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How does one un-become a European citizen? Reflections on the Janko Rottmann decision

Citizenship is undeniably one of the most investigated topics within recent years; it has been on the agenda of scholars from various disciplines, politicians, governments and the greater public, alike. There is an impressive literature that investigates its conditions, content, limits, etc., while expanding the vocabulary designed around it. Political, social, cultural, environmental, cosmopolitan or post-national citizenship are some of the variations that capture the fascination one has with questions about what constitutes belonging; who is entitled to it or how it is changing under forces such as globalization, industrialization, liberalization, the spread of human rights or mass migration. ENACT as a project proposes a specific understanding of citizenship, which is theorized through the lens of acts of citizenship.¹ These acts reveal actors, sites and scenes that allow for contestation and the reframing of citizenship. Legal acts of deprivation of citizenship may not be the most obvious manner in which citizenship is enacted but they point out to a certain type of citizenship narrative that emphasizes the type of citizenly values states choose to valorize and prioritize (the law-, moral – abiding citizen as the ideal prototype of citizen).

In this paper, I will look from the perspective of acts of citizenship at a decision of the European Court of Justice dealing with the impact of a national administrative decision of withdrawal of citizenship due to fraud upon the status of European citizenship. The questions that I want to ask are: Can judicial decisions be considered acts of citizenship? Do they constitute actors; reveal new sites of citizenship enactment? What is their disruptive effect? One may be a bit skeptical about legal acts being described as disruptive, law is after all about order, logical reasoning, making sense of the world in an orderly fashion, but disruptiveness, if read as originality and innovation, can be an important tool for ensuring that law corresponds to reality and that it fulfills its functions. The ECJ’s decision in *Rottmann* does seem to have a potential for disruptiveness; it has already stirred a lot of interest within the legal world and most legal journals will feature an analysis of the decision and its implications for European and national citizenship. In addition, the EUDO Citizenship Observatory (a web page dedicated to nationality law) has launched an online discussion about *Rottmann* and several leading scholars have written contributions on the decision’s implication for European citizenship from different perspectives (constitutional, migration

¹ For a general description of ENACT and its research agenda see <http://www.enacting-citizenship.eu>

law etc.).² More importantly, *Rottmann* poses questions about the limits and limitations of European citizenship and forces us to consider them in unexpected scenarios.

Acts of citizenship, law and enacting citizenship

This section draws extensively on Isin and Nielsen's theory of acts of citizenship and its purpose is to set the theoretical background against which the decision of the ECJ will be analyzed as well as provide a synthesis of what acts of citizenship are. Isin and Nielsen's theory of acts of citizenship should be seen within the larger field of critical citizenship studies, which has emphasized the need to view status as a contested concept and shifted attention to the interplay between status and habitus. Practices through which claims are articulated and subjectivities formed reveal the conditions under which claim making subjects enact themselves as citizens³. The conceptual leap from status and habitus (seen as separate entities) to the interplay between the two, has consequences for the understanding of citizenship as legal status, since in this framework, subjects can enact citizenship regardless of their status. Conceptually at least, this marks the opening of citizenship towards categories previously ignored or marginalized as well as creates potentialities for negotiating the formal, legal boundaries of citizenship. In Isin's words theorizing acts of citizenship means "an approach that focuses on an assemblage of acts, actions and actors in a historically and geographically concrete situation, creating a scene or state of affairs"⁴. Acts are ruptures in the given; creative breaks that make social transformation possible.

There are three principles identified by Isin in the theory of acts of citizenship:

Principle 1: Interpret acts through their grounds and consequences, which includes subjects becoming activist citizens. The *activist citizen* distinguishes himself from the *active citizen* who merely acts out already existing scripts (the last type of citizen is the darling of government strategies on citizenship and migrant integration; for example, the UK proposal to shorten the path way to citizenship acquisition for those migrants who behave as *active citizens*).

Principle 2: Acts produce actors that become answerable to justice against injustice, the position of the interpreter of the act will be important since he/she will try to orient him/herself towards justice, yet acts themselves do not need to originate in anything;

Principle 3: Recognize that acts of citizenship do not need to be founded in law or enacted in the name of law. Acts must call law into question and sometimes break it; they must call established forms of responsibility into question. Those acting may not be a priori recognized in law but they enact themselves through acts they affect the law that recognizes them (pp. 38-39).

² <http://eudo-citizenship.eu/>

³ Isin, E and Nielsen, G (2008) Acts of citizenship, Zed Books, p. 18

⁴ Idem, p. 24

Related to the fact that acts are disruptive and challenge existing assumptions about citizenship is the idea of creativity; acts are seen as creative breaks that operate as awakenings and habitus re-working impetuses. When discussing whether acts can be creative, Melanie White argued that it becomes important to understand the points at which citizenship acts destabilize the bounds of habitual activity.⁵ According to her habits express the tendency of pressure to congeal and to fix action into specific states or snapshots of activity. Thus, acts help challenge the mode of understanding and the limits of citizenship; they question the boundaries and the inclusiveness/exclusiveness of the concept.⁶ Acts of citizenship are creative even if they do not impose or lead to actual or immediate change; it is enough that they present new possibilities of interpretation and increase the permeability of the boundaries; as creative endeavors acts imply a certain temporality, what White refers to as duration in her Bergson-based understanding of creativity. This suggests that acts may be conceived not only as individual actions having certain characteristics but also as processes of change. When trying to couple this vision with how change takes place in the legal field, and, more precisely, in the case of European citizenship, it can be argued that it is not always individual cases or decisions that lead to change. Usually, some cases challenge the existing status quo and then further cases built along the same lines leading finally to change. It took a relatively long time before the ECJ started to make use and afterwards develop the content of European citizenship. For nearly a decade after its introduction, European citizenship remained mainly a symbolic statement. It was not until the case of *Martinez Sala*⁷ in 1998 that the Court decided to use citizenship to advance the rights of EU citizens. However, one had to wait until *Grzelczyk*⁸ to have the ECJ's confirmation that Union citizenship is the fundamental status of the nationals of the Member States. The idea of solidarity as one of the basis of European citizenship has gone through a slow process of transformation and change and at time creative usage of the notion of European citizenship to advance the rights of EU citizens.⁹

Approaching European citizenship from the perspective of legal acts of citizenship should shed some light on the concept's boundaries, its intrinsic limitations and avenues for change. Approaching court decisions as creative acts could be an avenue for legitimacy building in the face of national discontent regarding an activist and creative court.

However, in Isin's theory of acts of citizenship, law appears as a problematic field, since it is against it that acts of citizenship acquire their disruptive quality. Nevertheless, it seems to me that one should not oversimplify things and resist the temptation to think of law as a fixed, formalized system of norms with little space for originality, change or reform; a sort of intransitive field. While law strives for generality, neutrality and predictability as attributes for order, conflict solving and legitimation, it must also allow for a certain amount of

⁵ White, M (2008) Can Acts of Citizenship Be Creative? In Isin and Nielsen (eds) supra cit, p. 52

⁶ Idem

⁷ [Case C-85/96](#) *María Martínez Sala v Freistaat Bayern*.

⁸ [Case C-184/99](#) *Rudy Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve* .

⁹ Mantu, S, (2008) The Boundaries of European Social Citizenship, Nijmegen, WLP.

flexibility otherwise it falls short of schizophrenia. Daniel Augenstein and Jennifer Hendry deal with this idea by referring to the “double institutionalization of law and legal culture within the stately legal order”.¹⁰ The starting point of their analysis is a theory developed in the 1960s by the anthropologist Paul Bohannan who argued that law must be doubly institutionalized through legal rules and social norms in order for it to claim social authority. Thus, “legal rules act upon social norms in that they engineer social change and react to social evolution through its legalization and juridification. Conversely, social norms act upon legal rules in that they trigger legal change and react to legal evolution through its incorporation at the level of custom”¹¹. However, the double institutionalization is not a stable condition but builds on the continuous tensions between legal rules and social norms: “law’s capacity to do something about the primary social institutions creates a lack of phase between legal rules and social norms, while at the same time changing social norms challenge what appears from the societal perspective to be an inherent conservatism of law geared towards the stabilization of normative expectations and the maintenance of the status quo”.¹² Augenstein and Hendry argued that Bohannan theory, which was designed at the nation state level, operates as well at the level of the EU, although in a more complex way. They argue, “EU rules affect Member States social norms by conferring rights and obligations directly on private parties, thus acting upon and being enacted into the state legal orders with their distinctive socio-cultural pedigree.”¹³ Law in the EU can also be cognized as a socially embedded normative practice that builds on an interpretation of legal rules and social norms. Thus, a certain amount of disruptiveness is necessary in order to maintain law’s relevance within a constantly changing reality, be it national or European. The rest of the paper will focus on how the decision in *Rottmann (the act)* disrupts the understanding of nationality within the EU legal space (*the given*).

***Rottmann* or how does one un-become a (European) citizen**

Mr. Rottmann is an Austrian born national. Austria joined the EU on 1 January 1995 and from that date Mr. Rottmann was also an EU citizen. In 1995 he was suspected of serious fraud in the exercise of his profession and he stood as accused before the Regional Criminal Court of Graz in July 1995. After these events, he left Austria and established residence in Munich, Germany. The criminal case before the Graz Court continued in his absence and a national arrest warrant was issued on his name in February 1997. In February 1998, Mr Rottmann applied to the city of Munich for naturalization; however, he did not disclose that he was the subject of criminal proceedings in Austria. In February 1999, he became a German citizen, at the same time losing his Austrian nationality, in accordance with Austrian nationality law. In August 1999, Austrian authorities informed the German ones that Mr Rottmann was the subject of a national arrest warrant and that he had appeared before the Graz criminal

¹⁰ Daniel Augenstein and Jennifer Hendry, The “ Fertile Dilemma of Law”: Legal Integration and Legal Cultures in the European Union, in TICOM Working Paper no 2009/06

¹¹ Idem p. 8

¹² Idem p.7

¹³ Idem p. 14

court. On the basis of this information, on 4 July 2000 the authorities of the Freistaat Bayern have withdrawn the naturalization certificate issued previously. The certificate was considered illegal since Mr. Rottmann had obtained German nationality fraudulently.

Mr. Rottmann challenged the decision of the regional administrative authorities arguing that as a consequence of the withdrawal decision he has become stateless contrary to public international law and that the status of stateless would also entail, in breach of Community law, loss of Union citizenship. The case went all the way to the Federal Administrative Court, which referred two questions to the ECJ:¹⁴

‘(1) Is it contrary to Community law for Union citizenship (and the rights and fundamental freedom attaching thereto) to be lost as the legal consequence of the fact that the withdrawal in one Member State (the Federal Republic of Germany), lawful as such under national (German) law, of a naturalisation acquired by intentional deception, has the effect of causing the person concerned to become stateless because, as in the case of the applicant [in the main proceedings], he does not recover the nationality of another Member State (the Republic of Austria) which he originally possessed, by reason of the applicable provisions of the law of that other Member State?’

(2) [If so,] must the Member State ... which has naturalised a citizen of the Union and now intends to withdraw the naturalisation obtained by deception, having due regard to Community law, refrain altogether or temporarily from withdrawing the naturalisation if or so long as that withdrawal would have the legal consequence of loss of citizenship of the Union (and of the associated rights and fundamental freedoms) ..., or is the Member State ... of the former nationality obliged, having due regard to Community law, to interpret and apply, or even adjust, its national law so as to avoid that legal consequence?’

The sources of law used by the ECJ to reach its decision included primary and other sources of EU law, relevant national legislation of both Germany and Austria and international and regional conventions relating to nationality and statelessness. The Treaty as such does not regulate the acquisition or loss of national citizenship status; yet the relationship between national citizenship and European citizenship did preoccupy the Member States which, in 1992, were eager to clarify that “The provisions of Part Two of the Treaty establishing the European Community relating to citizenship of the Union give nationals of the Member States additional rights and protection as specified in that Part. They do not in any way take away the place of national citizenship. The question whether an individual possesses the nationality of a Member State will be settled solely by reference to the national law of the Member State concerned.”¹⁵ Declaration No. 2 on the Nationality of a Member State, which

¹⁴ Case C-135/08 Janko Rottmann v Freistaat Bayern, decision of 2 March 2010, retrievable from www.eur-lex.europa.eu

¹⁵ The so-called Edinburgh decision (OJ 1992 C348, p. 1), which was the response of the Heads of State and Government to issues raised by Denmark regarding some of the Maastricht Treaty’s provisions. The impact of European citizenship on nationality was feared by the Danes, which were keen to uphold the superiority of nationality as the main marker of belonging.

was attached to the final act of the Maastricht Treaty, also states that “the question whether an individual possess the nationality of a member State shall be settled solely by reference to the national law of the Member State concerned”.¹⁶ In the past, the Court has clarified that Declaration No. 2 has to be taken into consideration as an instrument for the interpretation of the Treaty especially when determining its personal scope.¹⁷

The provisions of national law relevant for Rottmann’s case gravitate around the issue of loyalty, and the idea that one cannot be loyal to two countries at once (although both legislations do provide for exceptions). Both German and Austrian nationality legislations provided at that time that a national who acquires a new nationality loses German, respectively Austrian nationality unless he asks for a special approval from the authorities of their state of origin to maintain that nationality. It did not matter that the acquired nationality was one of another EU Member State, the underlying assumption remained that dual nationality meant disloyalty. So, despite becoming a German national, according to Austrian law, Mr. Rottmann lost Austrian nationality.¹⁸ Reacquisition of Austrian nationality would be possible but only via naturalization, similar to any other migrant seeking to become an Austrian national. Considering his brushes with the law and the requirement of good character upon naturalisation, it is questionable whether an application for naturalization would be approved. It is unclear the weight given by the ECJ to this mismatch between EU integration and the fact that for some states holding the nationality of another EU Member State was equated with disloyalty, but one can assume that it has at least raised questions about the cohesiveness of the EU legal order based on respect for the rule of law, human rights and human dignity, especially since it can lead to statelessness.

Further more, the ECJ took into consideration the major international and regional standards of nationality and especially the provisions dealing with loss as provided for in the Universal Declaration of Human Rights, the Convention on the Reduction of Statelessness and the European Convention on Nationality (adopted by the Council of Europe and signed by both Germany and Austria). Under all these instruments, loss of nationality is prohibited if it leads to statelessness, with the exception of nationality acquired by fraud, deception or misrepresentation. Another important benchmark is that loss of nationality must not be arbitrary, which I think explains the Court’s use of proportionality as the limiting force of state power to withdraw nationality.

For the ECJ, the first hurdle was to decide whether or not a national administrative decision withdrawing nationality and therefore leading to statelessness and loss of EU citizenship comes within its sphere of competence¹⁹. It found, against the arguments of the 8

¹⁶ Declaration No 2 on the nationality of a Member State, OJ 1992 C 191, p. 98

¹⁷ [Case C-192/99](#) *R v. Secretary of State for the Home Department, ex p. Manjit Kaur*.

¹⁸ Germany has recently changed the law and other EU nationals naturalizing in Germany do not have to give up their nationality of origin; for TCN’s the situation is unchanged, which suggests a reconfiguration of loyalty but only within the EU space.

¹⁹ **Article about ECJ competence**

intervening governments and of the European Commission that the issue is one which comes within the ambit of EU law.²⁰ The ECJ argued that similar to other areas of law (criminal legislation and rules of criminal procedure, rules governing a person's name, rules regarding direct taxation, rules regarding who is entitled to vote and stand as a candidate in European elections), nationality may be within the competence of the Member States but this does not mean that when the situation is covered by European law, Member States can proceed as they please; on the contrary they must respect European law when exercising their powers.

For the Court there is no doubt that this is a situation covered by EU law. It stated:

“it is clear that the situation of a citizen of the Union who, like the applicant in the main proceedings, is faced with a decision withdrawing his naturalisation, adopted by the authorities of one Member State, and, placing him, after he has lost the nationality of another Member State that he originally possessed in a situation capable of causing him to lose the status conferred by Article 17 EC and the rights attaching thereto falls, *by reason of its nature and its consequences*, within the ambit of European Union law.”²¹

And

“In those circumstances, it is for the court 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 a citizen of the Union and thereby be deprived of the rights attaching to that status.”²²

The Court re-asserts itself as the institutional guarantor of European citizenship and in this capacity it has the legitimacy to review the conditions under which a European citizen loses his nationality and the status of European citizenship and the rights attached to it. The Court further argues that the principle of international law that recognises state sovereignty in deciding the rules of nationality attribution is not compromised by its dictum in *Micheletti* that Member States must have due regard for EU law when exercising their powers in the field of nationality²³. It finds that: “...in respect of citizens of the Union the exercise of that power (to lay down conditions for the acquisition and loss of nationality) in so far as it affects the rights conferred and protected by the legal order of the Union, as is in particular the case of a decision withdrawing naturalisation as that at issue in the main proceedings, is amendable to judicial review carried out in the light of European Union law”.²⁴ One could

²⁰ The case originates from the Land of Bavaria whose administrative and judicial authorities are known for their restrictive interpretation of nationality law. The Bavarian Administrative Court rejected the challenge based on the violation of EU law which Rottmann had brought, arguing that a finding that there was an obligation in EU law to withhold a withdrawal decision, violates state sovereignty which in its interpretation is upheld by the wording of former Article 17(1) EC (now Article 20 TFEU).

²¹ Case C-135/08, paragraph 42.

²² *Idem*, paragraph 46.

²³ [Case C-396/90](#) *Micheletti v. Delegación del Gobierno en Cantabria*

²⁴ *Idem*, paragraph 48

argue that unlike other citizens, European Union ones enjoy the judicial protection of that status, be it via national courts as sites for European citizenship enactment or ultimately before the ECJ as the ultimate guardian of European citizenship.

The Court's conclusion is that in principle and based upon existing international law, a decision of nationality withdrawal in the circumstances of *Rottmann* is legitimate even if it leads to statelessness. Yet, the ECJ argues that the national court will have to assess the proportionality of the withdrawal decision "so far as concerns the consequences it entails for the situation of the person concerned in light of European Union law, in addition, where appropriate, to examination of the proportionality of the decision in the light of national law".²⁵ It seems that the fundamental nature of European citizenship requires a different proportionality analysis than within the national legal context which must include:

- the consequences for the person concerned and for his family members of the loss of rights enjoyed by every citizen of the Union,

- loss must be justified in relation to the gravity of the offence committed by the person,

- the lapse of time between naturalisation and the withdrawal decision

- the possibility of recovering the original nationality; however, non-recovery of original nationality and therefore statelessness, do not de-legitimize the state from withdrawing nationality acquired by deceit.

The ECJ also found that it is not necessary to decide whether Austria must allow Mr. Rottmann to reacquire his nationality of origin because until the national court passes judgment on the withdrawal of nationality, its effects are suspended. Instead, it chose to emphasize that the principles articulated in the present case apply to both states, the state of naturalization and that of the original nationality. The decision of the Austrian authorities, with regard to reacquisition, if it will come to that, will also have to respect proportionality.

The two-tier system of proportionality check which national courts will have to perform may come as a surprise to them, considering that some Member States have troubles in acknowledging any European dimension to their decisions regarding nationality attribution²⁶.

Disrupting the "given"

A decision like *Rottmann* questions the manner in which the relationship between nationality and European citizenship has been understood and the consequences attached to particularized understandings of this relationship. The complexities and ambiguities of this relationship are well known and documented. Should one think in terms of hierarchical

²⁵ *Idem*, paragraph 55

²⁶ Mantu, S, *Janko Rottman v Freistaat Bayern, The end of nationality legislation as we know it?!*, IANL forthcoming September 2010

scales, with nationality determining European citizenship and the latter dependent on the first status? Should one see the two statuses as overlapping conditions of being, each having its own universe but interacting and influencing each other? Should European citizenship remain a complementary status as Bellamy argued²⁷ or should we start thinking about citizenship pluralism as Gareth Davies argued in his comment on *Rottmann*? Advocate General Maduro developed his opinion in *Rottmann* around the proper understanding of the relationship between the two statuses. His solution to the puzzle was to argue that they are intertwined yet independent. As a result, one cannot argue that European law has no impact on nationality because that would be to ignore the fact that European citizenship is the fundamental status of the nationals of the Member States. At the same time, the Member States have the right to take decisions with regard to the rules of nationality attribution. He argued that a different solution “...would amount to excluding the competence of the Member States to regulate the conditions of nationality of their own State and would thus affect the fundamental nature of the Member States’ autonomy in this sphere, in disregard of Article 17(1) EC.”²⁸

The difficulty in pinpointing the relationship of the two suggests the fluidity and complexity of the sites in which citizenship is to be enacted. Simple possession of the nationality of a Member State while it does make one a European citizen, it does not mean that while in that Member State one can also enjoy the rights of EU citizenship. In order to benefit from the rights associated with EU citizenship, the citizen must go to a different Member State. The need to establish a link with Community law in order to benefit from its provisions has been criticized for its potential to lead to reverse discriminations (for example, in cases of family reunification²⁹ or enjoyment of social benefits³⁰) but it remains a precondition for the application of EU law and the Court’s jurisdiction. The Treaty in its revised version after Lisbon does not change dramatically the wording of former Article 17/1 EC, now Article 20/1 TFEU that reads, “Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the union. Citizenship of the Union shall be additional to and not replace national citizenship.” The word *complement* was replaced by *additional*, probably seen as a better expression of the idea of EU citizenship as an additional source of rights next to national status.³¹

²⁷ Bellamy, R., Evaluating Union citizenship: belonging, rights and participation within the EU, *Citizenship Studies*, Vol 12, No 6, 2008, 597-611. He argues “...the formal status of EU citizenship as dependent on and complementary to national citizenship seems more normatively attractive than is often supposed. Indeed the attempts to turn Union citizenship into a standalone status that might replace national citizenship proves hard to justify- it can only undermine what remains the main sustainable locus for citizens of the EU to exercise their citizenship –namely, their member states.”(p 609).

²⁸ Opinion of AG Maduro in Case C -135/08, delivered on 30 September 2009, paragraph 24.

²⁹ Walter, A. (2008) Reverse Discrimination and Family Reunification, Nijmegen, WLP

³⁰ Case C-212/06 Government of the French Community and Walloon Government v Flemish Government

³¹ According to the Webster dictionary, the first meaning of “to complement “ is to fill something up, to make perfect or complete. “Additional” on the other hand is explained as added, annex or also, besides.

The Treaty is silent on the exact power relation between the two statuses, although in literature former Article 17 EC (now Article 20 TFEU) together with the Declaration on nationality attached to the Maastricht Treaty³² have been interpreted as showing that EU citizenship is dependent on national citizenship. In this narrative, nationality is described as an area of law *par excellence* within the sovereignty of the state, part of its domain réservé. The idea that the EU may actually have anything to say about the rules of nationality attribution used by its Member States can appear as a transgression of the principle of subsidiary. The ECJ's case law has not been very helpful in spelling clearly what powers EU law could be assumed to have on national attribution of nationality. I have argued elsewhere that the court's own case law has been relatively modest up to now in grappling with the principles of nationality attribution *per se*³³, although it did advance greatly the content of the rights of citizenship to be enjoyed by European citizens. This decision comes close to a scrutiny of the principles used to define membership by the nation states part of the Union.

Rottmann confirms more clearly than previous cases (Micheletti) that nationality law is just another branch of law, similar to other branches of law for which the Union is not directly competent but within which Member States, when exercising their powers, must have due regard for EU law. The traditional Weberian definition of the state having territory, people and administration at the centre of its composition is queried by the EU experience³⁴: control over territory in important ways had already lost some of its relevance as parts of the state's sovereignty had been altered for good by EU law; they had lost their exceptional character³⁵. With *Rottmann*, we are reminded that the *people* can also be thought of in non-exceptional tones and that thinking of nationality can take place outside sovereignty-embedded normative spaces, which have dominated our understanding of belonging and membership for so long. The exceptionality that international law bestows upon nationality is thus disrupted by the ECJ and the application of European law.

A more interesting aspect which is not fully spelled out by the Court is the relationship between the substantial content of the EU law, in light of which review of the nationality decision is to take place, and the development of EU nationality standards. The Court discusses loss of citizenship, if the status is acquired via misrepresentation, deceit or fraud but it does so by using the vocabulary developed around citizenship understood as a nationality status expressing the relationship between a national and his/her state, with the

³² The Declaration on Nationality of a Member State attached to the Maastricht Treaty reads as follows "... wherever in the Treaty establishing the European Community reference is made to nationals of the Member States, 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. Member States may declare, for information, who are to be considered their nationals for Community purposes by way of declaration lodged with the Presidency and may amend any such declarations when necessary."

³³ Mantu, S, Deprivation of citizenship from the perspective of international and European legal standards, available online http://www.enacting-citizenship.eu/index.php/sections/deliverables_item/285/; Mantu, S, book chapter in Guild, E and Mantu, S (eds.) *Constructing and Imagining Labor Migration Regimes*, Ashgate forthcoming 2010.

³⁴ Guild, E (2009) *Security and Migration in the 21st Century*. Cambridge: Polity.

³⁵ At least this is the experience of EU citizens travelling within the Community.

string of reciprocal duties and rights that emerge from this relationship. We are told that a withdrawal decision because of deception corresponds to a public interest (one could ask if there is a European public interest or is this just a case of upgrading the vocabulary of sovereignty and exceptionality that informs nationality at the municipal level, to the European scale?!) and as such it is legitimate for states to wish to withdraw the naturalisation decision. Legitimizing state interest in revocation of citizenship acquired by deception or fraud comes via the international and regional standards which allow for such actions, even if they lead to statelessness. If there is something to reproach the ECJ for, is its failure to engage directly with what can be seen as one of the main contradictions and tensions that exist within the international system for protection against statelessness. On one hand, in light of the horrors of WWII and the mass denaturalisations inflicted by European states, the international community decided to take action and proclaimed statelessness as a great evil, while on the other hand, the legal system put in place for protection against statelessness allows for exceptions. The underlying postulation is that some individuals commit acts which render them unworthy of the quality of being a citizen or better said, a good, reliable citizen. It is in this light that one can ask whether persons who deceive are unworthy to be European citizens, which seems a sensitive and problematic way of approaching issues of belonging within a space build around human dignity and the value attached to each and one individual. It suggests that thinking in terms of absolute value judgements around good and evil will have an impact on the recognition of the intrinsic value of some individuals. Also, it should force us to query what type of morality European citizenship is meant to express and what claims are formulated in its name. Saward's argument that enacting citizenship can be about challenging as well as reinforcing status is appropriate in this context. He argues that when persons who do not hold the status as such act as if they do, it actually poses a challenge about who should have the status, who deserves to have European citizenship status³⁶.

According to Isin's theory of acts, an act is about how it creates subjects-as-citizens. A court decision like Rottmann acts on the habitus of European citizenship by questioning the limits of that citizenship and the attributes that one has to possess in order to be considered worthy of the status. The habitus of European citizenship is disrupted by inserting the possibility of European citizenship imposing limitations on national citizenship, by creating expectations beyond the traditional understanding of what is inscribed in Article 20/TFEU. While court rulings in general are seen as reinforcing habitus, cases like Rottmann are potentially disruptive of the understanding of European citizenship within particular spatial and temporal frames.³⁷

³⁶ Saward, M, ENACT The Framework and Potential Answers, p.3, retrievable from http://www.enacting-citizenship.eu/index.php/sections/blog_post/314/

³⁷ For a reading of Rottmann as a prudent decision see Kochenov, D, Fraudulent Dr. Rottmann and the State of the Union in Europe, available online <http://www.kcl.ac.uk/content/1/c6/07/52/58/DimitryKochenov.pdf>

If we take court decisions as potential acts of citizenship, then we also accept that courts could be presented as sites of citizenship enactment, although they may not be the traditional sites in which this takes place.³⁸ However, the site of judicialisation of citizenship disputes appears in a surprising geographical but also social and political space, because judicialisation of nationality disputes between state and individual are normally expected to take place at the national level, there is no international court that has jurisdiction over conflicts of national/municipal nationality. Thus, to have a conflict over nationality status adjudicated by a regional court (the ECJ) who is the guardian of a Treaty that does not as such regulate the attribution of nationality of the States signatories to that Treaty, suggests that the sites for citizenship enactment are fluid, dynamic spaces that can manifest themselves in unexpected, surprising geographical locations. The act that makes this geo-legal permutation possible is the process of enacting European citizenship as the fundamental status of the nationals of the Member States. I think one should acknowledge the symbolical importance of the judicialisation of nationality that takes place at the level of the EU and the ECJ. Saward has argued that by adjudicating on European citizenship, the Court gives EU citizenship an autonomous existence and helps build the “imagined community”.³⁹

Conclusions

In this paper, I looked at a court decision on European citizenship from the perspective of Isin’s theory of acts of citizenship. Because acts of citizenship are defined as disruptive, habitus breaking deeds, this approach is useful in discussing the limits of EU citizenship and the boundary –negotiating exercises that take place within European legal spaces. *Rottmann* shows that courts can be sites of citizenship enactment and sites in which European citizenship is acted and reinforced as the fundamental status of the nationals of the Member States. The interplay between the two processes constitutes the European citizen as an actor embodying new expectations of solidarity and identity. From the variety of sites generated by state authority, courts are sites where relevant types of citizenship contestation and negotiation take place. I have tried to argue that the decision of the ECJ breaks away with nationality understood as an exceptional manifestation of state sovereignty. We are forced to consider the values that inform our normative understanding of EU citizenship and how best to express them in legal provisions that do not compromise on the importance of human dignity.

³⁸ Caglar, A (2009) European citizenship, the Third-Country-Nationals and Ruptures, http://www.enacting-citizenship.eu/index.php/sections/deliverables_item/287/

³⁹ Saward, op. cit.