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**Citizenship as a Primary Legal  
Aspect of Self-Identity  
(Or Just Self-Labeling)?**

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## **Citizenship as a Primary Legal Aspect of Self-Identity (Or Just Self-Labeling)?**

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### **Abstract**

In this paper I'd concentrate mostly on citizenship as a primary legal aspect of self-identity, however, till now there are a lot of discussions on this issue in order to determine possible strong ideological baggage, package of rights and duties and full membership in a state (features of citizenship) from everyday and personal complexity of social interaction (features of self-identity).

During last century concepts of citizenship and identity were very popular especially among sociologists (D. Beland, L. Jamieson, T.H. Marshall, S. Sassen, Ch. Tilly and B.S. Turner). In majority they concentrated on issues of self-awareness, self-definition and self-consciousness because those features help to discover self-identity as a fundamental concept of selfhood. During the last 10 years a lot of European lawyers (S. Carrera, G.-R. de Groot, J. Habermas, Ch. Joppke, M. La Torre, P. Mouritsen, H. Schneider, J. Shaw, J.H.H. Weiler etc.) analyzed in their scientific researches a legal concept of citizenship which plays an essential role in constitutional determination of personal identity of a citizen.

In order to discuss citizenship-identity interrelation we need to analyze deeply concept of identity and to define more concrete its primary and other aspects. We should not forget that citizenship is also a legal and national identity, which usually determine 'people's relationship to a state'.

As we can observe personal identity is often a question of constitutional matters, therefore we emphasize that self-identity is not only a philosophic or sociological issue, but also a legal one mainly because of citizenship as its primary aspect.

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Modern correct application of person's identity issues is a very important tension in frames of such triangle: person – society – state. I'd like to explain that such importance depends first of all upon level of legal self-consciousness of a person, geopolitical, social and economic, demographic development of society and state's place on the international arena.

Usually, citizenship combines such key elements of identity as personal name (which has to be transcribed in official language of a state, usually according to the standards and traditions of the state concerned), nationality, ethnicity, language etc. Sometimes to abovementioned features we may add native language or official language of a state concerned and state religion. Definitely all these features play a sufficient role in general concept of citizenship at least from the legal anthropology point of view. As the main proves of that fact we can use provisions of Article 2 Section 1 of the US Constitution 1787, where it is stressed which person might be eligible for the post of the US President (some famous persons had a lot of problems with that norm in the past) or of the Article 2 of the Act of Settlement of the UK 1701, where it goes not only on succession order, but what is more sufficient on possible heir apparent according to his religious views.

Due to such peculiarities, it is reasonable to confirm that the concept of citizenship is a set of contractual relationships between the individual and the state concerned. In this case we may observe different kinds of contract relationships, for example: legal – to vote and to stay as a candidate in elections, political – to serve a military service in the UN peacekeeper troops, economic – to pay for visa for TCN's (third country nationals) to enter the EU, financial – to receive national social security, cultural – to be a sport fan for national football team attending the 2012 UEFA European Football Championship, religious – to be a Christian or a Muslim, etc.

Cassuto (2001) in his report for 2<sup>nd</sup> European Conference on Nationality "Challenges to National and International Law on Nationality at the Beginning of the New Millenium" says that 'nationality constitutes an objective component of identity'. Definitely, it would be hard not to support his opinion or even to oppose it. However, does option "to be French (German, Ukrainian or US) citizen, etc." corresponds "to feel like French (German, Ukrainian or American), etc."?

Thinking on the distinct link between nationality and identity, which seems to be obvious in principle, we try to answer how far it goes in terms of substance, precision and completeness from the legal point of view. Here we think first of all about all categories of persons: citizens, persons with dual / multiple citizenship, stateless people, refugees, asylum seekers, migrants and persons who have their permanent residence due to different reasons (educational, political, work, social and economic) abroad (legally or illegally). Possessing a nationality of a home country how do they identify themselves in a host country? Does it depend on being home country of such group of people, host country or just a transit country for them? What does citizenship mean in such situation: link between a person and a state; a specific bond; a full bunch of rights, freedoms and privileges or duties? Is citizenship an inherited feature

which is inalienable or can it be voluntary changed by a person? Definitely, there are various approaches on nationality and identity interrelations in terms of their variability, most widely accepted by European scholars, yet very debatable. All of them try to answer the only question: can someone by changing a nationality to remain the same person?

During last century issues on citizenship caused a lot of effective and serious discussions in Ukraine, Europe and all around the world. The main aim of them was to provide a precise legislative regulation and as a result there were adopted few international documents on the level of the UN and the Council of Europe, which later on were signed and ratified by a lot of democratic states, including Ukraine. All of them are dedicated to observe citizenship as a legal tradition and as a well-defined connection between territory (state) and a person, therefore, to search for an obvious link between person's nationality and identity, where a nationality is an objective element and proper part of identity because it helps a state to identify legally an individual (Weil, 2011: 17).

Honestly speaking, citizenship, however, is used to be a set of practices – legal, political, economic (social and financial) and cultural (linguistic and religious) on local, regional, national, international and transnational levels of globalized world, which have been influenced by the constitution and nationality law of particular countries. During last century the European scholars in their multiple researches were dealing often with the citizen as an individual with uniform and universal legal, political and economic rights, duties and privileges, however, in cultural and gender terms 'citizen' might be neutral.

Initially, the position of the UN concerning citizenship we can observe in the Article 12 of the Universal declaration of human rights, adopted by the United Nations General Assembly on 10<sup>th</sup> December 1948 in Paris, where it is stressed that 'everyone has the right to a nationality'. By recognizing the individual's right to claim a nationality, it became to be a 'marked trend', where personal identity becomes a source of nationality based on objective elements to do with private life and individual choices.

Later on, the citizenship concept as a 'real link between a state and a citizen' was launched in *Nottebohm* case (Liechtenstein vs. Guatemala) of 1955<sup>1</sup>, where was realized a principle of 'effective nationality', what means 'a genuine and effective link between a state and an individual which confers upon the state the opportunity to afford diplomatic protection' (Pilgram, 2011: 3). Such definition of nationality examines a 'crisp' legal interrelation between an individual and state, therefore demonstrates at least a strong connection between nationality and identity and determines a nationality as a component of personality and as a key element in integration of a person within a community.

Further, this basic idea of citizenship was applied in the European Union since 1992, where according to Kostakopoulou (2007) was created 'a

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<sup>1</sup> Nottebohm Case (Liechtenstein v. Guatemala; ICJ 1955; Reports 4p., p. 315)

design of citizenship beyond the nation state'. As a result there applied a motto of 'le citoyen à la une de l'Europe', which guaranteed unrestricted intra-EU circulation for people. The European Union citizenship was introduced by the Maastricht Treaty, which entered into force in on 1<sup>st</sup> November 1993 during J. Delors Commission, where in the Preamble the heads of state recorded that they were resolved 'to establish a citizenship common to nationals of their countries' (Jacobs, 2007:591). Finally, after long process of the European Union integration and enlargement in the Article 20(1) of the L-TFEU is emphasized that: 'Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship'.

Despite the fact that there might be used two different terms: 'nationality' and 'citizenship', the relationship between whose concepts is not fully clear, today both terms refer to the national state because both of them identify the legal status of an individual (which usually entails the specifics of whom the state recognizes as a citizen and the formal basis for the rights and responsibilities of the individual in relation to the state) in terms of state membership (Sassen, 2002; Bosniak, 2000). De Groot (2004) assumes to be obvious that 'nationality' refers to the formal link between a person and a state, whereas 'citizenship of the European Union' refers to the newly created status in the European Union law.

The traditional concept of the European Union citizenship conferred four specific rights to the every citizen of all 27 European Union Member States. According to the Article 20(2) of the L-TFEU every European Union citizen possesses such personal rights (in some sense freedoms, privileges or even advantages): right to move and reside freely, right to vote and to stay as a candidate in elections, right to enjoy the protection of diplomatic and consular authorities, right to petition and to address the institutions and advisory bodies. Doubtless, such norm of the European Union legislation seems to cause definite limitations and conditions for TCN's (third country nationals) on the ground of citizenship and therefore to be 'privileges' for the European Union citizens in meaning to receive an access to foreign (sometimes cross-border) education, medical service and work, etc. paying no attention to legal, economic and political boundaries or other potentially discriminatory obstacles.

More deeply the European Union citizenship concept was analyzed by different European scholars, such as C. Barnard (2008), P. Craig and G. de Burca, S. Carrera, D. Chalmers (2010), G.-R. de Groot and M. de la Torre (1998), J. Habermas (1994), Th. Huddleston, L. Jamieson (2002), Ch. Joppke, D. Kostakopoulou, P. Mouritsen, H. Schneider, J. Shaw (2011), J.H.H. Weiler, B. de Witte, etc.

Also, the concept of citizenship had been fully reviewed during last 30 years by the European Court of Justice and newly interpreted in its decisions in



such relevant and recent cases as *Micheletti 1992*<sup>2</sup>, *Martinez Sala 1998*<sup>3</sup>, *Grzelczyk 2001*<sup>4</sup>, *Baumbast 2002*<sup>5</sup>, *Garcia Avello 2003*<sup>6</sup>, *Bidar 2005*<sup>7</sup>, *Grunkin and Paul 2006*<sup>8</sup>, *Rottmann 2010*<sup>9</sup>, *Zambrano 2011*<sup>10</sup>, where the ECJ was able to give to the European Union citizenship concept some more logical extension, to inaugurate a new approach or at least a new doctrine regarding European Union citizenship rights and more substantial content than the European Union lawmakers and interpreters did before. Specifically, keeping in mind an almost ‘embryonic’ view of the European Union citizenship made already in early 1960-s in cases *van Gend en Loos*<sup>11</sup> and *Costa v ENEL*,<sup>12</sup> where the main focus was made on free movement of persons (basically on workers), on freedom of establishment and on freedom to provide services (Agustín José Menéndez, 2009: 35).

As Jacobs (2007) stressed in his research, the case-law of the ECJ on citizenship is ‘complex, rapidly evolving and often highly technical’. We may summarize their experiences of citizenship-identity and individual-state interrelations, which had been refracted through the lens of multiple different, often sensitive and sometimes controversial positions of the European Union Member States. The keynote of all of these judgments is that application of the European Union citizenship means to broaden the scope of the non-discrimination principle (in the context of market freedoms) and to be as an independent source of human rights.

I need to remind that citizenship often has a chilling effect for every individual because it is a legally accepted ingredient of self-identity and therefore a key element of legal anthropology. Undoubtedly, it makes a great impact on a place of a person inside of society and state.

Undeniably, the most significant meaning and powerful influence on the citizenship concept development has European convention on nationality, being one of the most advanced international instruments in the field of nationality, adopted on 6<sup>th</sup> November 1997. This convention is said to be a so called codification of the international customary law on citizenship, which is a good example to establish the possibility of treating nationality as a personal right and to provide much greater legal certainty in the matter for the individual

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<sup>2</sup> Case C-369/90 *Micheletti and Others v Delegacion del Gobierno en Catanbria* [1992] ECR I-4239

<sup>3</sup> Case C-85/96 *Maria Martínez Sala v Freistaat Bayern* [1998] ERC I-2691

<sup>4</sup> Case C-184/99 *Rudy Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve* [2001] ERC I-6193

<sup>5</sup> Case C-413/99 *Baumbast and R v Secretary of State for the Home Department* [2002] ECR I-07091

<sup>6</sup> Case C-148/02 *Carlos Garcia Avello v Belgian State* [2003] ERC I-11613

<sup>7</sup> Case C-209/03 *The Queen, on the application of Dany Bidar v London Borough of Ealing and Secretary of State for Education and Skills* [2005] ERC I-2119

<sup>8</sup> Case C-353/06 *Grunkin-Paul v Standesamt Niebüll* [2008] ERC I-7639

<sup>9</sup> Case C-135/08 *Janko Rottman v Freistaat Bayern* [2010], 2 March 2010

<sup>10</sup> Case C-34/09 *Gerardo Ruiz Zambrano v. Office National de l'emploi (Onem)* [2011], 8 March 2011

<sup>11</sup> Case 26/62, *van Gend en Loos v Netherlands Inland Revenue Administration* [1963] ECR I

<sup>12</sup> Case 6/64 *Costa v ENEL* [1964] ECR 585

(Cassuto, 2001:41). This document of the Council of Europe contains the international standards on nationality, consolidates general principles of international law, provides a new form of co-operation between European states enabling better co-ordination of their fundamentally challenging legislation in the sphere of citizenship and future resolving of possible conflicts of law. By the way, the definition of nationality in the Council of Europe's legal system is in large part bound up with the abovementioned *Nottebohm* judgment of the ICJ.

We might see the modern concept of citizenship as a synthesis of historical and geographical privileges for exact persons and their inherited identity, from one side, and some legal, political and emotional bond between a state and a person based on birthplace and bloodline, from the other. Initially, both *jus sanguinis* and *jus soli* are the basic ways to acquire the citizenship and therefore to demonstrate personal self-identity, according to their 'ethnic' or 'civic' conceptions respectively. Usually, *jus sanguinis* (bloodline) is connected with name of famous German philosopher J.G. Fichte and his concept of objective nationality, which is based on blood, race or language. It is a social policy by which nationality or citizenship is determined by having an ancestor who is a national or citizen of the state. His scientific opponent French philosopher and writer E. Renan gave a serious argument on *jus solis* (birthplace) concept in his discourse 'Qu'est-ce qu'une nation?' ("What is a Nation?") 1882. Here he characterized a subjective nationality, which is based on an every-day plebiscite of one's appurtenance: a right by which nationality or citizenship can be recognized to any individual born in the territory of the related state (Abraham, 2008:144).

Without any doubt, it should be taken into account Joppke's (2003) vision that '*jus soli* and *jus sanguinis* are flexible legal-technical mechanisms that allow multiple interpretations, combinations and configurations, and states have generally not hesitated to modify these rules if they saw a concrete need or interest for it'. However, it goes specifically on citizenship application by birth. Here we are not speaking about citizenship application by marriage or by naturalization, where personal identity corresponds to personal self-determination and national identity is not anymore an option.

Undeniably, sense of self-identity can be expressed through the sense of belonging to a community of values and therefore might draw the appropriate political and legal conclusions. Linked to its very nature citizenship establishes a legal connection between an individual and a state. In this situation, only an individual as a subject of such legal connection can be named a 'citizen' unless this citizenship might be legally (in no case arbitrary) withdrawn.

Separate information I'd like to provide in order to demonstrate that citizenship as a primary legal aspect of self-identity stays in Ukraine pretty sharp being a special qualified feature of the interrelations between a person, state and society. That is a basic reason why we consider citizenship in such multicultural, multi-religious and multinational country to depend, firstly, on the level of state's legal, geopolitical, socio-economic and demographic development; secondly, on geographical and historical definition and thirdly,

on level of civil society participation in citizen's everyday life. It must be not just self-labeling, but concrete example of self-awareness, self-definition and self-consciousness of all Ukrainians.

My country has a long-going history despite all parts of the modern Ukraine were separated since XIV century and till the end of World War II. They were parts of different European countries with different legal systems and traditions, different historical patterns, religious and language preferences, life styles etc. Even during a turbulent XX century (we can characterize it by periods of political upheaval, brutal dictatorship, forced famine, genocide, war, resistance movements, economic uncertainty and renewal of independence) territory of Ukraine was divided in several parts, which have been included into different European countries (Austria and Hungary, Czech and Slovakia, Poland, Romania and Soviet Union) with different ethnicity, language, religion (all features of identity), administrative and political structure, level of economic and industrial development.

That is completely true, it would be very difficult to define and to clarify received heritage in the sphere of identity because of Soviet Union activity over total territory of modern Ukraine after World War II. After the 'iron curtain' finally failed, among ordinary citizens of Ukraine there appeared in some cases a 'seduction' or an advantage to restore their Polish, Hungarian, Slovak, Romanian background and to go abroad, to live, to receive a higher education and to work there (legally or illegally). In the other cases this was the only possibility to stay alive because of different reasons mentioned before.

Properly speaking about current legislation on citizenship in Ukraine, I need to remind that it consists of the Constitution 1996, adopted on 28<sup>th</sup> June 1996 (there is the only one provision on single citizenship in Article 4)<sup>13</sup> and basic nationality law, finally adopted on 18<sup>th</sup> January 2001, where in Article 1 is stated that 'citizenship of Ukraine is a legal link between an individual and Ukraine, which is demonstrated in reciprocal rights and duties'<sup>14</sup>.

Due to 'patchy' identity situation on domestic level (taking into account at least language & religion & ethnicity situation); influence of our European Union neighbor countries (Hungary, Poland, Romania and Slovakia) or ex-Soviet republics (like Belarus, Moldova and Russia) or especially of their political & economic & cultural 'interventions' and pressure on the international level we have a very challenging situation on citizenship-identity vector. 'To be Ukrainian' does it mean 'to be a citizen of Ukraine' or 'to speak Ukrainian'<sup>15</sup> (here we are not speaking about ethnicities, which officially and legally identify themselves as national minorities in Ukraine)?

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<sup>13</sup> Constitution of Ukraine, Law of Ukraine, № 254к/96-ВР, 28.06.1996 [in Ukrainian].

<sup>14</sup> Law of Ukraine on Nationality, № 2235-III, 18.01.2001 [in Ukrainian]

<sup>15</sup> Taking into account that there is only one official language in Ukraine – Ukrainian (due to Article 10 of the Constitution of Ukraine), and all official workflow is done only in this particular language and to know Ukrainian is one of basic requirements for naturalization as a way to acquire Ukrainian citizenship, clarified in the abovementioned Law of Ukraine on Nationality, Article 9.

Useful and precise argumentation due regarding self-identity and citizenship issues we can find in final version of the ECtHR judgment in *Bulgakov v. Ukraine* case of 31<sup>st</sup> of March 2008<sup>16</sup>, where in the Court's opinion (p.49 of the judgment) must be clearly distinguished name coinage in official state language due to its spelling rules and rights of ethnic minorities to apply names according to their traditions and confirmed by the Law on national minorities on Ukraine of 25<sup>th</sup> June 1992<sup>17</sup>.

Almost all our neighbor countries seduce our citizens to break Ukrainian laws by clear perspective to apply for passports of our neighbour countries without any delay (specifically it goes on the neighbor European Union Member States or Russia) in order to have some benefits<sup>18</sup> and therefore to receive a dual citizenship, what is *de jure* prohibited in Ukraine. But *de facto* a lot of people, who lives in West Ukraine have passports of Poland, Hungary or Romania or in the East and South parts of Ukraine<sup>19</sup> possesses passport of Russia. Again, in this case we are not speaking about ethnicities, which officially and legally identify themselves as national minorities in Ukraine, but about the situation which can be characterized by simple words – fashion and advantage.

Fashion in both identity and citizenship is not legally motivated or binding, however, some Ukrainian scholars emphasize that such specific dual citizenship is pretty dangerous for Ukraine's sovereignty and territorial indivisibility. Even some European researchers (Sassen, 2002; Spiro, 2003) confirm fears of Ukrainians by talking on perfect possibility of dual (or multiple) citizenship to override the importance of national citizenship as an inherently part of a Ukraine's sovereignty than it once was.

### ***Results & discussion***

It is becoming evident today that the self-identity has multiple dimensions and citizenship is used to be its primary legal aspect. Despite all possible transformation of identity over the last century the essential features of citizenship has not been changed much.

It must be noted, that some of the major transformations in citizenship concept occurred during last few years under the impact of world globalization, however, citizenship (local, national, transnational) as a legal status of a person reminds to consist of fundamental human rights, freedoms, duties and sometimes privileges in various spheres of social life.

<sup>16</sup> ECHR, *Bulgakov v. Ukraine*, no. 59894/00, judgment of 11<sup>th</sup> September 2007

<sup>17</sup> Law on national minorities on Ukraine, № 2494-XII, 25.06.1992 [in Ukrainian]

<sup>18</sup> specifically to travel into the EU without visa (keeping in mind 2004 and 2007 waves of the EU enlargement) by which the EU Member States are 'shifting towards a selective acceptance' can separate 'wanted' incomers from 'unwanted'

<sup>19</sup> specifically in Crimea, where are settled thousands of Crimean Tatars, deported after World War II by the Soviet authorities, who are Muslims, speak Crimean Tatar, identify themselves as citizens of Ukraine and struggle till now with retired Soviet (in most cases communist party leaders), who identify themselves as Russian-speaking people, possess latently dual Russia / Ukraine citizenship, are sure that crash of the USSR happened accidentally and Ukraine's independence would last just briefly

As we can observe personal identity is often a question of constitutional matters, therefore we emphasize that self-identity is not only a philosophic or sociological issue, but also a legal one, mainly because of citizenship as its primary aspect deals with constitutional matters. Therefore, we are sure that a research of citizenship concept' sources, deep analysis of its evolution and interconnection with personal identity deserves an additional attempt to study being one of the main modern European humanitarian standards and playing a prior role in personal self-consciousness and self-determination.

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