

Gellért NAGY*

EU Citizenship: A Constitutional Law Perspective on the Activist Case Law of the Court of Justice of the European Union

ABSTRACT: *The institution of citizenship of the European Union (EU) is one of the key milestones of European integration. However, it is linked to the nationality of a Member State because, under the Treaties, only persons holding the nationality of a Member State are citizens of the Union. This poses a significant challenge for future integration, as it requires developing a coherent approach to citizenship issues. Thus, EU citizenship raises questions in the context of multilevel constitutionalism: whilst the rules governing the acquisition and loss of nationality remain within the discretionary powers of the Member States, these rules strongly influence EU citizenship and the rights associated with this status. In line with these findings, it is also worth noting the case law of the Court of Justice of the European Union (CJEU), which can be considered particularly proactive and activist in its approach. In the present contribution, we aim to focus primarily on the relationship between EU citizenship and nationality. To this end, two recent CJEU cases will be presented (both concerning the loss of EU citizenship). Although the factual backgrounds of the two cases differ, we believe that reviewing these judgments together is the best way to highlight the specific features of the constitutional-law approach to EU citizenship and the consequences of the activist case law of the CJEU.*

KEYWORDS: *Citizenship of the European Union, Nationality, Case Law of the Court of Justice of the European Union, Brexit, Judicial Activism, Multilevel Constitutionalism.*

1.

Introduction

The citizenship of the European Union (hereinafter: EU citizenship) is one of the most significant achievements of European integration, rooted in the idea of bringing

* PhD student at the Ferenc Deák Doctoral School of Faculty of Law of the University of Miskolc, Junior researcher at the Central European Academy, nagy.gellert@centraleuropeanacademy.hu, <https://orcid.org/0000-0002-8633-3038>.



“*the Union closer to its citizens.*”¹ In the first phase of European integration, EU law primarily recognised citizens only as economically active persons, namely workers.² However, as early as 1975, Leo Tindemans, then Prime Minister of Belgium, called for the recognition of certain special rights for citizens of the Member States of the European Community.³ Later on, the Single European Act contained certain provisions that forecasted the establishment of EU citizenship.⁴ Furthermore, in 1988, the Commission submitted a proposal to establish the right to vote and stand as a candidate in municipal elections,⁵ thus promoting the recognition of certain political rights at the European level. In addition, the Court of Justice of the European Communities anticipated, in a judgment issued in 1989, that some form of EU citizenship could be established in the future.⁶ In these early years of integration, the Court continued to play a significant role in “*constitutionalising*” EU citizenship by extending the interpretation of certain rights.⁷

The turning point finally came with the Maastricht Treaty, which established the concept of EU citizenship. However, even at its inception, some Member States expressed reservations, fearing the “*erosion of national citizenship.*”⁸ The relevant legal literature of the time also expressed scepticism.⁹ To somewhat address these reservations, the *Declaration on nationality of a Member State* (Declaration No. 2) was annexed to the Maastricht Treaty, which states that ‘*the question whether an individual possesses the nationality of a Member State shall be settled solely by reference to the national law of the Member State concerned.*’¹⁰ Since, under Article 51 of the Treaty on European Union, the annexes to the Treaties form an integral part thereof,

1 Oosterom-Staples, 2018, p. 436.

2 Mohay and Szalayné, 2011, p. 183., Milassin, 2022, p. 12.

3 Fábíán, 2018, 142. The so-called Tindemans Report included rights such as ‘*equal access to public offices, dismantling of border controls, promotion of school and student exchange programmes, mutual recognition of diplomas and improved consumer protection.*’ See Kadelbach, 2009, p. 447. One might observe that all these goals set out in 1975 were fulfilled in the following decades. <http://doi.org/10.62733/2025.2.5-15>

4 Fábíán, 2018, p. 142.

5 Kadelbach, 2009, p. 447.

6 Fábíán, 2018, 142. See Judgment of 2 February 1989 on Case 186/87 Ian William Cowan v Le Trésor public. In the given case, during a preliminary ruling procedure, the CJEU emphasised that the prohibition of discrimination ‘*must be interpreted as meaning that in respect of persons whose freedom to travel to a Member State, in particular as recipients of services, is guaranteed by Community law that State may not make the award of State compensation for harm caused in that State to the victim of an assault resulting in physical injury subject to the condition that he hold a residence permit of be a national of a country which has entered into a reciprocal agreement with that Member State.*’ Thus, the CJEU, based on community law provisions, linked certain rights to the status of a citizen of a Member State.

7 Milassin, 2012, p. 12, 15.

8 Oosterom-Staples, 2018, p. 438.

9 Craig and de Búrca, 2015, p. 853.

10 Treaty on European Union – Declaration on nationality of a Member State.

the discretionary power of the Member States to regulate rules governing national citizenship has been articulated in the Founding Treaties.¹¹ Based on this reasoning, it seems clear that *'national autonomy in nationality matters is not affected at all by the creation of a European citizenship.'*¹² Nevertheless, as we will see in the present contribution, the situation is somewhat more complex than the above opinion formulated in 1998 suggests. The Court of Justice had already sought to nuance this approach in the renowned *Micheletti* case¹³.

In recent decades, the institution of EU citizenship has been at the centre of debate; hence, the constitutional analysis remains relevant. This is particularly true in light of the Court of Justice of the European Union (hereinafter: CJEU) activist case law, which has significantly influenced the development of EU citizenship.¹⁴ For all these reasons, the present contribution reviews recent CJEU case law, with a particular emphasis on the constitutional aspects of EU citizenship, focusing on cases related to the loss of citizenship.

2.

Citizenship of the European Union as 'A Pale Shadow of Its National Counterpart'¹⁵

Under Article 20 (1) of the Treaty on the Functioning of the European Union, *'[e]very person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.'*¹⁶ A similar provision is contained in Article 9 of the Treaty on European Union.¹⁷ The second sentence of these provisions, which underlines one of the *"crucial features"*

11 Oosterom-Staples, 2018, p. 439.

12 de Groot, 1998, p. 122.

13 Judgment of 7 July 1992 in Case C-369/90 Mario Vicente Micheletti and others v Delegación del Gobierno en Cantabria. For details, see de Groot, 1998, p. 123.

14 See the three seminal judgments of the CJEU: Judgment of 2 March 2010 in Case C-135/08 Janko Rottmann v Freistaat Bayern; Judgment of 8 March 2011 in Case C-34/09 Gerardo Ruiz Zambrano v Office national de l'emploi (ONEm); and Judgment of 5 May 2011 in Case C-434/09 Shirley McCarthy v Secretary of State for the Home Department. For more on the case law of the CJEU, see Lenaerts, 2013, pp. 569–583 or Kochenov, 2011, pp. 74–91. Kochenov highlighted that these cases are pivotal as *'for the first time in its jurisprudence, the ECJ has established that EU citizenship alone can trigger the application of EU law in several situations.'* Kochenov, 2011, p. 59.

15 Kostakopoulou, 2007, p. 625.

16 Article 20(1) of the Treaty on the Functioning of the European Union.

17 Article 9 of the Treaty on European Union: *'In all its activities, the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.'*

of EU citizenship, namely its complementarity¹⁸ – was incorporated into the original text by the 1999 Treaty of Amsterdam, as a reaction to an annex attached to the Danish Act of Ratification of the Maastricht Treaty.¹⁹ Based on this sentence, we can confirm that EU citizenship ‘*does not abolish national citizenship or replace it, national citizenship being a condition for acquiring the citizenship of the European Union.*’²⁰ This complementary nature is also reflected in secondary EU law. Article 2 (1) of Directive 2004/38/EC provides that ‘*Union citizen means any person having the nationality of a Member State.*’²¹

One can rightly observe from these provisions that ‘*EU citizenship establishes a direct link between the citizens of the Member States and the European Union, while it remains attached to national citizenship, nationality.*’²² According to another opinion, ‘*EU citizenship is a distinct social and legal status putting the individual in a direct legal relationship with the EU.*’²³ Though the same scholar has highlighted that, under international law, EU citizenship cannot be understood as an actual citizenship or nationality.²⁴ A similar concept exists only in Africa, under the umbrella of the Economic Community of West African States (ECOWAS).²⁵

Against this background, when it comes to conceptualising EU citizenship, one has to point out that its personal scope ‘*is defined in terms of nationality of a Member State*’²⁶, since EU citizenship ‘*cannot be acquired alone, nor can it be forfeited without giving up nationality.*’²⁷ On this basis, EU citizenship can be regarded as secondary, given that it is strongly linked to nationality.²⁸ To be precise, ‘*the relationship of EU*

18 Kadelbach, 2009, p. 452., Craig and de Búrca, 2015, p. 854.

19 Oosterom-Staples, 2018, p. 439.

20 Fábíán, 2018, p. 143.

21 Article 2(1) of the Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

22 Csehi, 2025, p. 77.

23 Worster, 2018, pp. 351–352. This relationship between a citizen and the environment in which he or she lives (the EU in our case) is examined by the “citizenship practice theory.” See in this sense Wiener, 2017, p. 255.

24 Worster, 2018, pp. 350–351. In this regard, it is salient to point out that even though nationality and citizenship are interdependent, they “*are not congruent,*” as citizenship ‘*describes the adherence to a body politic in a way that identifies a person as a full member thereof.*’ Kadelbach, 2009, p. 449. Nonetheless, in this article we will use “*nationality*” and “*citizenship*” interchangeably, in order to avoid confusion when reviewing the case law of the CJEU.

25 Under Article 1 of the Revised Treaty of the ECOWAS, community citizen means ‘*any national of Member States who satisfy the conditions stipulated in the Protocol defining Community citizenship.*’

26 Oosterom-Staples, 2018, p. 431.

27 Kadelbach, 2009, p. 451.

28 Varga, 2019, p. 181.

*citizens to the European Union is limited to the fact that the state of their nationality [...] is a member of the European Union.'*²⁹

It is precisely this relationship between national citizenship and EU citizenship that raises the main questions. By linking EU citizenship to nationality, the rights associated with it³⁰ (i.e. right to move and reside freely within the territory of the Member States,³¹ the right to vote and stand as a candidate in the European Parliamentary elections,³² the right to vote and stand as a candidate in the municipal elections in the Member State in which he resides,³³ right to protection by diplomatic and consular authorities,³⁴ right to petition,³⁵ right to apply to the European Ombudsman,³⁶ and the right to information and access to documents³⁷ are essentially subject to national regulations. On this basis, EU citizenship appears as a legal institution within the multilevel constitutional system³⁸ that lies at the intersection of national and EU levels. According to Stefan Kadelbach, from the perspective of multilevel constitutionalism, EU citizenship is *'a mere subsidiarity institution that expresses the existing degree of joint policy organised at the Union level in terms of individual rights.'*³⁹ At the same time, even though EU citizenship *'contributes to the democratisation of the EU,'*⁴⁰ It is not connected to a given community.⁴¹ Due to this shortcoming, *'the Union regarded as a*

29 Ganczer, 2022, p. 36.

30 Some of these rights related to the EU citizenship are affiliated with nationality, whilst others are not. Gyeney, 2023, p. 308. In the meantime, some scholars consider that relating citizenship only to rights might be problematic, since *"rights are central to citizenship, but only if they are linked to the principal source of legitimation: the citizens of the polity."* However, the issue of the nature of polity is *"still an unanswered question"* in the European integration, that's why EU citizenship is *"hard to position."* See Seubert, 2018, p. 27.

31 Article 20(2) point a) and Article 21 of the Functioning of the European Union.

32 Article 20(2) point b) of the Functioning of the European Union. With regard to the right to vote and stand as a candidate in the European Parliamentary elections, it is necessary to mention the *Delvigne* judgment (Judgment of 6 October 2015 in Case C-650/13 Thierry Delvigne v Commune de Lesparre Médoc and Préfet de la Gironde) of the CJEU, which specifically addressed this political dimension of EU citizenship. In essence, the CJEU recognised in the Judgment that Article 39 (2) of the Charter of Fundamental Rights of the European Union (*'Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot'*) recognises the participation of EU citizens in elections. See Gyeney, 2020, p. 11.

33 Article 22 of the Functioning of the European Union.

34 Article 20(2) point c) and Article 23 of the Functioning of the European Union.

35 Article 20(2) point d) of the Functioning of the European Union.

36 Article 24(3) of the Functioning of the European Union.

37 Article 24(4) of the Functioning of the European Union.

38 According to Stefan Kadelbach, any *'parallel considerations between national and Union citizenship only make sense when considering this background [i.e. of a multilevel system].'* Kadelbach, 2009, p. 452.

39 Kadelbach, 2009, p. 470.

40 Lenaerts, 2016, p. 164. Besides indirect democracy, a form of participative democracy is also linked to EU citizenship, namely the citizens' initiative. See Lenaerts, 2016, pp. 164.

41 Lashyn, 2021, p. 364.

“compound of states” [...] cannot currently possess a legitimising community of its own.⁴² Nevertheless, one should not forget that the establishment of EU citizenship was a major step in the process of constitutionalisation,⁴³ and was part of the ‘attempt to move from a mainly economic community to a political union.’⁴⁴

If we examine this relationship from the perspective of competences, certain aspects are particularly noteworthy. It goes without saying that one of the most pivotal characteristics of nationality is the discretionary power of states in this regard.⁴⁵ In other words, it falls within the exclusive competence of states to determine the exact requirements for acquiring or conditions for losing citizenship; i.e., this issue falls within the scope of the *domain réservé*.⁴⁶ This is confirmed likewise by Article 3(1) of the European Convention on Nationality, adopted by the Council of Europe in 1997, under which ‘each State shall determine under its own law who are its nationals.’⁴⁷ At the same time, in recent years, the CJEU has issued several rulings that set certain limits on this discretionary power. For example, the CJEU highlighted that ‘Member States must, when exercising their powers in the sphere of nationality, have due regard to EU law and, in particular, to the principle of proportionality.’⁴⁸ Taking relevant EU law provisions into account is particularly important in regulating the loss of nationality, as this also entails the loss of EU citizenship. Against this background, it can be said that:

‘it is for the Court [of Justice of the European Union] to rule on the questions referred by the national court which concern the conditions in which a citizen of the Union may, because he loses his nationality, lose his status of citizen of the Union and thereby be deprived of the rights attaching to that status.’⁴⁹

42 Kadelbach, 2009, p. 470.

43 Lashyn, 2021, p. 362.

44 Craig and de Búrca, 2015, p. 852.

45 Varga, 2019, p. 174.

46 Ganczer, 2022, p. 29.

47 Article 3(1) of the European Convention on Nationality.

48 Judgment of 5 September 2023 in Case C-689/21 X v Udlændinge- og Integrationsministeriet. Reasoning 30.

49 Judgment of 2 March 2010 on Case C-135/08 Janko Rottmann v Freistaat Bayern. Reasoning 46.

Based on these findings, certain scholars concluded that *‘the Court adopted a proactive stance in the effort to “construct” a new status for European nationals.’*⁵⁰ Moreover, these CJEU conclusions likewise influenced the case law of the constitutional courts of the Member States. For example, in Decision No. 362 of 2019, the Constitutional Court of Romania expressly referred to these findings.⁵¹

In this context, it is of utmost importance to review recent CJEU case law to assess how EU citizenship affects domestic nationality law. Citizenship is a public law relationship between a state and an individual, entailing both rights and obligations.⁵² The claim that EU citizenship affects this relationship raises unique questions. For example, as some scholars observed, *‘tensions between member countries and the Union regarding the personal scope of EU citizenship arise regularly.’*⁵³

Similarly, one might venture to observe a *‘shift from nationality to residence as a criterion for the acquisition of certain national citizenship rights’* as *‘Union citizenship generates rights for nationals of a Member State by virtue of their residing in another Member State.’*⁵⁴ In this context, the principle of non-discrimination must also be mentioned. Under Article 18 of the Treaty on the Functioning of the European Union, *‘[w]ithin the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be*

50 Skrbic, 2019, p. 19. Nonetheless, Skrbic also pointed out that cases concerning EU citizenship are decided by the CJEU based on two different approaches: in certain judgments, the Court focuses primarily on Article 20(1) of the Treaty on the Functioning of the European Union and on the status of EU citizenship as such, whilst the majority of cases related to EU citizenship are still viewed from the perspective of the freedom of movement (Article 21 of the Treaty on the Functioning of the European Union) and thus decided on the basis of a “functional”, internal market-oriented approach. See Skrbic, 2019, pp. 19–20.

51 Decision No. 362 of 2019 of the Constitutional Court of Romania. Published in Official Gazette No. 568 of 2019. Reasoning 34–36. The Constitutional Court also emphasised that *‘the withdrawal of Romanian citizenship also results in the loss of the citizenship of the European Union.’* Reasoning 34.

52 Gyeney, 2023, p. 307. By analogy, EU citizenship should represent a public law relationship between a natural person and an international organisation. See Fábíán, 2018, 143. Yet this relationship is a complex issue from a constitutional law perspective, raising serious questions. Moreover, contrary to national citizenship, there are no additional duties attached to EU citizenship. See Kochenov, 2014, pp. 482–498.

53 Lashyn, 2021, p. 364.

54 Besson and Utzinger, 2008, p. 194. It is interesting to note that, as early as 1998, certain scholars argued that the basis of EU citizenship should be residence, instead of nationality, as this would unify differences created by divergent nationality laws. Garot, 1998, p. 229, 233. At the same time, this solution would excessively extend EU citizenship and the rights associated with it, since even third-country nationals (if they reside in a Member State of the EU) could be eligible for EU citizenship. For this reason, it would be difficult to accept such a solution.

prohibited.⁵⁵ In essence, this principle protects EU citizens from becoming “*second class citizens*” in a Member State of which they are not nationals.⁵⁶

In addition to these issues, the recent loss of EU citizenship resulting from the loss of nationality of a Member State has also raised concerns. In what follows, the present contribution will reflect on the loss of EU citizenship through an in-depth analysis of recent CJEU case law.

3. Cases Related to the Loss of EU Citizenship

Generally, one can observe that the CJEU ‘*has used its competence to mould Member States’ competence in nationality matters, by requiring them to observe international and EU standards*.⁵⁷ Thus, recent case law seeks to limit measures taken by Member States that affect EU citizenship.⁵⁸ This activist case law can, to some extent, be justified, as the CJEU wishes to protect EU citizenship and, in particular, the rights associated with it. Moreover, there are several positive aspects of this activist approach. For example, the CJEU established that ‘*the Treaty provisions on EU citizenship create certain autonomous rights, independent of other Treaty provisions governing movement and residence*.⁵⁹ It is beyond doubt that this finding strengthens the protection of certain rights. Similarly, although Member States remain competent to regulate the requirements for acquiring or losing citizenship, the CJEU emphasised the need to respect certain fundamental principles, such as the principle of proportionality⁶⁰ (as expressed in the *Rottmann* case⁶¹) or loyalty towards the European community⁶². Thus, ‘*EU law does not directly regulate the conditions under which Member States confer nationality, but indirectly regulates aspects of this process*.⁶³

Recently, loss of EU citizenship has arisen in two radically different cases. In general, such citizenship can be lost in two ways: (I) by losing the nationality of a Member State, (II) by the Member State’s withdrawal from the EU.⁶⁴ The two cases presented below illustrate how these scenarios can occur in practice.

55 Article 18 of the Treaty on the Functioning of the European Union.

56 Oosterom-Staples, 2018, p. 435.

57 Oosterom-Staples, 2018, p. 446.

58 Papp, 2022, p. 44.

59 Craig and de Búrca, 2015, p. 853.

60 Oosterom-Staples, 2018, p. 446.

61 Ganczer, 2022, p. 31.

62 Kadelbach, 2009, p. 451.

63 Craig and de Búrca, 2015, p. 854.

64 Takó, 2022, pp. 106–108.

In the first case, the High Court of Eastern Denmark referred a question to the CJEU seeking a preliminary ruling.⁶⁵ According to the facts of the case, the applicant in the proceedings before the national court (hereinafter X) was a dual US–Danish citizen, who lost his Danish citizenship at the age of 22 pursuant to Article 8(1) of the Law on Danish nationality, under which

*‘[a] person born abroad who has never been resident in Denmark and who has also not spent time there in circumstances indicating a close attachment to Denmark shall lose his or her Danish nationality upon reaching the age of 22, unless he or she would thereby become stateless. The Minister for Refugees, Migrants and Integration, or the person whom he or she authorises for that purpose, may, however, upon application submitted before that date, allow nationality to be retained.’*⁶⁶

Although X had applied to retain her citizenship, she did so after reaching the age of 22; thus, the Danish authorities deduced that the second sentence of Article 8(1) could not apply to her. Moreover, the authorities likewise found that X had spent a maximum of 44 weeks in Denmark during her life, which is insufficient to develop a close relationship with the state. In 2018, X contested the decision of the Danish authorities before the Copenhagen District Court, referring, *inter alia*, to the case law of the Court of Justice, in particular to the *Tjebbes and Others*⁶⁷ Judgment.⁶⁸

In his Opinion, Advocate General Szpunar emphasised that, based on the case law of the CJEU, two main principles have to be taken into account when examining the consequences of loss of nationality, namely (I) *‘the competence of the Member State as regards the acquisition and loss of nationality must be exercised having due regard to EU law’*⁶⁹ and (II) *‘judicial review must be carried out in the light of EU law and, in particular, in the light of the principle of proportionality.’*⁷⁰

65 Judgment of 5 September 2023 in Case C-689/21 X v Udlændinge- og Integrationsministeriet.

66 Article 8(1) of the Law on Danish nationality.

67 Judgment of 12 March 2019 in Case C-221/17 M.G. Tjebbes, G.J.M. Koopman, E. Saleh Abady, L. Duboux v Minister van Buitenlandse Zaken. The case in question arose in relation to a substantially similar Dutch national regulation.

68 Judgment of 5 September 2023 in Case C-689/21 X v Udlændinge- og Integrationsministeriet. Reasoning 10–24.

69 Opinion of Advocate General Szpunar in Case C-689/21 X v Udlændinge- og Integrationsministeriet. Reasoning 45.

70 *Ibid.*, Reasoning 46.

In examining the question referred for preliminary ruling, the CJEU emphasised that it is not incompatible with EU law to prescribe the loss of citizenship for reasons of public interest,⁷¹ however

*'having regard to the importance which primary EU law attaches to citizenship of the Union which [...] constitutes the fundamental status of nationals of the Member States, it is for the competent national authorities and the national courts to determine whether the loss of nationality of the Member State concerned, when it entails the loss of citizenship of the Union and the rights attaching thereto, has due regard to the principle of proportionality.'*⁷²

At the same time, the CJEU stressed that, although Member States may require that an application for retaining citizenship be submitted within a reasonable time,⁷³ this should be preceded by informing the person concerned⁷⁴ and

*'that person must have a reasonable period in which to make a request to the competent authorities for an examination of the proportionality of the consequences of that loss and, where appropriate, the retention or recovery ex tunc of that nationality.'*⁷⁵

Furthermore, the examination of the request for retaining citizenship *'must include an individual assessment of the situation of the person concerned.'*⁷⁶

Based on all these findings, the CJEU concluded that Article 20 of the Treaty on Functioning of European Union and Article 7 of the Charter of Fundamental Rights of the European Union do not preclude a national legislation such as the Danish one. This is true provided that (I) within a reasonable time (which cannot begin to run before the given person was duly informed), the persons concerned can lodge an application for the retention of the nationality; (II) the national authorities, during the course of the procedure for retention, can review the proportionality of the consequences of the loss of citizenship from an EU law perspective; and (III) where appropriate, the procedure allows the *ex tunc* recovery of citizenship.⁷⁷ These conclusions of the CJEU

71 Judgment of 5 September 2023 in Case C-689/21 X v Udlændinge- og Integrationsministeriet. Reasoning 37.

72 Ibid., Reasoning 38.

73 Ibid., Reasoning 43.

74 Ibid., Reasoning 48.

75 Ibid., Reasoning 50.

76 Ibid., Reasoning 54.

77 Ibid., Decisional part.

(which also bear the hallmarks of judicial activism in our view⁷⁸) accurately reflect the impact of EU citizenship on the discretionary powers of the Member States about the rules governing citizenship.

The second relevant judgment arose in the context of Brexit.⁷⁹ EP, a UK citizen, had been living in France for several decades and was married to a French citizen. Nonetheless, following the UK's withdrawal from the EU, EP was removed from the electoral roll in France, thereby deprived of the right to vote in municipal elections. EP argued before the French domestic courts that she was also unable to participate in UK elections, as under the applicable national provisions, persons who have resided abroad for more than 15 years are not eligible to vote. On this basis, EP contended that the withdrawal of the UK from the EU cannot lead to an automatic loss of the EU citizenship status and, by extension, the rights associated with it. Considering these facts, the Court of Auch referred questions to the CJEU for a preliminary ruling.⁸⁰ It is evident that the factual background of the present case differs significantly from that of the previous one. Whilst in the previous case, EU citizenship ceased upon the loss of the nationality of a Member State, in the present case, it was the withdrawal of a Member State (the UK) that led to the termination of EU citizenship.

The Court of Justice, whilst examining the request for preliminary ruling, emphasised that the inseparable link between EU citizenship and the possession of a nationality should apply not only when it comes to establishing, but also in the case of retention of EU citizenship.⁸¹ Thus, since 1 February 2020, UK nationals are no longer citizens of a Member State, but nationals of a third country.⁸² Accordingly, they have

78 Generally, as mentioned above, the CJEU has taken an activist position when examining issues related to EU citizenship. In this way, for example, *'both the scope ratione personae and the scope ratione materiae of Union citizenship rights have gradually been broadened.'* Besson and Utzinger, 2008, p. 185. Furthermore, *'[a]s a result of this extremely active case-law, EU citizenship is gradually emancipating and turning into a more inclusive form of social and political membership, which is in line with universal human rights guarantees.'* Besson and Utzinger, 2008, p. 192. According to another opinion expressed in the legal literature, the activist case law affects the discretionary powers of the Member States in four main areas: *'1. proportionality assessments in cases of withdrawal of citizenship [...]. 2. Combating the commercialization of citizenship [...]. 3. Procedural reforms in naturalization [...]. 4. Limits of state discretion.'* Chronowski, 2025, p. 76.

79 Judgment of 9 June 2022 in Case C-673/20 EP v Préfet du Gers and Institut national de la statistique et des études économiques (INSEE). Some scholars argue that "EU citizenship was an important factor" in Brexit. Schmidt, 2017, p. 17. This further highlights that an analysis on the institution is topical.

80 Ibid., Reasoning 30–37.

81 Ibid., Reasoning 48.

82 Ibid., Reasoning 56.

lost their EU citizenship and the rights attached to this status.⁸³ This is the automatic result 'of the sole sovereign decision taken by the United Kingdom to withdraw from the European Union.'⁸⁴ Taking into account all these factors,

*'neither the competent authorities of the Member States nor their courts may be required to carry out an individual examination of the consequences of the loss of the status of citizen of the Union for the person concerned, in the light of the principle of proportionality.'*⁸⁵

As evident, this conclusion of the CJEU is significantly different from the one set out in the above-presented *Udlændinge- og Integrationsministeriet* case. At the same time, as already mentioned, the facts of the case were completely distinct. Emphasising this, the CJEU also pointed out that

*'[t]he cases in which the Court set out the obligation to carry out an individual examination of the proportionality of the consequences of the loss of Union citizenship concerned specific situations falling within the scope of EU law, where a Member State had withdrawn its nationality from individual persons, pursuant to a legislative measure of that Member State [...] or an individual decision taken by the competent authorities of that Member State. The case law arising from those various judgments cannot therefore be applied to a situation such as that in the main proceedings.'*⁸⁶

As a result of these findings, one cannot require Member States to treat UK nationals as EU citizens or to recognise the rights attached to this status, such as the right to vote or stand as a candidate in municipal elections.⁸⁷ At the same time, it is worth mentioning that following Brexit, both the UK and the remaining 27 Member States have secured the preservation of some acquired rights through numerous agreements (e.g., the UK has managed to conclude bilateral agreements with Poland,

83 *Ibid.*, Reasoning 58. At the same time, some scholars have reached a different conclusion. According to William Thomas Worster, the loss of EU citizenship because of Brexit is arbitrary and violates the principles of non-retroactivity and non-discrimination. See Worster, 2018, pp. 341–363.

84 Judgment of 9 June 2022 in Case C-673/20 EP v Préfet du Gers and Institut national de la statistique et des études économiques (INSEE). Reasoning 59. According to certain views expressed in the legal literature, whilst it is a logical consequence that as a result of Brexit, citizens of the UK have lost their EU citizenship, this 'negatively affects EU citizenship insofar this concept—apart from granting rights—aims to create a bond between the citizen and the EU.' Schewe, 2020, p. 137.

85 *Ibid.*, Reasoning 61.

86 *Ibid.*, Reasoning 62.

87 *Ibid.*, Reasoning 71.

Luxembourg, Portugal, and Spain on the right to vote or stand as a candidate in municipal elections).⁸⁸

4. Conclusions

The establishment of EU citizenship – and thus the creation of a strong, direct link between the citizens and the EU – was a long-standing issue that influenced discussions on European integration for decades. At the same time, reservations were expressed from the outset by certain Member States, particularly concerning their discretionary powers to regulate national citizenship. Under the current provisions of the Treaties, EU citizenship is linked to nationality and thus occupies a fragile position within the multilevel constitutional system of the EU.

In addition, the activist case law of the CJEU—which is useful in that it protects the rights associated with this status—may also raise questions about the role of EU citizenship in a multilevel constitutional system. As Imre Vörös pointed out, due to the case law, *'new areas of law are coming into collision'*.⁸⁹ Nonetheless, it is salient to emphasise that the CJEU seems to have found the right balance on these issues thus far. As highlighted in the Hungarian legal literature:

*'[i]t follows from the case law of the CJU that, in practice, it always seeks to strike a balance between national and EU interests. On the one hand, it respects the discretionary power of the Member States, as they continue to have competence over the content of nationality laws [...]. On the other hand, it recognises the principle of effective connection in the nationality laws of the Member States.'*⁹⁰

Recently, some highly relevant questions have arisen regarding the loss of EU citizenship, both under certain national regulations and as a result of Brexit. These two situations led to different conclusions of the Court of Justice. The main findings of the two judgments presented in this contribution are summarised in the table below.

88 Gyeney, 2023, pp. 314–315.

89 Vörös, 2012, p. 241.

90 Chronowski, 2025, p. 74. At the same time, according to other Hungarian scholars, the Founding Treaties did not allow for such an expansive interpretation as that adopted by the CJEU in relation to an issue falling within the *domain réservé* of the Member States. See Ganczer, 2022, p. 41.

Table 1: Review of the recent case law of the CJEU (source: author's own research)

Case of <i>X v Udlændinge-og Integrationsministeriet</i>	Case of <i>EP v Préfet du Gers and Institut national de la statistique et des études économiques (INSEE)</i>
<p>A national legislation under which certain persons may, under certain circumstances, lose their nationality and thus their EU citizenship is not contrary to EU law provisions, if:</p> <ul style="list-style-type: none"> (I) within a reasonable time (which cannot begin to run before the given person was duly informed), the persons concerned can lodge an application for the retention of nationality; (II) the national authorities – during the course of the procedure for retention – can review the proportionality of the consequences of the loss of citizenship from an EU-law perspective; (III) where appropriate, the procedure allows the <i>ex tunc</i> recovery of citizenship. 	<p>The loss of EU citizenship as a result of the withdrawal of a Member State from the EU is an automatic consequence of that state's sovereign decision. This situation cannot be regarded as equivalent to the loss of EU citizenship resulting from the loss of nationality, which is governed by national regulations.</p> <p>In this context, '[t]he loss of rights of UK citizens is the logically consistent consequence of the democratic decision taken and in which the majority decided to leave the EU.'⁹¹</p>

91 Schewe, 2020, p. 135.

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