principle of national identity is becoming a tool to temper conflict between the CJEU and constitutional courts of the Member States in the scope of the principle of primacy of the EU law over national law. Compare, A. von Bogdandy, S. Schill, *Overcoming...*, p. 1417.

⁴⁰ CJ judgement of 22 December 2010, in the case C-208/09, *Ilonka Sayn-Wittgenstein v. Landeshauptmann von Wien*, ECLI:EU:C:2010:806. See, L.F.M. Besselink, *Case C-208/09, Ilonka Sayn-Wittgenstein v. Landeshauptmann von Wien, Judgment of the Court (Second Chamber) of 22 December 2010*, *nyr*. *Common Market Law Review* Vol. 49, 2012, p. 671.

⁴¹ CJ judgement of 12 May 2011, in the case C-391/09, *Malgożata Runevič-Vardyn, Łukasz Paweł Wardyn v. Vilnius miesto savivaldybės administracija*, ECLI:EU:C:2011:291. See, A. Dorabalska, *Glosa do wyroku C-391/09* [Gloss on the judgement C-391/09], *Państwo i Prawo* No. 9, 2011, p. 116; H. van Eijken, *Case C-391/09, Malgożata Runevič-Vardyn and Łukasz Paweł Wardyn v. Vilnius miesto savivaldybės administracija and Others. Judgment of the Court (Second Chamber) of 12 May 2011*, *nyr*. *Common Market Law Review* Vol. 49, 2012, p. 809.

⁴² For more on the issue, see M. Taborowski, *Swobodny przepływ osób w UE a nazwiska osób fizycznych – uwagi na tle orzecznictwa TS* [Free movement of people in the EU vs. the names of natural persons: comments in the light of CJ rulings], *Europejski Przegląd Sądowy* No. 1, 2012, p. 22.

circumstances and held that, in accordance with the Law on the abolition of the nobility, Austrian citizens are precluded from acquiring a surname that includes a title of nobility. As a result, Vienna authorities decided that it was necessary to enter a new name into the register of civil status without the title of nobility and adopt a form Sayn-Wittgenstein. The Court of Justice heard the case in the light of Article 21 TFEU guaranteeing the EU citizens the freedom of movement. The Court held that the provision was in conflict with the Austrian norms that could lead to a specific risk of being accused of using false identity and a necessity to refute the allegation. This may result in the use of different names in identity documents issued by the state of origin and the state of residence (in case of the applicant, the German driving licence). The obstacle to free movement, however, was justified by the Court of Justice by reference to the reasons connected with the need to protect public order.⁴³ The Austrian court's arguments referred to the importance of Law on the abolition of the nobility in order to ensure the principle of equality, which on the other hand is one of the elements of national identity, that should be protected. The Court of Justice, taking into consideration this interpretation, referred to Article 4 (2) TEU as an auxiliary provision, and ruled that respecting national identity of a Member State, one element of which is the principle of equality and a republican political system of the State, is included in the treaty-related derogation of the protection of public order. This means that in the *Sayn-Wittgenstein* case, Article 4 (2) TEU was not applied as autonomous treaty-related derogation but used as an auxiliary provision to define the concept of public order.⁴⁴

In the other case, *Runevič-Vardyn*, the principle of national identity was used in the assessment of the Lithuanian rules concerning the spelling of names. It concerned a citizen of Lithuania, a member of the Polish ethnic minority, and her husband, a Polish citizen. The problem was connected with the way of spelling their forenames and surnames in the Lithuanian documents (birth and marriage certificates). The Lithuanian authorities issuing the documents used the spelling rules typical of the Lithuanian language, i.e. without Polish diacritic modifications and letters (there is no letter "w" in Lithuanian). In the opinion of the applicants, requesting that their names should be spelled in accordance with the rules of the Polish language, it constituted a violation of the principle of non-discrimination based on nationality. In the proceedings before the Court of Justice, the Lithuanian authorities presented the argument that "the Lithuanian language constitutes a constitutional value that protects national identity, contributes to citizens integration, ensures the expression of national sovereignty, indivisibility of the State and appropriate functioning of the state and self-government bodies".⁴⁵ The Court of Justice approved of the position of the Lithuanian authorities and emphasised that the protection of the official

⁴³ L.F.M. Besselink, draws attention to the fact that in the judgement in the case *Sayn-Wittgenstein*, the exception to the protection of public order was used in the case concerning the Union citizenship heard directly under Article 21 TEU for the first time. Formerly, this type of exception had been used in the justification for the decision on the ban on entry or expulsion of the EU citizen. Compare, L.F.M. Besselink, *Case C-208/09...*, p. 681.

⁴⁴ A. von Bogdandy, S. Schill, *Overcoming...*, p. 1424.

⁴⁵ CJ judgement in the case C-391/09, *Runevič-Vardyn*, para. 84.

language of the Member State is included within the scope of national identity protected under Article 4 (2) TEU. To support the argument, the Court referred to Article 3 (3(4)) TEU and Article 22 of the Charter of Fundamental Rights of the European Union, pursuant to which the Union respects cultural and linguistic diversity of its Member States. The domestic court is competent to finally assess the obstacle to free movement of people and possibility of justifying it with the need to protect national identity – the protection of the official language of a given State.

The presented rulings indicate that the protection of national identity is becoming a significant value that is taken into consideration when establishing obstacles to free movement of the EU citizens. In the issues discussed, the Court of Justice did not apply the provision of Article 4 (2) as autonomous grounds for justifying exceptions to freedoms guaranteed by the EU law. The Court made use of the principle laid down in Article 4 (2) TEU as an additional interpretational guideline strengthening the application of the formerly accepted in the Treaty and judicial decisions special reasons for derogation from provisions guaranteeing free movement of people.

4. THE EU CITIZENSHIP VERSUS EUROPEAN IDENTITY

Citizenship, according to W. Sadurski, has two dimensions: a formal-legal one and a symbolic-political one.⁴⁶ The former, dominant in case of the EU citizenship, encompasses the rights provided in the Treaty, which thanks to the broadening interpretation of the Court of Justice of the EU became a basic part of the status of each Member State's citizen.⁴⁷ The rights directly granted to the EU citizens include: the right to move and reside freely (Article 21 TFEU), the right to vote and to stand as a candidate in elections to the European Parliament and at municipal elections in the Member State in which he resides, under the same conditions as nationals of the State (Article 22 TFEU), the right to protection by the diplomatic or consular authorities in the territory of a third country (Article 23 TFEU), the right to petition the European Parliament (Article 24 para. 2 TFEU), the right to apply to the Ombudsman (Article 24 para. 3 TFEU), the right to write to any of the institutions or bodies of the EU (Article 24 para. 4 TFEU), and the right to a citizen's initiative (Article 24 para. 1 TFEU within the meaning of Article 11 TEU). According to the research com-

⁴⁶ W. Sadurski, *Obywatelstwo...* [European citizenship...], p. 23.

⁴⁷ The process of strengthening the Union citizenship as a basic status of each citizen of a Member State was started by the CJ judgement of 20 September 2001 in the case C-184/99 *Rudy Grzelczyk v. Centre public d'aide d'Ottignies-Louvain-la Neuve*, Rec. 2001, p. I-06193, para. 31. What deserves special attention is the fact that neither TEU nor TFEU directly mention the EU citizens' obligations, which would shape their legal status. D. Kochenov, (*EU citizenship without duties*, *European Law Journal* Vol. 20, No. 4, July 2014, p. 482) holds that citizenship in general, and the Union citizenship in particular, is freeing itself from the initial correlation of rights and obligations. The author recognises that basing a legal system on the rights, and not obligations, the principles of a democratic State ruled by law are fully guaranteed and the citizens should be really free in it. On the contrary, he recognises that the rights cannot be separated from obligations that citizens have towards the State or the EU; R. Bellamy, *A duty-free Europe? What's wrong with Kochenov's account of EU citizenship rights*, *European Law Journal* Vol. 21, No. 4, July 2015, p. 558.

missioned by the European Commission in 2015, the citizens of the Member States have a medium-level awareness of the status of the EU citizen and the method of acquiring it or the rights they have. Although 87% of the respondents are acquainted with the term “EU citizenship”, only 52% know what it really means. The data on the knowledge of the rights they have are even worse: 42% of the respondents state that they feel they are very well or sufficiently informed on their entitlements. Despite that, 84% of citizens are aware of their right to move and reside freely and 83% of them know they can apply to the European Ombudsman, petition the European Parliament and write to the European Commission. The lowest level of awareness concerns the right to vote and stand as a candidate in elections in the State in which they reside (54% of respondents give the right answers that a citizen of the EU residing in their countries has the same rights at municipal elections as their nationals). The awareness of other entitlements is at the level of 67–77%.⁴⁸

It can be noted that some of the rights granted by the Treaty are strictly connected with the functioning of the domestic market (the freedom to move and reside), and this way they strengthen the implementation of the freedom of the movement of people existing from the very beginning of integration, and some of them are the rights political in nature. While the former is typical of the EU citizenship, the electoral rights or those connected with the relations between an individual and the EU bodies are the rights typical of citizenship in general. They specify the relations between an individual and a political community to which he or she belongs. This way, the formal-legal dimension overlaps the symbolic-political dimension of citizenship. The latter dimension mainly determines the relations between a citizen and a political community and the relations between the citizens.⁴⁹ As W. Sadurski indicates, the main content of citizenship is identity meant as “identification with what, in the eyes of the citizens, binds them as the members of the same community”.⁵⁰ In case of the EU citizenship, a problem arises how to determine the European identity, which would enable the EU citizens identify with the Union as an organisation, activities of their institutions and feel the bounds with citizens from other Member States. Whether such a universal European identity is possible at all is the subject of a doctrinal debate.⁵¹ In case of the EU citizenship, one cannot expect such an obvious sense of identification and belonging as in case of national citizenship and belonging to a nation. National

⁴⁸ Flash Eurobarometer 430, Report, European Union Citizenship, March 2016, http://ec.europa.eu/justice/citizen/document/files/2016-flash-eurobarometer-430-citizenship_en.pdf [accessed on 1 August 2017].

⁴⁹ W. Sadurski, *Obywatelstwo...* [European citizenship...], pp. 25–26.

⁵⁰ *Ibid.*, p. 26.

⁵¹ Compare, inter alia, S. Kadelbach, *Union citizenship*, [in:] A. von Bogdandy, J. Bast, *Principles of European constitutional law*, Hart-CH Beck-Nomos, Oxford–München, pp. 470–475; P. Magnette, *How can one be European? Reflections on the pillars of European civic identity*, *European Law Journal* Vol. 13, No. 5, September 2007, p. 664; D. Kostakopoulou, *On European identity*, [in:] R. Bellamy, U. Saiger (eds), *EU citizenship and the market*, The European Institute UCL, 2011; http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2117157 [accessed on 24 August 2016]; *idem*, *European Union citizenship...*, pp. 625–626; F. Benoît-Rohmer, *Identité européenne et identité nationale. Absorption, complémentarité ou conflit*, [in:] *Mélanges en l’honneur de Jean Paul Jacqué*. Chemins d’Europe, Dalloz, Paris 2010, pp. 63–64.

and European identity will differ, although sometimes they will have something in common. In the context of comments on the EU citizenship, it is necessary to emphasise that the European identity may be treated in a subjective and objective way. The first approach is presented above and it consists in an individual's feeling of belonging to the EU political community. An objective European identity will encompass a certain general collection of values that are important for the process of the European integration, where some of them will be essential (fundamental), and some will be derivatives of integration mechanisms. Thus, it will be the identity of the European Union as an international organisation that is supranational in nature. The necessity of strengthening the European identity treated in this way was clearly laid down in the Declaration on European Identity adopted in Copenhagen already in 1973.⁵² The nine then Member States emphasised the necessity of pursuing unity in mutual relations and, to that end, attempted to define the European identity. It was described based on values common to all the States, which include: the rules of representative democracy, the state governed by law, social justice and respect for human rights. Thus, it is the part of values building the European identity which matches the values that may be part of a national identity of each Member State. The document also lists specific components of the European identity that result from the integration processes. Thus, for the European identity, they are very specific in nature and should be developed and strengthened by progressing integration movements. These include: internal market, the EU system of institutions, common policy or cooperation mechanisms worked out. Also the Declaration on European Union of 1983 adopted in Stuttgart refers to the European identity.⁵³ This is the document that contains the famous statement that it is necessary to continue the process of developing stronger relations between the European nations with the aim to strengthen the European identity. One of the aims of the Stuttgart Declaration was to tighten cooperation in the field of culture in order to strengthen the awareness of common cultural heritage being one of the elements of the European identity.

At present, the framework of the European identity can be defined with the use of the criteria for the EU membership adopted in Copenhagen in 1993,⁵⁴ the values on which the EU is founded and which are laid down in Article 2 TEU⁵⁵ as well as general rules of the Union law, including the principles of direct effectiveness

⁵² Declaration on European Identity (Copenhagen, 14 December 1973), <http://ec.europa.eu/dorie/fileDownload.do;jsessionid=1KGyQ1tKfTpNjBQwQh6cwgC2yLn7BJMymvTrDq5s2rD3JYR9RfGQ!243197488?docId=203013&cardId=203013> [accessed on 22 August 2016]. Also compare, V. Constantinesco, *La confrontation...*, p. 80.

⁵³ Solemn Declaration on European Union (Stuttgart, 19 June 1983), http://aei.pitt.edu/1788/1/stuttgart_declaration_1983.pdf [accessed on 31 July 2017].

⁵⁴ The Copenhagen criteria, adopted by the European Council in 1993, assume that to become a Member State, a country must respect the rules of democracy, must be a state ruled by law, respect human rights (including those of ethnic minorities), and function within an efficient free market economy that can cope with competition and market pressure within the EU. The text of the European Council summit conclusions containing the criteria is available at: www.europarl.europa.eu/enlargement/ec/pdf/cop_en.pdf [accessed on 22 August 2016].

⁵⁵ Article 2 TEU stipulates that: "The Union is founded of the values of respect for human dignity, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in

and supremacy, the Charter of Fundamental Rights or the rules of establishing and functioning of the internal market strengthened by the CJEU judgements (including the principle of non-discrimination based on national origin).⁵⁶

A subjective European identity, important from the point of view of an individual – the EU citizen, is absolutely more difficult to define and achieve. It concerns the establishment of a type of collective identity that would strengthen integration mechanisms and be the source of democratic legitimation of the Union. The European Commission, in its Third Report on Citizenship of 2001, held that the EU citizenship is at the same time a source of integration processes legitimation as well as a basic factor in the process of developing the feeling of belonging to the EU among its citizens and possessing real European identity.⁵⁷ The issue of legitimation of integration processes is connected with the issue of democratic deficit in the EU that is broadly discussed in the literature.⁵⁸ On the one hand, the Union declares in Article 2 TEU that it is founded on freedom, democracy or the state ruled by law, and on the other hand, the institutional system does not reflect the typical tripartite separation of powers. The status of the European Parliament, which is the only representative assembly, was fully strengthened after the Treaty of Lisbon.⁵⁹ Article 10 TEU that was introduced then indicates that the basis for the functioning of the EU is representative democracy and the citizens are directly represented at the Union level in the European Parliament, and that every citizen has the right to participate in the democratic life of the Union. Undoubtedly, the establishment of the European Citizens' Initiative aimed to strengthen the citizens' participation in the political life of the Union. However, the citizens still do not feel that their voice is heard at the Union level.⁶⁰ The establishment of the EU citizenship did not

which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail”.

⁵⁶ V. Constantinesco, *La confrontation...*, p. 81.

⁵⁷ Report from the Commission. The Third Report from the Commission on Citizenship of the Union, Brussels, 07.09.2001, COM (2001) 506 final, p. 7. Compare also, D. Kostakopoulou, *European Union citizenship...*, pp. 625–626.

⁵⁸ More on the issue, together with the literature referred to therein, in: W. Sadurski, *Democratic legitimacy of the European Union: A diagnosis and some modest proposals*, Polish Yearbook of International Law Vol. 32, 2012, pp. 19–43; A. Śledzińska-Simon, *Europejska inicjatywa obywatelska, czyli fiasko demokratycznego telos?* [European Citizens' Initiative, or a failure of the democratic telos?], [in:] G. Baranowska, A. Bodnar, A. Gliszczyńska-Grabias (ed.), *Ochrona praw...* [Protection of the European...], pp. 39–46.

⁵⁹ The European Parliament mainly became an actual co-legislator because the former procedure of co-decision making after the Treaty of Lisbon changed into an ordinary legislative procedure (Article 294 TFEU) and it covers all the most important areas of the EU law (inter alia, Common Agricultural or Fisheries Policy, or implementation of Common Commercial Policy). Soon after the Treaty of Lisbon entered into force (2010–2011), the ordinary legislative procedure covered ca. 90% of adopted legal acts. Compare, Report: *Mid-term Evaluation of the 2009–2014 European Parliament: Legislative activity and decision-making dynamics*, VoteWatch Europe no. 63/ July 2012, p. 5, Centre for European Policy Studies, Brussels, available at: <https://www.ceps.eu/publications/mid-term-evaluation-2009-14-european-parliament-legislative-activity-and-decision> [accessed on 31 July 2017].

⁶⁰ According to the European Commission statistical data, only 39% of the EU citizens agree with the opinion that their vote counts in the EU (54% do not agree with the statement). Citation after Standard Eurobarometer 84, Autumn 2015, Public opinion in the European Union,

change the situation much. Although 50% of the citizens state that they know their rights as the EU citizens,⁶¹ only ca. 42% of them decided to exercise their right to elect representatives to the European Parliament in 2009 and 2014,⁶² and as many as 63% declare that they do not intend to exercise their rights of the European Citizens' Initiative.⁶³ As the above data indicate, one of the main political objectives of the Union citizenship has not been reached. When it was set, the assumption was that it should lead to bridging the gap between the citizens and the European bodies, which were to become more effective thanks to that.⁶⁴ However, the EU citizens still do not identify with the Union bodies forgetting, or often not knowing, that the institutions representing national interests of the Member States (the European Council and the Council of the European Union) are composed of prime ministers, heads of state or ministers of national governments. This means that in fact the weak democratic legitimation of the EU is a result of the deficit of democratic legitimation of national state institutions.⁶⁵ At the same time, it is necessary to remember that, in the institutional system of the European Union, there is no representative body elected by citizens that makes it possible to hold the government liable. It is true that the European Parliament is competent to control the European Commission but the European Council remains outside the parliamentary system of supervision.⁶⁶ Thus, the above-mentioned facts have impact on the very low level of citizens' identification with and trust in the Union institutions. From political perspective, the European *demos* still has no full common identity and is based on the citizens who feel that they are and who actually are the citizens of the Member States and only next – the citizens of the EU.⁶⁷ Therefore, one can speak about a multi-level identity connected with the secondary character of the EU citizenship,⁶⁸ in which the element of national identity overrides the European one.

December 2015. Available at: <http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/ResultDoc/download/DocumentKy/70150>, [accessed on 25 August 2016].

⁶¹ Standard Eurobarometer 83, European Citizenship. Report, Spring 2015, p. 31.

⁶² Statistical data on the turnout in the European Parliament elections available at: <http://www.europarl.europa.eu/aboutparliament/pl/20150201PVL00021/Poprzednie-wybory> [accessed on 25 August 2016].

⁶³ Standard Eurobarometer 83..., p. 75.

⁶⁴ W. Sadurski, *Obywatelstwo...* [European citizenship...], p. 30.

⁶⁵ *Ibid.*, p. 36.

⁶⁶ A. Śledzińska-Simon, *Europejska inicjatywa obywatelska...* [European Citizens' Initiative...], pp. 40–41.

⁶⁷ According to the European Commission statistical data, 52% of the EU citizens primarily identify with the citizens of their Member State and only then with the citizens of the EU. 38% of the citizens believe they are only citizens of the given State, and 6% – primarily citizens of the EU and then citizens of their State, and only 1% believe they are only citizens of the EU. Compare Standard Eurobarometer 83, European Citizenship. Report, Spring 2015, p. 21.

⁶⁸ For more on the issue of citizenship and multi-level identity, compare A. Bodnar, *Obywatelstwo...* [Multi-level citizenship], pp. 292–301.

5. CONCLUSIONS

Summing up the considerations, it is necessary to state that the influence of the European citizenship on the strengthening of the European identity is absolutely smaller than it was originally assumed to be. As S. Konopacki indicates, the construction of the Union citizenship alone, based on the sovereign States' rights to determine the subjective scope of national citizenship, leads to the limitation of possibilities of bringing the European identity into existence.⁶⁹ Although the Union citizens share, apart from the legal status that is laid down in the Treaty, some historical, cultural or religious roots, the EU citizens' identity at the political level is still very weak. Thus, it turns out that national identity is stronger in case of the Member States' citizens' feeling of belonging to a political community. For the EU citizens, mainly their State, not the Union, constitutes such a community. In addition, the latest political events, especially the Brexit referendum, indicate a serious crisis of common European values, which were to be a binder of the EU citizens' identity. It turns out that one of the key entitlements of the EU citizens, the right to move and reside freely, becomes the reason for a split. As the President of the European Council, Donald Tusk, indicates in his letter sent on the eve of the summit in Bratislava, considering the result of the British referendum only from the point of view of the moods in the British community would be a serious mistake.⁷⁰ It is an indicator of general tendencies of the citizens' lack of trust in the European Union. At the same time, the Member States' governments, making use of the trend, often blame the European Union for all their failures and political or economic difficulties. Thus, we can speak about a crisis of the European identity understood as a group of certain values binding, despite the diversity, the Member States and the EU citizens. The sources of the crisis should be looked for in the citizens' lack of knowledge about the Union as an international organisation, the mechanisms governing it and interrelations between national governments and the Union institutions in the decision-making process.⁷¹ That is also why, in the public discourse, there is stronger and stronger attachment to the idea of the national identity, which should be protected against the "pernicious" influence of the European idea.

The EU citizenship, which is an institution on the borderline between the national and European identity, in the face of the crisis, clearly loses its importance. It is becoming an institution that is a weaker and weaker carrier of the European

⁶⁹ S. Konopacki, *Problem suwerenności...* [Issue of sovereignty...], p. 14.

⁷⁰ Letter from President Donald Tusk before the Bratislava summit, Press release 511/16, 13 September 2016, available at: <http://www.consilium.europa.eu/en/press/press-releases/2016/09/13-tusk-invitation-letter-bratislava/> [accessed on 14 September 2016].

⁷¹ J.M. Fiszer draws attention to a similar issue, *Skutki członkostwa w UE dla suwerenności i tożsamości kulturowej* [Consequences of the EU membership for sovereignty and cultural identity], *Myśl Ekonomiczna i Polityczna* No. 1–2, 2011, p. 174. The author points out that although more and more decisions are taken on the Union institutions' forum, the European issues have a scarce share in the domestic discourse. He discusses the example of the elections to the European Parliament and the electoral campaign in which domestic matters dominate. This results in insufficient information of the citizens who adopt critical attitudes towards the EU decisions.

idea and remains solely an additional status of the Member States' citizens. This multi-level construction results in a situation in which common rights, instead of binding, start to divide the citizens.

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EU CITIZENSHIP: AN ELEMENT OF NATIONAL, EUROPEAN IDENTITY OR ONLY AN ADDITIONAL STATUS OF MEMBER STATES' CITIZENS?

Summary

The European Union citizenship is a concept on the borderline between the EU law and domestic laws. The Member States' regulations decide about its subjective scope. The EU citizenship was originally supposed to be the source of integration processes legitimisation as well as a basic factor in the process of developing the citizens' feeling of belonging to the European Union and possessing a real European identity. Therefore, it is a legal institution with multi-level construction and is based on the co-existence of national states' identities (which are expressed, inter alia, in national citizenships) and the European identity. Respecting a national identity in case of Member States' entitlement to naturalise or deprive a citizen

of their national citizenship has limits indicated by the Member States' obligation to respect the EU law. However, considerable weakening of the European citizenship as a carrier of the European identity has been observed recently. It can be especially well seen now, at the time of the European values crisis, which resulted in the negative outcome of the Brexit referendum.

Keywords: citizenship, EU citizenship, national identity, European identity

OBYWATELSTWO UE – ELEMENT TOŻSAMOŚCI NARODOWEJ, EUROPEJSKIEJ, CZY JEDYNIENIE DODATKOWY STATUS OBYWATELI PAŃSTW CZŁONKOWSKICH?

Streszczenie

Obywatelstwo UE jest instytucją pozostającą na styku prawa unijnego i prawa krajowego. O jej zakresie podmiotowym decydują przepisy państw członkowskich. Obywatelstwo unijne w pierwotnym założeniu miało być źródłem legitymacji procesów integracyjnych, a także podstawowym czynnikiem w procesie kształtowania wśród obywateli poczucia przynależności do Unii Europejskiej i posiadania prawdziwej tożsamości europejskiej. Jest to zatem instytucja prawna, która skonstruowana jest wielopoziomowo i opiera się na współistnieniu tożsamości narodowych państw (których wyrazem jest m.in. obywatelstwo krajowe) oraz tożsamości europejskiej. Poszanowanie tożsamości narodowej w przypadku uprawnień państw członkowskich dotyczących nadawania lub pozbawiania obywatelstwa krajowego ma granice wyznaczone przez obowiązek poszanowania przez państwa członkowskie prawa unijnego. Z kolei w ostatnim czasie można zaobserwować istotne osłabienie obywatelstwa unijnego jako nośnika tożsamości europejskiej, co szczególnie widoczne jest w dobie kryzysu wartości europejskich a czego wyrazem był negatywny wynik referendum brytyjskiego.

Słowa kluczowe: obywatelstwo, obywatelstwo UE, tożsamość narodowa, tożsamość europejska