



FACULTY OF LAW
Lund University

Sara Bengtson

All Citizens are Equal but Some Citizens are More Equal than Others (?)

On The Current Trajectory of Western European Citizenship
Regimes and What Human Rights Have Got to Do with It

JURM02 Graduate Thesis

Graduate Thesis, Master of Laws program
30 higher education credits

Supervisor: Leila Brännström

Semester of graduation: Spring semester 2015

Contents

SUMMARY	1
PREFACE	2
ABBREVIATIONS	3
EXPLANATION OF TERMS	5
STYLISTIC AND EXPLANATORY NOTES	7
1 INTRODUCTION	8
1.1 Background	8
1.2 Purpose and research questions	9
1.3 Regarding method and material	11
1.4 Delimitations	12
2 REGARDING CITIZENSHIP	14
2.1 Formal citizenship: citizenship as status	14
2.2 Substantial citizenship: citizenship as a right to equal rights	15
2.3 Socio-political ideals of citizenship: the white ideal	17
3 CASE STUDIES	20
3.1 How does one acquire citizenship by naturalization?	20
3.1.1 <i>Denmark</i>	20
3.1.2 <i>Germany</i>	23
3.1.3 <i>Sweden</i>	25
3.2 Is the right to family reunion the same for all citizens?	28
3.2.1 <i>Denmark</i>	28
3.2.2 <i>Germany</i>	31
3.2.3 <i>Sweden</i>	32
4 CITIZENSHIP IN INTERNATIONAL LAW	34
4.1 The status of citizenship in international law	34
4.1.1 <i>The scope of the right to citizenship in international law</i>	34
4.1.2 <i>A right to naturalization in international law?</i>	37

4.1.2.1	The approach of the IACtHR	37
4.1.2.2	The approach of the ECtHR	40
4.1.3	<i>Analysis</i>	42
4.2	The right to family reunification in international law	46
4.2.1	<i>Citizens' equal rights to family life?</i>	46
4.2.2	<i>Analysis</i>	52
4.3	Concluding thoughts on citizenship in international law	54
5	IDEALS OF CITIZENSHIP IN LEGAL PRACTICES	59
5.1	Ideal citizenship in the rules of naturalization	59
5.1.1	<i>What patterns emerge from the rules of naturalization?</i>	59
5.1.2	<i>What ideals are evoked?</i>	61
5.2	Ideal citizenship and full membership in the rules of family reunification	65
5.2.1	<i>Germany and Sweden</i>	65
5.2.2	<i>Denmark</i>	65
5.3	Concluding thoughts: citizenship as status and as a right to equal rights	69
6	CONCLUSION	71
	BIBLIOGRAPHY	75
	INTERNATIONAL LEGISLATION	79
	DOMESTIC LEGISLATION	82

Summary

Citizenship regimes in Western Europe are changing. On the one hand, over the past 30 years, citizenship has been liberalized. On the other, in particular over the past ten years, access to citizenship through *naturalization* has become restricted in most Western European states. This development has been intertwined with public discourses on ‘integration’ of those Europeans who once migrated to the continent. The same integration concerns have also had an impact on what in this thesis is viewed as forming part of the *content* of citizenship. Simultaneously with the restricted rules of naturalization, regulations restricting the right to *family reunion* for Europeans with a migration background have been adopted. In this thesis, the current trajectory of citizenship regimes in Western Europe as briefly described is discussed, through a comparative analysis of the regulation of citizenship in three states; Denmark, Germany and Sweden. Citizenship is in this thesis analysed as composed of three dimensions. Citizenship has a formal dimension, by being the status of ‘full membership’ in the nation-state. It has a substantive dimension, since citizens as ‘full members’ should have ‘a right to equal rights’. But citizenship is also a set of *ideals*, more or less explicit public and institutionalized ideas about who is the ideal member of a community. Rules of naturalization regulate the access to the status of citizenship, and family reunification is something that all citizens, as full members of a state, should enjoy equally. This thesis comparatively investigates regulations of naturalization and family reunification, which thus pertain to the formal and substantive dimensions of citizenship, in Denmark, Germany and Sweden, with a view to then analyse the regulations in light of the third dimension of citizenship; what ideals are evoked by the regulations? Citizenship as discussed in this thesis has furthermore *international* dimensions. To what extent are the regulations of naturalization and family reunification compatible with the international human rights norms of the right to a nationality and the right to family life? It is noted in the thesis that, in international law, citizenship resides in the tension between the state prerogative to exclude and human rights obligations to include, and it is argued that the results of this tension in the European human rights system are reflected in the current trajectory of Western European citizenship regimes.

Preface

I would like to thank my supervisor Leila Brännström, without whose big engagement I would not have been able to write this thesis. I would further like to thank my friends Tariq and Daniel for linguistic review and my friend Mirjam for useful comments on an earlier draft of this thesis. I would also like to thank my family for their constant support throughout my studies, and my friends and fellow human rights lawyers Cecilia, Lynn and Amin for continuously challenging and developing me intellectually. Last but indeed not least, I would like to thank my dear classmates of the master's class of 2013-2015 at the Raoul Wallenberg Institute in Lund, for providing support, laughter and perspectives throughout these two past years of study of international human rights law.

Lund 27 May 2015

Abbreviations

ACHR	American Convention on Human Rights
ACHPR	African Charter on Human and People's Rights
ArCHR	Arab Charter on Human Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CEFRL	Common European Framework of Reference for Languages
CPRMW	Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CRC	Convention on the Rights of the Child
CRS	Convention on the Reduction of Statelessness
EC	European Commission of Human Rights
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECN	European Convention on Nationality
EEA	European Economic Area
EU	European Union
HRC	United Nations Human Rights Committee
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice

PCIJ	Permanent Court of Justice
UDHR	Universal Declaration on Human Rights
UK	The United Kingdom
USA	The United States of America

Explanation of terms

Child-parent reunification	Specific form of family-based residence permit; the immigrating family member is a child or a parent to the family member in the country.
Citizenship <i>ius sanguinis</i>	Acquisition of citizenship by descent, either via the mother (<i>ius sanguinis mater</i>) or the father (<i>ius sanguinis pater</i>).
Citizenship <i>ius soli</i>	Acquisition of citizenship by residence (most commonly by birth in the country).
Country knowledge requirement	Requirement that a naturalizing citizen should demonstrate knowledge of the country she is naturalizing into.
Decency requirement	Requirement that a naturalizing citizen should have lived a ‘decent’ life, referring to lack of criminal record unless otherwise indicated.
Discretionary naturalization	Naturalization decisions lie with relevant authorities; no right to naturalization.
Entitlement to naturalization	A right to naturalization for eligible non-citizens.
Family reunification	Family-based residence permit.
Language requirement	Requirement that a naturalizing citizen should demonstrate knowledge of the language in the country she is naturalizing into.
Renouncement requirement	Requirement that a naturalizing citizen should renounce former citizenship.

Residence requirement	Requirement that a naturalizing citizen should have lived in the country she is naturalizing into for a certain period of time.
Self-sufficiency requirement	Requirement that a naturalizing citizen should be able to support herself (and sometimes also any dependents).
Spousal reunification	Specific form of family-based residence permit; the immigrating family member is a spouse to the family member in the country.
The ‘attachment requirement’	Danish requirement for spousal reunification; the spouses’ aggregate ties to Denmark should be stronger than to any other country.

Stylistic and explanatory notes

Feminine pronouns are employed throughout the text in cases when the subject or object is unknown.

The citation of domestic legislation follows the following pattern: Where a provision is cited 'x:y.z', 'x' refers to the chapter in the relevant act; 'y' refers to the paragraph; and 'z' to any sub-paragraph. In cases where an act is not divided in chapters, the paragraph number follows a §.

In chapter 4, the ECtHR and ACtHR are both frequently referred to, as are ECHR and ACHR. When the terms 'the Court' or 'the Convention' are employed, they refer to the Court or the Convention last mentioned.

The first time a case or decision is mentioned, its full title is written out in the text. Thereafter, cases and decisions from the ECtHR are referred to as 'the [*applicant's name*] case/decision'. Other case and decision names are shortened.

1 Introduction

1.1 Background

Matters of *belonging* are at the forefront of contemporary political and public debate in many Western European¹ states. Does the veil belong to Europe? ‘Non’ appears to be the answer in the French context,² where with approval from the ECtHR the concealment of the face in public is prohibited.³ Does the minaret belong to Europe? ‘No’, the Swiss referendum answered in 2009. Are multiple national identities possible? Clearly no, according to a prominent figure in the Swedish nationalist party, who has held that one cannot simultaneously be Jewish and Swedish.⁴ ‘Maybe...’ has been the overall answer in Germany, where intense public debate over the past two decades has concerned whether to allow dual nationalities or not.

The discourse on which identities and which cultural features belong to Europe has been intertwined with the discourse on *integration* of those who have migrated to Western Europe and their children. With an increased desire to make these individuals integrate, public policy has changed to that end. Two examples of this are the introduction of restricted criteria for naturalization and family reunification, respectively. With the view of enhancing integration, most Western European states have introduced language requirements as a prerequisite for naturalization.⁵ Many states also demand successful integration, such as fulfilment of ‘integration contracts’, proof of knowledge of a country’s society and values, and realization of self-sufficiency criteria.⁶ Likewise, states have restricted their requirements regarding family reunification, often with similar demands on proof of language skills, integration and self-sufficiency.

The restriction of naturalization criteria constitutes an exception to what otherwise, promoted by human rights and increased awareness of gender equality, is a liberalization of citizenship regulation in Western Europe the

¹ ‘Western Europe’ refers in this thesis to the countries Austria, Belgium, Denmark, France, Finland, Germany, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom.

² Law no 2010-1192 of 11 October 2010 prohibiting the concealment of one’s face in public places.

³ *S.A.S. v France*.

⁴ Niklas Orrenius, ‘Den leende nationalismen’.

⁵ Today, only three countries in the region do not demand any particular language skills for naturalization: Ireland, Italy and Sweden.

⁶ Christian Joppke, ‘Beyond National Models: Civic Integration Policies for immigrants in Western Europe’ at 5. The number of countries that demand country knowledge is not as high as of those that demand language skills, but more and more countries follow the example of the Netherlands that introduced formalized tests in 1999.

past 30 years.⁷ Citizenship can now be acquired also by children born out of wedlock and by children who also acquire another citizenship.⁸ Likewise, as a matter of family life (that is, to live with one's family), restricted rules on family reunion is an exception to what in general has been an increasingly liberal regulation of family matters in Western Europe, during the past two decades in particular.

Whilst naturalization is a way to be let into a community, family reunion is something that you may get if or once you are in. In this way, the respective legal fields are examples of formal and substantive dimensions of membership. Citizenship is often analysed as composed of these dimensions.⁹ *Formal* citizenship is a status of membership in a state, which, by substantively entailing a couple of more things than the status of for example permanent residence permit, expresses 'full membership'. *Substantive* citizenship is accordingly whatever content full membership entails in a specific community. It is often argued that the fact that citizenship is 'full' membership brings with it that whatever citizenship entails, it should be equal for all citizens.¹⁰

Both the matter of naturalization and the matter of family reunification have *human rights* dimensions. As a way to acquire a nationality, naturalization falls within the scope of the human right to a nationality. As a way to get to enjoy family life, family reunion falls within the scope of the human right to family life.

This thesis investigates the new restricted rules on naturalization and family reunion in light of how scholars have analysed how belonging is imagined in Europe, as well as from a human rights perspective. How is belonging imagined in the new stricter naturalization rules; what citizenship ideal(s) do they evoke? Do the new strict family reunion-policies affect the equality 'full membership' should entail? And, are the stricter naturalization and family reunification policies in accordance with international law, including and in particular human rights norms? Or are the stricter policies ignored, allowed or even advocated by international law? These are some of the questions that are explored in this thesis.

1.2 Purpose and research questions

The purpose of this thesis is to analyse recent changes in the legal regulation of citizenship in Western Europe with a view to analyse its normative

⁷ Sara Wallace Goodman, *Naturalisation Policies in Europe: Exploring Patterns of Inclusion and Exclusion*.

⁸ Maarten P. Vink and Gerard-René de Groot, *Birthright Citizenship: Trends and Regulations in Europe* at 4, 13 and 33.

⁹ The distinction of formal and substantive citizenship originally derives from Roger Brubaker's definition. He writes that formal citizenship is neither a sufficient, nor a necessary condition for substantive citizenship. Roger Brubaker, *Citizenship and nationhood in France and Germany* at 66.

¹⁰ See T.H. Marshall, 'Citizenship and Social Class' at 18, and further in chapter 2.2.

underpinnings and its compatibility with the ideal of equal citizenship as well as with international legal norms, in particular international human rights norms.

The thesis explores two aspects of citizenship, one formal and one substantive. Formal citizenship is the status of membership in a state that expresses 'full membership', and substantive citizenship is whatever content, such as rights, full membership entails in a specific community. The thesis studies the matter of naturalization, which is a means by which formal citizenship may be acquired. It further studies the matter of family reunification, which, in forming part of the content of membership in the state, is something one as a citizen should enjoy equally.

The two aspects of citizenship are studied through an examination of the rules on naturalization and family reunification respectively in three Western European countries; Denmark, Germany and Sweden. Different features distinguish the citizenship regimes in the three countries. Denmark, once a liberal country as regards immigration, has developed one of the strictest regimes in Europe regarding naturalization. Germany has traditionally been considered to have restrictive ethno-national membership criteria, which in the past 15 years have been liberalised, in particular due to the introduction of the acquisition of citizenship by birth *ius soli*.¹¹ Sweden stands out in Europe with its legislation seemingly unaffected by the current trajectory of European citizenship regimes. Which similarities and differences are there in the regulation of naturalization and family reunion in the respective three states?

Given the above, the research questions are:

1. How is citizenship via naturalization acquired in the three countries respectively?
2. Is the right to family life (more specifically family reunification) the same for all citizens in the respective countries?
3. What requirements does international law (and human rights law in particular) put on domestic rules of naturalization?
4. What requirements does international law (and human rights law in particular) put on domestic rules of family reunification for citizens?
5. Is the regulation of naturalization and family reunification in Denmark, Germany and Sweden in accordance with the requirements of international law, in particular human rights law?
6. Which ideal(s) of citizenship do the rules of naturalization and family reunification in the three countries evoke, and who has full membership as regards family reunification?

¹¹ The principle of *ius soli* does however not apply strictly. In other words, not everyone who is born in Germany becomes a German citizen. There are certain prerequisites relating to *inter alia* the length of the parent's stay in the country for a child to acquire German citizenship *ius soli*.

The studies relating to questions 2 and 4 are performed from a *migration* perspective, meaning that they are limited to how the examined rules affect citizens who have been migrants or have parents who have been migrants. This further means that how the rules particularly affect citizens of certain gender identity, sexual orientation, functionality, etc. are *not* examined.

1.3 Regarding method and material

The thesis comparatively analyses the rules of naturalization and family reunification for citizens in the three respective countries in order to subsequently a) discuss the rules' accordance with international law and b) explore the ideals of citizenship that emerge from the relevant regulation.

Questions 1 and 2 are answered by a review of relevant legal sources; the rules themselves, preparatory works and case law. This part of the thesis is located in chapter 3. Due to deficient language skills, aside the legal norms as such, secondary sources are employed in order to answer the questions in regard to in particular Germany, but sometimes also in regard to Denmark.

Questions 3 and 4 are answered by a review and discussion of international legal norms and cases, opinions, recommendations and decisions from international courts and human rights bodies. More specifically, the review aims at finding out whether there is a right to acquire citizenship by naturalization and a right to family reunification in international law. Considering that the thesis is geographically limited to Western Europe, the norm system of the ECHR is the most relevant and is thus primarily discussed.¹² However, the IACtHR has become famous for its progressive decisions regarding the right to a nationality. To shed light over the way the Strasbourg Court has solved the matter of an eventual right to naturalization, it will therefor be contrasted to the way in which the IACtHR has approached the matter, although the Western European states are not, from a formalistic point of view, bound by the IACtHR's decisions.¹³ In addition to the study of primary sources, the thesis also relies on secondary sources, in particular recent work by the professor of law Marie-Bénédicte Dembour, *When Humans Become Migrants: Study of the European Court of Human Rights with an Inter-American Counterpoint*.

To answer question 5, the positive international norms are analysed in relation to the domestic rules on naturalization and family reunification respectively. Questions 3-5 are discussed in chapter 4. Concluding thoughts on the applicable international law (and the comparison between the ECtHR and the ACtHR) are presented in chapter 4.3.

¹² There is not room in this thesis for an in-depth discussion of the emergence of obligations in public international law.

¹³ For an expansion on and in-depth analysis of this comparison, see Marie-Bénédicte Dembour, *When Humans Become Migrants: Study of the European Court of Human Rights with an Inter-American Counterpoint*.

In this thesis, citizenship is methodologically discussed in a tripartite manner, which will be explained in detail in chapter 2. The first two dimensions belong to the formal (the status of full membership) and substantive (the content of citizenship, which shall reflect the status of full membership by for example meaning equal rights) levels of citizenship as explained in the last section. Citizenship is discussed as 1) a *status* and as 2) *a right to equal rights*. The study of the rules on naturalization and whether there is a right to naturalization in international law relates to the first dimension. The study of the rules on family reunification and whether there is a right thereto in international law relates to the second dimension.

A third dimension of citizenship is also introduced, namely 3) *socio-political ideals of citizenship* in Western Europe. Among scholars, a thesis emerges regarding how membership or belonging is imagined in Western Europe. It is argued that the presumed ‘real’ member or she who ‘truly’ belongs to Europe is a *white* subject. The white ideal is arguably predominant among the general public but is sometimes also institutionalized, that is, reflected in legal practices. In this context, it is important to note that in all Western European states, there are rules that prohibit discrimination on the basis of race or ethnicity. To the extent that the presumption about whiteness is institutionalized, it is not explicit. Therefore, when answering question 6 in chapter 5, it is explored whether the thesis about the white citizenship ideal is yet somehow reflected in the regulation of naturalization and family reunification in the three countries, and whether, from a migration perspective, that has implications for full membership as regards family reunification. Although this is the theoretical starting point, when analysing which ideal(s) of citizenship the rules evoke, the thesis is not limited to the white ideal but highlights also other emerging patterns.

1.4 Delimitations

The case study of the rules of naturalization will focus on ordinary naturalization. The usage of the term ‘ordinary naturalization’ implies that it covers all the requirements there might be in order to become a citizen via naturalization. Other forms of naturalization are for example spousal or filial transfer, for which the demanded prerequisites normally are fewer. Likewise, the requirements are also normally narrowed for refugees and stateless individuals, and consequently these cases as well fall outside the scope of the case study.

Since it is ordinary naturalization that is in focus here, moreover, international legislation concerning naturalization of stateless and refugees will be acknowledged but not primarily dealt with.

The study of rules for family reunion focuses on situations when the applying family member is a non-EU national. Rules relevant to EU migration are thus not discussed. Neither are rules where the residing family member is a non-national primarily dealt with.

The examination of the legal framework in the three countries in relation to international law focuses on the right to acquire citizenship by naturalization and citizens' equal rights to family reunion. Cases and opinions from human rights bodies concerning family reunion when the family member in the receiving state is a non-citizen herself will hence not be dealt with.

The study of international law will focus on rules and cases which explicitly concern naturalization and the right to family reunion for citizens. This means that other potentially relevant legislation will not be discussed, such as how non-discrimination in general and the principle of the best interest of the child should or do affect states' obligations in these fields.

2 Regarding citizenship

As held, citizenship is in this thesis discussed in a tripartite manner. As a status, as a right to equal rights, and as a set of ideas about who the ideal citizen is, which can but not necessarily do affect who can acquire the status of citizenship and who in practice has the same rights as all other citizens. These three dimensions of citizenship will in the following be explained in more detail.

2.1 Formal citizenship: citizenship as status

Citizenship is a legal status attributed to an individual via descent (*ius sanguinis*) or residence (*ius soli*), at birth or later, indicating formal membership in a nation-state. It is domestic law that regulates who can acquire the status of citizenship, and who can lose it. Traditionally, international law did not interfere.¹⁴ However, with the emergence of international human rights law, in some aspects international law restricts states' sovereign right to decide on matters of acquisition and loss of citizenship (see further in chapter 4).¹⁵ The formal status of citizenship has an *external* dimension, which will not be examined in this thesis. In this context, it suffices to mention that the formal status of national citizenship *inter alia* determines which state is entitled to exercise diplomatic protection over an individual when she is outside of her state of nationality.¹⁶

As a legal status in the nation-state, modern citizenship in Western Europe is unitary; all citizens are formally equal.¹⁷ This has not always been the case. Past polities have witnessed various degrees of formal citizenship.¹⁸ Some scholars argue however that such formal citizenship hierarchies still exist today amongst members of a country, 'members' in that respect meaning everyone who has a legal right to reside in a country. In arguing this, they take into account *substantive* aspects of citizenship. In Western Europe today, 'foreigners' also partly enjoy membership. Non-nationals who permanently reside in a country have many civil and social rights that earlier were reserved for citizens. Substantial citizenship – the content of membership – has thus expanded to include more people. But this also

¹⁴ See *Nationality Decrees Issued in Tunis and Morocco* at 24.

¹⁵ See *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica* para 38. The Amendments-opinion is an often quoted authority to illustrate human rights law's impact on nationality matters, see Commentaries to Draft Articles on Nationality of Natural Persons in Relation to the Succession of States, para 4 of the comment to the preamble.

¹⁶ For the purposes of international relations, however, the determination of nationality is assessed independently from domestic law, as was established by ICJ in *Nottebohm*.

¹⁷ Yasemin Nuhoglu Soysal, *Limits of Citizenship – Migrants and Postnational Membership in Europe* at 141.

¹⁸ Étienne Balibar, 'Propositions on Citizenship' at 723.

means that there are groups within the populations of states that are members of the communities, substantively speaking, without formal membership status (and most commonly, as a reminder of the national state as the main organizational form of a political community; without a formal influence over its politics, i.e. no right to vote). Accordingly, scholars argue, citizenship is gradual. It divides populations into citizens and ‘denizens’.¹⁹ However, the *formal* status of citizenship is *not*, as established in the last paragraph, gradual. Since citizens and other members of a state may enjoy more or less the same rights, one of the most important implications of the formal citizenship status is that of equality in content for all citizens. This implication is dealt with in the coming section, 2.2.

There is a tendency in Western Europe to linguistically distinguish between nationality and citizenship. Linguistically, the former implies a legal status and the latter what it substantially entails, i.e. the *content* of citizenship, with particular emphasis given to political rights.²⁰ The habit to linguistically distinguish the two concepts bears historical marks. When modern citizenship in Western Europe began to emerge, nationals transformed into citizens, who were not merely subjects to sovereignty, but also the source of sovereignty. The legitimacy of sovereignty derived from national identities.²¹ The status of citizenship did however paradoxically not necessarily entail participation in the exercise of popular sovereignty.²² Until a few decades ago, women did not have the right to vote in all Western European states. However, for the purposes of the analytical model in this thesis, ‘citizenship as status’ will only refer to formal membership in a nation-state, and will thus be able to be employed interchangeably with ‘nationality’.²³

2.2 Substantial citizenship: citizenship as a right to equal rights

By discussing citizenship as a ‘right to equal rights’, I diverge from a common take on citizenship in scholarship and jurisprudence, namely that

¹⁹ See Thomas Hammar, ‘Denizen and Denizenship’.

²⁰ An example in this regard is France, where the definitions of the two concepts pertain to two different legal fields. Whereas the Civil Code defines nationality, citizenship is defined by the Constitution.

²¹ Jürgen Habermas, ‘The European Nation State. Its Achievements and Its Limitations. On the Past and Future of Sovereignty and Citizenship’. The emergence of popular sovereignty, or democracy, was thus intertwined with the emergence of nationalism.

²² Balibar at 723.

²³ In most countries, ‘nationality’ also refers to membership to an ethnic, cultural or linguistic community, not necessarily linked to a sovereign state and neither necessarily, via rules on acquisition of citizenship, transformed into formal citizenship. In some countries, the term citizenship is nowadays used in an integration context; in Flanders in Belgium and in the Netherlands, the integration process in the form of courses and tests are called ‘inburgering’, literally the development into a citizen. For the process of ‘inburgering’, see <http://inburgering.be/en> in the Belgian context, and <http://en.inburgeren.nl/> in the Dutch. For comments on the term and its implications, see Leonard, F.M., Besselink, F.M., Leonard, ‘Integration and Immigration: The Vicissitudes of Dutch ‘Inburgering’.

citizenship is 'the right to have rights'.²⁴ As implied in the section above, this assertion is only partly true today. Also non-nationals enjoy many and some most rights in the Western European states, although they do not share citizens' unqualified right to enter and remain on state territory.²⁵

Nevertheless, citizenship is the status that manifests the highest form of attachment to a state, full membership. This still entails a couple of things, which distinguishes the status of citizenship from for example the status of permanent residence. Exactly what it entails varies between countries. Generally, these exclusive rights and duties include the unconditional rights to enter and reside in the country; most commonly the rights to vote, to run for public office and often a more extensive freedom of speech; in some aspects a duty to abide by domestic criminal legislation when abroad; the duty to pay certain taxes also when residing in another country; and sometimes the duty of military service. Traditionally, international law did not interfere in states' regulation of the content of citizenship.²⁶ However, with the emergence of international human rights law, international law encompasses possibilities of restriction of states' sovereign right to decide on matters of the content of citizenship.²⁷

As noted in the last section, 2.1, the legal status of modern citizenship in the nation-state is a unitary status. This has implications for the content of citizenship. According to many influential, also legal, thinkers, the status of citizenship implicates that citizens should be equal in rights. Hersch Lauterpacht wrote that the equality dimension of citizenship is the legitimating basis for equal access to in particular political rights. Such rights, he wrote, are thus 'corollary of the principle of equality'.²⁸ T.H. Marshall wrote, '[citizenship is] a status bestowed on those who are full members of a community. All who possess the status are equal with respect to the rights and duties with which the status is endowed'.²⁹ Étienne Balibar wrote, 'the dimension of equality... is always present in the constitution of a concept of citizenship'.³⁰

The ideal of citizenship as a right to equal rights has also had effect in a positivistic legal context. The special European instrument regarding

²⁴ Citizenship as 'the right to have rights' was formulated by Hannah Arendt in Hannah Arendt, 'The Perplexities of the Right of Man', where she revealed that human rights turned out to have nothing to offer those who had nothing left but their humanness, without forming part of a political community, thus rendering rights 'citizens' rather than human. Citizenship as the right to have rights was echoed, *inter alia*, in *Trop v Dulles* of 31 March 1958, Supreme Court, 356 U.S. 86, majority opinion authored by Judge Earl Warren.

²⁵ Audrey Macklin, 'Kick-off contribution' at 1-7.

²⁶ *Nationality Decrees Issued in Tunis and Morocco* at 24.

²⁷ See, for example, ICCPR article 25 that sets out every citizen's right to participate in public affairs, including the right to vote and to run for public office.

²⁸ Hersch Lauterpacht, *An International Bill of Human Rights* at 135.

²⁹ T.H. Marshall, 'Citizenship and Social Class' at 18.

³⁰ Balibar at 723. Balibar writes that this is because the concept of citizenship is related to (at least) popular sovereignty and (prolonged in the democratic version) individual participation in the exercise of government.

nationality matters, ECN,³¹ declares that states 'shall be guided by the principle of non-discrimination between its nationals, whether they are nationals by birth or have acquired its nationality subsequently'.³² The IACtHR, in a much-quoted advisory opinion concerning human rights law's impact on nationality law,³³ has held that 'nationality is a bond that exists equally [for those who acquired their nationality by birth and those who obtained it by naturalization]³⁴ and could therefore not approve of legal practices that 'unjustly creat[e] two distinct hierarchies of nationals in one single country.'³⁵ In ICCPR, the political rights of the conduct of public affairs, the right to vote and to be elected and the right to have access to public service are reserved for citizens. These rights for all citizens should be exercised with only reasonable restrictions,³⁶ such as limiting them to adult citizens.³⁷ By supreme and constitutional courts in different jurisdictions, it has further been held that to be a citizen among others is to count in and belong to a community on an equal footing with others.³⁸

What emerges from the description in the last two paragraphs, is citizenship as a *promise* about or *ideal* of equality. As a citizen, one can use citizenship as a discursive resource in order to demand changes of problems that prevent equality among the citizenry. This has traditionally also been done, by citizens who have evoked the promise of equality in citizenship to claim that rights should be given to more groups of people, as well as to claim that citizenship should entail more sets of rights.³⁹

2.3 Socio-political ideals of citizenship: the white ideal

In her book *European Others: Queering Ethnicity in Postnational Europe*, Fatima El Tayeb writes about how the ideal of membership or belonging in Western Europe is *coloured*, in white.⁴⁰ That the white ideal is prominent is illustrated by the fact that *non-white* subjects constantly are questioned in their Europeanness. Although these subjects might have been born in Europe, have family and ancestors in Europe, have European passports and

³¹ Which all the three states in the case study have ratified.

³² ECN article 5.2.

³³ See, *inter alia*, Commentaries to Draft Articles on Nationality of Natural Persons in Relation to the Succession of States, para 4 of the comment to the preamble.

³⁴ *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica* para 61.

³⁵ *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica* para 62.

³⁶ ICCPR article 25.

³⁷ HRC *General Comment no 25* para 4.

³⁸ The equal right to vote has been described as '[q]uite literally [saying] that everybody counts'. It has furthermore been held that to deny a certain group voting rights would be to violate the principle of 'equal membership'. Alison Kesby, *The Right to Have Rights* at 73.

³⁹ As a consequence, it has been suggested that 'citizenship' is evoked by whoever is critical of status quo, see Peter H. Schuck, 'Liberal Citizenship' at 131.

⁴⁰ Fatima El Tayeb, *European Others: Queering Ethnicity in Postnational Europe*.

only experiences of life in Europe, ‘the visual markers of non-Europeanness’ turn them into eternal migrants.⁴¹

To whom are non-white subjects eternal migrants, by who are they constantly questioned? Most Europeans bearing the visual markers of non-Europeanness can witness about how they, maybe at a daily basis, need to answer the question ‘where are you from?’ or, when the answer is Sweden/Germany/Denmark, ‘where are you *actually* from?’.⁴² These questions are probably often not asked with bad intention, but they illustrate that among the general public, there is a certain imagination of how a Swede, German or Dane should look like. Non-white Europeans become in this way ‘impossible’ subjects,⁴³ by possessing a combination of features or identities that normally are not considered as belonging together.

However, El Tayeb and other scholars with her,⁴⁴ argues that the questioning of non-white Europeans also is *institutionalized*, that is, reflected in or on purpose underpinning legal practices. In contrast to the question on the street, ‘where are you actually from?’, racist legal practices do not explicitly sort out non-white Europeans as non-European. This would from a formalistic point of view be impossible – all Western European states have rules which prohibit discrimination on the ground of race. But, rules may *effectively* question non-whites’ Europeanness, by *treating them in a disadvantageous way* with regard to the benefits of membership and/or *by being based on and reinforce stereotypical assumptions* about their lack of attachment to what is constructed as European, which, scholars argue, are values such as human rights, gender equality and tolerance.⁴⁵ The application of practices (which in effect disadvantage non-whites) with reference to some groups’ assumed lack of attachment to these ‘European’ values of human rights, becomes what Judith Butler calls a ‘coercive instrumentalization of freedom’.⁴⁶ What is ‘European’ is also, El-Tayeb argues, whatever is considered as *not* European.⁴⁷ Europeanness is in this way constructed in a mutually excluding binary, where the ‘non-Europeans’ ‘culture’ or ‘religion’ largely follows ‘earlier ascriptions of similar qualities to the same groups under the heading of ‘race’’.⁴⁸ (Alena Lentin argues that these two categories of racism always converge, as racist

⁴¹ El Tayeb at xxv and xxix.

⁴² El Tayeb at xxiv and xxxv.

⁴³ That the ideal member is white is illustrated by the fact that, like queer theory proved in the context of sexual identities, some subjects are deemed ‘impossible’. Queer theory showed how sex/gender is constructed in a mutually excluding binary, turning people performing outside of the expected scope of behaviour for their sex/gender into ‘queers’, non-comprehensible. Judith Butler Judith Butler, ‘Sexual Inversions: Rereading the End of Foucault’s History of Sexuality, Vol. I’ at 67.

⁴⁴ See for example Alana Lentin, ‘Europe and the Silence about Race’, David Theo Goldberg, ‘Racial Europeanization’ and Judith Butler, ‘Sexual Politics, Torture, and Secular Time’.

⁴⁵ Alana Lentin, ‘Europe and the Silence about Race’ at 499.

⁴⁶ Butler, ‘Sexual Politics, Torture, and Secular Time’, at 105.

⁴⁷ El Tayeb at 3.

⁴⁸ El Tayeb, at xv.

projects such as the European ‘civilizing mission’ in the former colonies witness about.)⁴⁹

What is investigated in this thesis, is if and how the thesis about the white European ideal membership is reflected in the dimensions of citizenship as described in 2.1 and 2.2. Hence, it does *not* explore whether the ideal of whiteness exists among the general public, but rather whether and, if so, how it is institutionalized by the legal practices that are investigated in this thesis. More specifically; are the rules on naturalization and family reunion reflecting an imagining of the ideal citizen as white?

⁴⁹ Alana Lentin, ‘Europe and the Silence about Race’ at 489.

3 Case studies

In the following chapter, the questions how citizenship via naturalization is acquired and whether there is an equal right to family reunification for all citizens, regardless of the migration background of the family members, in Denmark, Germany and Sweden are answered. Most of the rules now in force in all three countries regarding both naturalization and family reunification have been enacted during the past decade. In the description of their design, the rules are also to a certain extent put in their politico-legal context.

3.1 How does one acquire citizenship by naturalization?

3.1.1 Denmark

The Social Democrats came into power in 2011. They introduced the naturalization requirements now in force. The prospect of citizenship is formulated by the current government as a means to further integration. Yet, 'the requirements [for naturalization] should be high, because Danish citizenship is something special.' The government has declared that it wants to send the clear message that foreigners, who have had a successful integration, should be able to become Danish citizens.⁵⁰ In the beginning of the 2000's, the governmental discourse was somewhat different. Amendments of the Nationality Act in 2002 significantly restricted access to naturalization in Denmark. The reform turned the Danish residence requirement into the strictest in Europe. The 2002 restrictions formed part of the former Liberal-Conservative (with support from the Danish People's Party) government's new immigration policy, set out in the Liberals' party program 'Time for Change'.⁵¹ According to the government, Danish citizenship was something 'to be earned'. One earned it at the end of a successful integration process. The idea was that when a person acquired citizenship, she should already be integrated into Danish society.⁵²

Simultaneously with the new emballage of citizenship in 2002, the then current government amended the Danish Integration Act. It introduced an opening paragraph, which states that the integration process is the individual

⁵⁰ Et Danmark, der står sammen, regeringsgrundlag oktober 2011 at 54.

⁵¹ Tid til forandring, party program, 2001, Venstre. The party program is fronted with a picture of two men with what supposedly is to be seen as Middle Eastern appearance, who are smiling while giving the finger to someone not in the picture. Under the picture, it says 'An immigration politics which is both legitimate and consequent'. The opening paragraph of the program reads: 'The Liberals want a restriction of the immigration politics. We have to limit the immigration flow to Denmark. In return, we will do more to put immigrants into work and to become integrated into the Danish society.'

⁵² See Regeringens integrations- og udlændingepolitik – status marts 2003.

alien's responsibility.⁵³ The amendments further introduced so-called 'integration contracts'. The contract is not legally binding as such, but the signing thereof is a condition in order to get a permanent residence permit.⁵⁴ When applying for a permanent residence permit, furthermore, a declaration on 'Integration and Active Citizenship' must be attached.⁵⁵ By signing the declaration, the applicant promises that she understands and accepts that, in Denmark, individuals and families are responsible of supporting themselves; that men and women have the same rights; that circumcision of girls and the use of force to contract marriage are punishable in Denmark; that Danish society strongly condemns acts of terrorism; that active commitment to the Danish society is a precondition for citizenship; and that she respects the freedom and personal integrity of the individual, equal opportunities for men and women and freedom of speech and religion.

When the Social Democrats came into power in 2011, independent from the support from the right-wing populist party the Danish People's Party, they eased the requirements for naturalization a bit, but far from the extent that everything that had been introduced under the past decade was made undone; rather, as is seen below, the relaxations included a small decrease of the level of language skills required and an ease of the self-sufficiency criteria.

According to the Danish Constitution, foreigners can only acquire Danish citizenship by Parliament's adoption of a bill that the Ministry of Justice proposes twice a year.⁵⁶ The political power over naturalization decisions is discretionary. This means that although an applicant has paid the application fee (currently 1000 DKK, about 135 euros),⁵⁷ has fulfilled the relevant requirements and has been included in the Ministry of Justice's proposed bill on naturalization, she might still be refused naturalization. There is no possibility of appealing Parliament's naturalization decision. Denmark has made a reservation to article 12 ECN, which prescribes a right to an administrative or judicial review of decisions relating to acquisition of citizenship.⁵⁸

The main rule is that the person applying for citizenship, who must be a permanent resident, should have been residing without interruption in Denmark for nine years.⁵⁹ The 2002 amendments eternally excluded people

⁵³ Consolidated Act no. 1094 on Integration of Aliens in Denmark of 7 October 2014 §1.2.

⁵⁴ Consolidated Act no. 1094 on Integration of Aliens in Denmark of 7 October 2014 §19.

⁵⁵ The declaration can be found at <https://www.nyidanmark.dk/en-us/coming_to_dk/permanent-residence-permit/integration-and-active-citizenship.htm>

⁵⁶ Constitutional Act of Denmark of 5 June 1953 44.1 and Circular on naturalization no. 9253 of 6 June 2013 1.

⁵⁷ Consolidated Act on Danish Nationality of 5 May 2004, §12.1.

⁵⁸ There are further no restrictions to the Parliament's discretionary powers to decide over naturalization. In practice, there is thus a risk that singular parties' proposed amendments to exclude individual applicants from the Ministry of Justice's proposed bill may pass. Eva Ersbøll, *Report on Denmark*, 17-18.

⁵⁹ Introduced by Circular on naturalization no 55 of 12 June 2002. For Nordic citizens or people who are married to Danish nationals, two and six years respectively is sufficient, Circular on naturalization no 9253 of 6 June 2013 3:5-8.

who have committed certain crimes from naturalization. For people who are convicted of other crimes, the otherwise prescribed nine years of residence is prolonged, and even further in cases of repeated criminality of a similar nature.⁶⁰

The resistance towards dual citizenship lasted longer in Denmark than in the other Nordic countries, which all repealed the renouncement requirement following the entering into force of ECN in 1997. The requirement will however disappear in Denmark by first September 2015.⁶¹

Along with the overall restriction of the naturalization rules during the first decade of the 21st century,⁶² self-sufficiency requirements were introduced.⁶³ People with due debts to the state cannot be naturalized.⁶⁴ In 2006, a requirement which prevented naturalization for an applicant who had relied on social benefits for more than one out of the five previous years was introduced.⁶⁵ With the introduction of the current regulation in 2013, the self-sufficiency requirement was relaxed. Today, an applicant cannot have received social benefits according to the social assistance law or the integration law during the last year before application or during a period exceeding two and a half of the past five years.⁶⁶

Since 2000, applicants for naturalization must fulfil language and country knowledge criteria. The amendments in 2002 set the level of required knowledge of Danish to CEFRL level B1 (intermediary level) and repealed the exemption for the elderly.⁶⁷ The level was raised to B2 (upper intermediary level) in 2006.⁶⁸ After the general relaxations of the naturalization criteria in 2013, level B1 is again required.⁶⁹ Since 2007,⁷⁰ an applicant needs to attach certified scores from a citizenship exam. The exam tests applicants' knowledge about historical and everyday and political life in Danish society.⁷¹ It is held twice a year and it currently costs 728 DKK

⁶⁰ Circular on naturalization no 9253 of 6 June 2013 5:19.

⁶¹ Law no. 1496 of 23 December 2014 amending the Law on Danish Citizenship §2.

⁶² The restriction of the naturalization criteria in the early 2000's led to a decrease in the number of naturalizations. Between 2002 and 2003, there was a decrease from 17,727 to 6,184. When the language requirements were restricted in 2006, the numbers decreased again. Ersbøll 2013 at 21-27.

⁶³ Ersbøll 2013, at 21-23.

⁶⁴ Circular on naturalization no. 9253 of 6 June 2013 6:22.

⁶⁵ Circular on naturalization no. 9 of 12 January 2006.

⁶⁶ Circular on naturalization no. 9253 of 6 June 2013 6:23.

⁶⁷ Circular on naturalization no. 55 of 12 June 2002. Swedish or Norwegian speaking applicants are exempted from the language requirement provided that they have completed elementary school in these countries. Circular on naturalization no. 9253 of 6 June 2013 7:24 and attachment 3.

⁶⁸ Circular on naturalization no. 9 of 12 January 2006.

⁶⁹ Circular on naturalization no. 9253 of 6 June 2013 6:24.

⁷⁰ Circular on naturalization no. 9 of 12 January 2006.

⁷¹ Circular on naturalization no. 9253 of 6 June 2013 7:24. Initially, the 200 questions, from which a selection of 35 was made in each test, were published together with the correct answers on the website of the Ministry of Integration. Following political criticism that this rendered the test too easy since 2008 the questions are no longer accessible on the website, Ersbøll 2013 at 23.

(almost 100 euros) to enrol.⁷² Since 2002, moreover, applicants for naturalization have to sign a declaration of loyalty. Thereby, they declare themselves loyal to Denmark, the Danish community and explain that they will be faithful to Danish law and legal principles.⁷³

3.1.2 Germany

Whereas in Denmark the political discussion about citizenship in recent decades has circled much around the issue of naturalization, in Germany the traditional citizenship regime, specifically the principle of *ius sanguinis*, has been at the centre of public debate.⁷⁴ During the 1990's, it was discussed whether the principle of *ius soli* at birth should be introduced to complement *ius sanguinis*. Political parties disagreed on whether it is possible to have multiple national identities.⁷⁵ These discussions also affected the matter of naturalization. Since 2000, a major reform carried out in stages has gradually changed the German legislation on naturalization. In 2000, a right to naturalization was introduced, the residence requirement was lowered from 15 years to eight years,⁷⁶ and dual nationalities were partly accepted (see below). However, the introduction of multiple prerequisites made this right quite inaccessible. Since then, further requirements have been introduced in stages, triggered by concerns for integration.

In 2000, naturalization criteria in Germany were amended. The requirement of a clean criminal record (minor offences do not count) remained.⁷⁷ A provision that naturalization became effective upon a declaration of loyalty was introduced.⁷⁸ To the requirement of the renouncement of one's earlier citizenship, some exceptions were added. If the applicant has particular difficulties in giving up her previous citizenship or if she is a national of other EU states, initially on the condition of reciprocity, the renouncement requirement does not apply.⁷⁹ (In 2007, the requirement of renouncement of former nationality was entirely waived with regard to EU and Swiss

⁷² See <<http://www.uvm.dk/Uddannelser/Uddannelser-til-voksne/Overblik-over-voksenuddannelser/Dansk-for-voksne-udlaendinge/Statsborgerskabsproeve>>

⁷³ Circular on naturalization no. 9253 of 6 June 2013 2:1-2.

⁷⁴ In January 2000, the so-called 'option model' was introduced, according to which children to non-nationals under certain conditions became German citizens *ius soli*, but upon the age of 18 were obliged to decide which nationality to choose (since, most commonly, she/he also had an additional nationality *ius sanguinis*), Law to Reform the German Nationality Act of 15 July 1999. The option duty was however waived in 2014, Second Act Amending the Nationality Act of 13 November 2014. Accordingly, German law today allows dual nationalities to a certain extent.

⁷⁵ The Social Democratic Party and the Liberals argued for the acceptance of dual nationalities, and argued that it would reflect people's dual attachments to different nations and dual cultural and political ties. The (then in opposition) Christian Democrats, on the other hand, held that dual nationalities were a sign of lack of integration and that it impeded acceptance of requirements of loyalty and a German identity. Anuscheh Farahat and Kay Hailbronner, *Country Report on Citizenship Law: Germany* at 21.

⁷⁶ Nationality Act of 22 July 1913 §10.1.

⁷⁷ Nationality Act of 22 July 1913 §10.5.

⁷⁸ Nationality Act of 22 July 1913 §16.

⁷⁹ Hailbronner, Kay, *Country Report: Germany* at 7.

citizens.)⁸⁰ A self-sufficiency criterion was further introduced with the 2000 amendments of the Nationality Act. An applicant for naturalization must be able to ensure her subsistence and that of her dependants, without having recourse to social security or unemployment benefits. Those whose recourse to such benefits is beyond their control are exempted.⁸¹

In 2004 the Nationality Act was amended again,⁸² motivated by the government's integration policy to '[offer] more support for integration efforts while making requirements stricter.'⁸³ Language and country knowledge requirements were introduced.⁸⁴ The residence requirement was modified. Upon successful attendance of an integration course, applicants may naturalize already after seven years. If the applicant in such a course has made 'outstanding efforts at integration exceeding the requirements' that normally apply for naturalization after eight years of residence, the qualifying period may be further reduced, to six years.⁸⁵ The 2004 amendments also included a provision enacted in the light of anti-terrorism concerns. Although the requirements for naturalization otherwise are fulfilled, naturalization shall not be allowed if there are grounds to assume that the applicant supports or engages in activities aimed at subverting the free democratic constitutional system or if there exists ground for expulsion.⁸⁶

New restrictions of the naturalization criteria followed in 2007. The level of German required was raised to CEFRL level B1.⁸⁷ Initially, applicants below the age of 23 years had been completely exempted from the self-sufficiency criterion. In 2007, this exception was deleted, motivated by the assumption that it was counterproductive for integration.⁸⁸ These changes coincided with the introduction of a new 'Integration' chapter in the Residence Act.⁸⁹ Integration courses were started. They aim to enable foreigners 'to act independently in all aspects of daily life, without the assistance or mediation of third parties.'⁹⁰ According to the Federal Office for Migration and Refugees, to integrate, in particular to learn German, is important 'if you are looking for work, if you need to fill in application forms, if you would like to support your children in school or if you would like to meet new people.'⁹¹ If a person for whom the integration course is

⁸⁰ Nationality Act of 22 July 1913 §12.2.

⁸¹ Nationality Act of 22 July 1913 §10.1.3.

⁸² Act to Control and Restrict Immigration and to Regulate the Residence and Integration of EU Citizens and Foreigner (Immigration Act) of 30 July 2004.

⁸³ Federal Ministry of the Interior, Immigration Law and Policy 1 July 2004 at 40.

⁸⁴ Nationality Act of 22 July 1913 §§10.1.6-7.

⁸⁵ Nationality Act of 22 July 1913 §10.3.

⁸⁶ Nationality Act of 22 July 1913 §§11.1-2.

⁸⁷ Nationality Act of 22 July 1913 §10.4.

⁸⁸ Farahat and Hailbronner at 12.

⁸⁹ Following the adoption of Act on Implementation of the Directives of the European Union with regard to residence and asylum law of 19 August 2007 3.

⁹⁰ Residence Act of 30 July 2004 §43.2.

⁹¹

<<http://www.bamf.de/EN/Willkommen/DeutschLernen/Integrationskurse/integrationskurse-node.html>>

mandatory fails to attend it, this is taken into account in *inter alia* the decision on extension of the residence permit.⁹²

Since 2008, applicants need to pass a naturalization test to be entitled to naturalization.⁹³ Exempted are those who otherwise can prove necessary knowledge about German society, for example by demonstrating German school leaving-qualification.⁹⁴ The naturalization test consists of questions about ‘Living in a democracy’; ‘History and responsibility’; and ‘People and society’; together with specific questions about the province in which the applicant resides.⁹⁵ The naturalization test may be prepared for within the framework of voluntary integration courses.⁹⁶ The costs for the integration course are shared between the individual and the Federal Office for Migration and Refugees.⁹⁷

3.1.3 Sweden

In Sweden, there have been similar debates on integration, also in relation to naturalization, as those in Denmark and Germany. However, in contrast to in the other two states, in Sweden the matter of integration has not become decisive for a strict regulation of naturalization (instead, it is reflected in the emphasis on the ‘symbolic’ side of citizenship that was introduced in 2015, see further below). Language requirements had been discussed already around the year 2000, motivated by the assumption that knowledge of Swedish was a *de facto* prerequisite for a successful integration process. However, that time, it was emphasised that the individual possibilities of learning Swedish varied because of reasons for which the individual could not be held responsible. To introduce a language requirement would thus be unfair and would permanently exclude some Swedish inhabitants from ever becoming citizens.⁹⁸ Before the Swedish Citizenship Act was amended in 2015, the eventual introduction of some form of language provision was discussed again. It was proposed that a so-called ‘language bonus’ (see further below) should be introduced. However, the proposal became much criticized by the parties to whom the proposal was referred to for consultation. In the end it was not included in the government’s proposal for amendments of the Citizenship Act.⁹⁹

⁹² Residence Act of 30 July 2004 §§8.3 and 44a.3. The integration course is mandatory for those foreigners who do not speak any German, those who receive certain benefits and those with ‘special integration needs’ who the authorities require to participate in such a course, Residence Act of 30 July 2004 section 44a.

⁹³ Regulation on Naturalization Tests and Naturalization Courses of 5 August 2008.

⁹⁴ <http://www.bamf.de/EN/Einbuengerung/WasEinbuengerungstest/waseinbuengerungstest.html?nn=1448618>>

⁹⁵ <http://www.bamf.de/EN/Einbuengerung/WasEinbuengerungstest/waseinbuengerungstest-node.html>>

⁹⁶ Nationality Act of 22 July 1913 §10.5.

⁹⁷ See http://www.bamf.de/EN/Willkommen/DeutschLernen/Integrationskurse/TeilnahmeKosten/Aufenthaltstitel_nach/aufenthaltstitel_nach-node.html>

⁹⁸ SOU 1999:34 at 313.

⁹⁹ Amendment (2014:481) to the Swedish Citizenship Act (2001:82) of 19 June 2014.

On April 1 2015, amendments of the Swedish Citizenship Act entered into force. They were motivated by the perception that citizenship is important for the experience of community; that this symbolic side of citizenship needed to be strengthened in Sweden; and that the experience of forming part of the community, in its turn, is an important step in the integration process for new Swedish citizens.¹⁰⁰ The amendments introduced a definition of Swedish citizenship, based on the perception that the meaning of Swedish citizenship had to be strengthened. It now states that '[c]itizenship is a legal relationship between the citizen and the state that entails rights and duties for both parties. Citizenship unites all citizens and stands for a significant link with Sweden. Citizenship represents the formal membership in the Swedish society and is the basis for democracy.'¹⁰¹ 'A significant link' refers to objective and concrete criteria, in particular the fact of being expected to grow up in or having had residence in Sweden for a while.¹⁰²

The new rules did however not introduce any amendments of the requirement for naturalization in Sweden, although a 'language bonus' was suggested. The Inquiry Commission (hereinafter; the Citizenship Commission), set up by the liberal-conservative coalition government in 2012 to investigate the need to reform the Citizenship Act, dealt with the question of whether some kind of language requirement should be introduced. It held that knowledge of Swedish was integral to integration and underlined the importance of language skills to be able to fully participate in the democratic process. Knowledge of Swedish entailed advantages in the labour market. The ability to speak Swedish, the Citizenship Commission argued, indicates that a person has knowledge about and forms part of Swedish society, and that she has a significant link with Sweden.¹⁰³ For these reasons, based on the premise that citizenship was something attractive, rules on citizenship should be designed in a way as to further the individual's actions to integrate; such actions should be rewarded. The Citizenship Commission therefore suggested that, as a main rule, an applicant with a certain knowledge of Swedish should be able to naturalize after a shorter residence period than what was otherwise prescribed.¹⁰⁴ As already noted, the proposal encountered much criticism and was in the end not enacted.

Naturalization is granted on discretion in Sweden, but can be appealed.¹⁰⁵ A successful applicant for naturalization must have proved her identity, have

¹⁰⁰ Prop 2013/14:143 at 9-13.

¹⁰¹ Swedish Citizenship Act (2001:82) of 1 March 2001 §1.

¹⁰² Prop 2013/14:143 at 12. The new rules, which *inter alia* made it easier for children to non-nationals to acquire citizenship by *ius soli* and introduced re-acquisition of Swedish citizenship for people who had lost their citizenship due to earlier prohibition of dual citizenship, are meant to reflect this. Swedish Citizenship Act (2001:82) of 1 March 2001, §§7-9.

¹⁰³ Prop. 2013/14:143 at 9-10.

¹⁰⁴ SOU 2013:29 at 177-182.

¹⁰⁵ Swedish Citizenship Act (2001:82) of 1 March 2001 §26.

turned 18, have a permanent residence permit, must have led and can be expected to lead a decent life and must have resided legally in Sweden for five years.¹⁰⁶ Nationals of countries within the EEA are exempted from the requirement of permanent residence and must instead solely possess a temporary residence permit.¹⁰⁷

A 'decent life' particularly refers to lack of criminal record. If an applicant has been subject to administrative sanctions, for example because of failure to pay tax, this may also affect the decency-assessment.¹⁰⁸ Previous criminal activity does not completely preclude naturalization, but depending on the overall circumstances of the crime leading to conviction, the residence criteria is prolonged accordingly.¹⁰⁹ Also, whether the applicant is, or has been, suspected of a crime may negatively affect the decency requirement.¹¹⁰

In case the naturalization requirements are not fulfilled, naturalization may anyway be granted if the applicant has been a Swedish citizen before, she is married or lives in partnership with a Swedish citizen, or if special reasons exist.¹¹¹ A person who has lived in Sweden under false identity is normally not awarded such an exemption, even if she lives with a Swedish citizen.¹¹² The exemption ground 'special reason' has occasionally been used to naturalize people who are considered to be of use or beneficial to the country, such as prominent researchers or sportsmen.¹¹³

The Swedish regulations do not demand that applicants take an oath of loyalty. With the amendments in 2015, citizenship ceremonies for new citizens were introduced.¹¹⁴ The matter of whether naturalizing citizens at this ceremony should be obliged to take an oath was discussed by the Citizenship Commission. It concluded that attempts to affect naturalized citizens' future behaviour, i.e. behaviour when citizenship is acquired, by demanding them to take an oath of loyalty, risked signalling that there are different demands on naturalized citizens than on citizens by birth.¹¹⁵

¹⁰⁶ Swedish Citizenship Act (2001:82) of 1 March 2001 §11. For Nordic citizens, the residence requirement is only two years, §11.4.a.

¹⁰⁷ Swedish Citizenship Act (2001:82) of 1 March 2001 §20. The requirement of permanent residence does furthermore not apply to Nordic citizens.

¹⁰⁸ Håkan Sandesjö and Kurt Björk, *Nya medborgarskapslagen: med kommentarer* at 122-128.

¹⁰⁹ Prop 1994/95:179 at 59.

¹¹⁰ MIG 2013:10.

¹¹¹ Swedish Citizenship Act (2001:82) of 1 March 2001 §12.

¹¹² See UN 02/00689.

¹¹³ Prop 1999/2000:147 at 49.

¹¹⁴ Swedish Citizenship Act (2001:82) of 1 March 2001 §29.

¹¹⁵ SOU 2013:29 at 128.

3.2 Is the right to family reunion the same for all citizens?

3.2.1 Denmark

Over the past three decades in Denmark, immigration law in general, and the right to family life for foreigners and transnational families in particular, has witnessed one of the most dramatic developments in Europe. In the middle of the 1980's, foreign children, spouses and parents of Danish citizens and people with resident permits alike, were entitled to a residence permit, although it could be made a condition that the resident in Denmark undertook to maintain the arriving family member.¹¹⁶ In contrast, in 2002, the revised version of the Alien's Act was proudly described as 'the strictest in the world'.¹¹⁷ Today, a residence permit based on family relations is given on discretion in Denmark.¹¹⁸ It is given to spouses and children solely, and only if multiple conditions are fulfilled on part of both the applicant and the family member in Denmark, as well as of the family as a whole. The family member in Denmark can however both be a Danish citizen, a citizen of any of the other Nordic countries, or a permanent resident.

For spouses to reunite in Denmark, both must as a main rule be over 24 years old.¹¹⁹ The rule's aim is to curb forced and arranged marriages. In the preparatory works, it was held that young women of 'ethnic minority background' were pressured to marry men whom their families had chosen.¹²⁰

The Danish spouse must be permanently resident in Denmark. The couple should have cohabited at a shared residence, in marriage or in regular cohabitation of prolonged duration.¹²¹ Both spouses must sign a declaration stating that they will involve themselves actively in the integration into Danish society of the applicant.¹²² The person living in Denmark must further undertake the maintenance of the applicant.¹²³ As a main rule, she needs to provide a financial security of 50,000 DKK to cover any future public expenses for assistance under the Act of Active Social Policy or the Integration Act of the applicant.¹²⁴ If the applicant is subsequently granted such assistance, the Danish spouse shall be ordered to pay for this.¹²⁵ The

¹¹⁶ Aliens Act of 6 June 1983 §9.

¹¹⁷ Garbi Schmidt, 'Law and Identity: Transnational Arranged Marriages and the Boundaries of Danishness' at 79.

¹¹⁸ Aliens Act of 19 September 2014 1:9.1.

¹¹⁹ The requirement was re-introduced 2012 (after having been deleted for a year), Amendments to the Danish Aliens Act no. 418 of 12 May 2012.

¹²⁰ Prop 2001/2 LSF 152 to Law Amending the Aliens Act and Marriage Act and Other Acts.

¹²¹ Aliens Act of 19 September 2014 1:9.

¹²² Aliens Act of 19 September 2014 1:9.2.

¹²³ Aliens Act of 19 September 2014 1:9.3.

¹²⁴ Aliens Act of 19 September 2014 1:9.4.

¹²⁵ Aliens Act of 19 September 2014 1:9.22.

spouse in Denmark must prove that she has a dwelling of her own of a reasonable size.¹²⁶

A residence permit cannot be issued if it is considered doubtful that the relationship between the spouses was entered into according to both spouses' desire. This is presumed if the spouses are close relatives or otherwise closely related.¹²⁷ A residence permit can further not be issued if there are definite reasons for assuming that the decisive purpose of the relationship is to obtain a residence permit,¹²⁸ or if the person living in Denmark has been sentenced for violence against a former spouse or cohabitant within the past ten years.¹²⁹ Family reunion is furthermore denied if the resident spouse has been convicted of certain crimes, has due debts to the state or has not been under education or in employment during at least three years of the five years before the application for the residence permit.¹³⁰

A residence permit based on marriage/partnership can only be issued if the spouses' aggregate ties to Denmark are stronger than to any other country, the 'attachment requirement'.¹³¹ According to the preparatory works, a resident alien born or arriving in Denmark as a small child and then raised in Denmark, is exempted from the attachment requirement after 26 years.¹³²

When the attachment requirement was introduced, Danish nationals were completely exempted from the attachment requirement.¹³³ In 2002, it was made generally applicable because of the perception that among Danish nationals with foreign background 'there is a widespread pattern to marry a person from their countries of origin, among other reasons due to parental pressure... There are thus also Danish nationals who are not well-integrated in Danish society and where integration of a spouse newly arrived in Denmark may therefor entail major problems.'¹³⁴ The aim of the rule was therefor 'to ensure the best possible starting point for a successful integration for the family member wanting to be reunited with his or her family in Denmark...'¹³⁵

Another purpose of making the attachment requirement generally applicable was to secure the aim of the '24-year-rule' described above. The government argued, that if the attachment requirement was not introduced,

¹²⁶ Aliens Act of 19 September 2014 1:9.6.

¹²⁷ Aliens Act of 19 September 2014 1:9.8. In this regard, it could be noted that marriages between Danish cousins are not prohibited in Denmark, compare Marriage Act of 7 October 2014 1:6.

¹²⁸ Aliens Act of 19 September 2014 1:9.9.

¹²⁹ Aliens Act of 19 September 2014 1:9.10.

¹³⁰ Aliens Act of 19 September 2014 1:9.12.

¹³¹ Aliens Act of 19 September 2014 1:9.7.

¹³² Prop 2003/1 LSF 6 to Law Amending the Aliens Act.

¹³³ Which then changed by Amendments to the Danish Aliens Act no. 365 of 6 June 2002.

¹³⁴ Prop 2001/2 LSF 152 to Law Amending the Aliens Act and Marriage Act and Other Acts.

¹³⁵ Prop 2001/2 LSF 152 to Law Amending the Aliens Act and Marriage Act and Other Acts.

people under 24 years old could simply get married abroad, stay there for a couple of years and then come back to Denmark when they turned 24. According to the preparatory works, '[t]he attachment requirement enables a refusal of family reunification although the age-requirement is fulfilled... The fact that the couple has stayed several years in the husband's home country may mean that the aggregate ties to the husband's country are stronger than to Denmark.'¹³⁶

In 2003, the attachment requirement was amended again. Since then, it ceases to apply when the spouse in Denmark has been a national for 26 (originally 28)¹³⁷ years.¹³⁸ The aim of the exception was to ensure that Danish nationals who had lived abroad, and thus presumably had lost their ties to Denmark, should be able to come back to Denmark and bring their families with them, and that young Danes should not be discouraged from studying and working abroad.¹³⁹ According to the preparatory works, the aim of the attachment requirement would not be forfeited by the exception, since the expatriates who were expected to benefit from it usually maintained strong links to Denmark, it was held, by speaking Danish, paying visits to the country, reading Danish newspapers regularly, etc.¹⁴⁰

The assessment of whether the attachment requirement is fulfilled pays attention to multiple factors on the part of the both spouses separately and as a couple. How long the Danish spouse has been in Denmark is determinative. If she, furthermore, has lived with the applicant in the applicant's home country, that speaks for that her attachment to Denmark has weakened. It is considered whether both spouses speak Danish and whether they communicate in a shared mother tongue other than Danish. In general, the attachment requirement cannot be considered as fulfilled if the applying spouse has never been to Denmark.¹⁴¹ When assessing the Danish spouse's ties to Denmark, her presence on the Danish labour market, for how long she has been there, whether it has been interrupted or not, and whether it involved substantial contact and communication in Danish, is also considered.¹⁴² It is further considered how strong the Danish spouse's ties are to the applicant's home country. If the spouses are related that is considered to be a sign of that the Danish spouse has strong cultural and family ties to the applicant's country.¹⁴³

As initially held, family-based immigration may also be possible for children. In such cases, the attachment requirement does not apply and the maintenance and the self-sufficiency requirements apply only if they are

¹³⁶ Prop 2001/2 LSF 152 to Law Amending the Aliens Act and Marriage Act and Other Acts.

¹³⁷ Amendments to the Danish Aliens Act no. 1204 of 27 December 2003.

¹³⁸ The reduction from 28 to 26 years was introduced in 2012 by Amendments to the Danish Aliens Act No. 418 of 12 May 2012.

¹³⁹ Prop 2003/1 LSF 6 to Law Amending the Aliens Act.

¹⁴⁰ Prop 2003/1 LSF 6 to Law Amending the Aliens Act.

¹⁴¹ Prop 2003/1 LSF 6 to Law Amending the Aliens Act.

¹⁴² Prop 2003/1 LSF 6 to Law Amending the Aliens Act.

¹⁴³ Prop 2003/1 LSF 6 to Law Amending the Aliens Act.

motivated by special reasons.¹⁴⁴ Before 2004, an unmarried child under 18 whose parent was permanently resident in Denmark could be issued a residence permit.¹⁴⁵ In 2004, the rules for child-parent reunification were amended.¹⁴⁶ Today, child-parent reunification may only be allowed if the child is under 15 years old. The purpose of lowering the age limit from 18 to 15 years was to ensure that children had as much as possible of their upbringing in Denmark as to enable a successful integration.¹⁴⁷ The rules were further amended so that a child above six years who lives with one of her parents in the country of origin may only be issued a residence permit if she has or is able to obtain such ties with Denmark that there is a basis for successful integration.¹⁴⁸ The assessment of ‘successful integration’ focuses on whether the child was raised in the home country in order to grow up in accordance with the culture there and to not be affected by Danish norms and values.¹⁴⁹

Conclusively, citizens in Denmark are *not* treated equally regarding spousal reunification. The ‘26-year-rule’, which is an exception to the attachment requirement, entails that naturalized citizens (citizens with a migration background) and citizens by birth (citizens without a migration background) formally have different opportunities to enjoy spousal reunification in Denmark. The reason for the difference in treatment is that the integration concerns that motivated the applicability of the attachment requirement to citizens are not considered relevant to Danish nationals by birth. Therefore, exempting Danes by birth from the attachment requirement would not forfeit the aim of the general applicability of the attachment requirement.

3.2.2 Germany

The current German regulations on family reunification were introduced in 2005. Family members of both German nationals as well as foreigners with residence permits are entitled to a residence permit.¹⁵⁰ The conditions are however fewer when the family member is a German citizen. When the requirements are fulfilled, a family-based residence permit is issued to spouses, to minor and unmarried children, and to parents of a minor, unmarried German child for the purpose of care and custody.¹⁵¹

The requirements are that the German family member’s ordinary residence is in German territory,¹⁵² that the foreign family member’s identity is established, that no ground for expulsion applies and that she has a valid passport.¹⁵³ If the family member in Germany is a German citizen, the

¹⁴⁴ Aliens Act of 19 September 2014 1:9.3 and 1:9.15.

¹⁴⁵ Aliens Act of 19 September 2014 1:9.2.

¹⁴⁶ Amendments to the Danish Aliens Act no. 427 of 9 June 2004.

¹⁴⁷ Prop 2003/1 LSF 171 to Law Amending the Aliens Act and the Integration Act.

¹⁴⁸ Aliens Act of 19 September 2014 1:9.16.

¹⁴⁹ Prop 2003/1 LSF 171 to Law Amending the Aliens Act and the Integration Act.

¹⁵⁰ Residence Act of 30 July 2004 §§27.1 and 28.1.

¹⁵¹ Residence Act of 30 July 2004 §§28.1.1-3.

¹⁵² Residence Act of 30 July 2004 §28.1.

¹⁵³ Residence Act of 30 July 2004 §5.

family is exempted from many conditions that otherwise must be fulfilled. The requirement that the arriving family member's subsistence is secure does not apply.¹⁵⁴ The condition that the foreign spouse must be able to communicate in German before entering the country does not apply.¹⁵⁵ And neither does the condition apply that a foreign child over 16 must have a command of German or appear to be able to integrate into the way of life that prevails in Germany.¹⁵⁶

Conclusively, in Germany, the rules on family reunification do not make any distinction on citizens depending on whether they are naturalized or not (former migrants or not). Once a citizen, the same rules apply. Neither are there, in contrast to the Danish case, any specific integration considerations as regards the rules on family reunification for citizens. The integration concerns that are prevalent in the German naturalization process have thus disappeared once one has become a citizen.

3.2.3 Sweden

A foreigner who applies for a residence permit in Sweden based on family relations is entitled thereto if the family member is a Swedish citizen or has been granted a residence permit for settlement.¹⁵⁷ (The use of the term 'for settlement' indicates that a shorter residence permit in general does not give entitlement to family reunion.)¹⁵⁸ If the foreigner is a child, she is also entitled to a residence permit if her parent is married to/cohabiting in partnership with such a person.¹⁵⁹

Couples that intend to marry or cohabit as partners do not have a right to family reunion, but the foreign spouse may get a residence permit provided that the relationship appears serious.¹⁶⁰ The seriousness-requirement normally means that the relationship has lasted for a while (but arranged marriages where the partners may not have met or spent a lot of time with each other can qualify as a serious relationship).¹⁶¹

If the family member in Sweden is a citizen, she must live in Sweden,¹⁶² or, if not, have manifested a concrete intention to settle in Sweden within the near future.¹⁶³ If the couple is validly married, the burden of proof is on the Migration Agency to prove that it is possible that the marriage has been entered solely for the reason of getting a residence permit.¹⁶⁴ If the family member in Sweden is not a Swedish citizen, there are certain requirements

¹⁵⁴ Residence Act of 30 July 2004 §§5.1.1 and 28.1.

¹⁵⁵ Residence Act of 30 July 2004 §30.1.2.

¹⁵⁶ Residence Act of 30 July 2004 §32.2.

¹⁵⁷ Aliens Act (2005:716) of 29 September 2005 5:3.

¹⁵⁸ Prop 1996/97:25 at 285.

¹⁵⁹ Aliens Act (2005:716) of 29 September 2005 5:3.2.b.

¹⁶⁰ Aliens Act (2005:716) of 29 September 2005 5:3a.1.

¹⁶¹ Prop 1999/00:43 at 37-40.

¹⁶² Aliens Act (2005:716) of 29 September 2005 5:3.1 and 5:3.2.b.

¹⁶³ *MIG 2007:36*.

¹⁶⁴ *MIG 2007:60*.

that do not apply when the family member is a Swedish citizen or a citizen of any of the countries in the EEA or Switzerland.¹⁶⁵ In such case, the family member in Sweden must be self-sufficient and in possession of housing of an adequate size and standard for herself and the arriving family member.¹⁶⁶ (They further do not apply if either the family member in Sweden is a child or the applying family member is a child and the family member in Sweden is the child's parent.)¹⁶⁷ The self-sufficiency criteria for everyone except citizens were introduced in 2010¹⁶⁸ and motivated by integration concerns. According to the preparatory works, the Liberal-Conservative government was of the opinion that such requirements would promote integration.¹⁶⁹

Conclusively, as in in the German case, citizens are treated equally as regards family reunification in Sweden, regardless of the migration background of the family members. Integration concerns have been considered to motivate stricter criteria for non-citizens. Citizenship is thus determining for when a person no longer is object to integration measures such as requirements for self-sufficiency in order to enjoy family reunification.

¹⁶⁵ Aliens Act (2005:716) of 29 September 2005 5:3.b-c.

¹⁶⁶ Aliens Act (2005:716) of 29 September 2005 5:3.b.

¹⁶⁷ Aliens Act (2005:716) of 29 September 2005 5.3c.1 and 5.3d.

¹⁶⁸ Amendment of the Aliens Act (2005:716) of 11 March 2010.

¹⁶⁹ Prop 2009/10:77 at 18.

4 Citizenship in international law

In the following chapter, international law's regulation of national citizenship as a legal status and as equal rights is examined. This means that what is considered is whether there are norms in international law that limit states' power to regulate the status of citizenship and the equal rights that the status of citizenship ideally should entail. More specifically, what is considered is whether there is a right to naturalization and whether citizens, regardless of the migration background of the family members, have equal rights to family reunion.

The chapter is divided in two main parts, followed by a concluding part. In section 4.1, the status of citizenship in international law is explored, with particular emphasis on the right to naturalization. In section 4.2, the right to family life, in particular family reunification, in international law is explored. Each part first describes the applicable rules. Thereafter, the rules are analysed in detail and lastly applied to the regulation of naturalization and family reunification in Denmark, Germany and Sweden, with a view to answer whether the regulation in the respective countries are in accordance with the requirements of international law, in particular human rights law. In the concluding section, 4.3, some general reflections on citizenship in international law are presented.

4.1 The status of citizenship in international law

This section is divided into three parts. In 4.1.1, it is described in what circumstances in general that a state may be obliged to grant its nationality to someone. In 4.1.2, it is discussed whether, and if so, when, a state is ever obliged to allow someone to naturalize. In this regard, the approach of the ECtHR is contrasted to that of IACtHR (a contrast which is finally analysed in section 4.3). In 4.1.3, the norms by which Denmark, Germany and Sweden are bound are analysed and applied to the regulation of naturalization in the respective countries.

4.1.1 The scope of the right to citizenship in international law

For a long time, citizenship or nationality was merely a status in modern public international law.¹⁷⁰ As such, it was considered that states, in

¹⁷⁰ It is often defined in line with what was established in *Nottebohm*: 'nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties. It may

principle, had the right to decide over its acquisition and loss. This was initially expressed in 1923 in the PCIJ's advisory opinion *Nationality Decrees Issued in Tunis and Morocco*. However, the exclusive right for states to decide on the matter could be restricted by obligations, which they had undertaken towards other states.¹⁷¹

In 1984, the IACtHR revised the principles from the *Nationality Decrees*- In 1984, the IACtHR revised the principles from the *Nationality Decrees* opinion in the advisory opinion *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*. Its reasoning subsequently turned into an often referred to authority on the matter of nationality in international law.¹⁷² The Court held that nationality is today perceived as involving the jurisdiction of the state *as well as human rights issues*.¹⁷³ It was hence necessary to reconcile the principle that the regulation of nationality fall within the jurisdiction of the state with the additional principle that international law imposes certain limits on the state's power, which are linked to the demands imposed by the international system for the protection of human rights.¹⁷⁴

With the development of human rights law, the matter of citizenship as such is no longer just a status in international law. During the decades after World War II, citizenship was also established as a right. Statelessness was now seen as problematic also from the individual's point of view. To not have a nationality was to stand in a precarious situation.¹⁷⁵ The right to a nationality is codified in multiple human rights instrument. UDHR article 15.1 declares everyone's right to a nationality. So do ACHR article 20.1 and the ArCHR Article 29.1. The right of the child to a nationality is further established in CRC article 7.1 and in the CPRMW article 29. ICCPR article

be said to constitute the juridical expression of the fact that the individual upon whom it is conferred, either directly by the law or as the result of an act of the authorities, is in fact more closely connected with the population of the State conferring nationality than with that of any other State...' para 57. In *Nottebohm*, the ICJ was confronted with the question of whether the act of Liechtenstein to grant nationality to a Mr Nottebohm entailed an international obligation on the part of Guatemala to recognize its international effects, more specifically the right for Liechtenstein to exercise its diplomatic protection. Consequently, the ICJ determined what constituted nationality for the purposes of international law.

¹⁷¹ *Nationality Decrees Issued in Tunis and Morocco* at 24. In *Acquisition of Polish Nationality*, the PCIJ reiterated that states' right to decide who are their citizens could be limited by treaty obligations, at 16.

¹⁷² See Commentary to Draft Articles on Diplomatic Protection.

¹⁷³ *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica* para 33. In the *Nationality Decrees* opinion the exclusive rights of states to decide over nationality matters could only be restricted by voluntarily entered into treaty agreements. In the *Proposed Amendments* opinion, on the other hand, the Court thus ruled on the premise that rules of international human rights law to that end were already in force, as noted in Yaffa Zilbershats, *The Human Right to Citizenship* at 10. However, considering how the opinion has been cited since, it might perhaps rather be, which Marie-Bénédicte Dembour suggests, that the Court was *developing* human rights law, Dembour at 173.

¹⁷⁴ *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica* para 38.

¹⁷⁵ As reflected in the work that led to the Convention on the Reduction of Statelessness in 1961, Extract from the Yearbook of the International Law Commission II (1952) at 19.

24.3 sets out every child's right to acquire a nationality.¹⁷⁶ However, its normative force is moderated by the interpretation of the provision as given by the HRC: '[w]hile the purpose of this provision is to prevent a child from being afforded less protection by society and the State because he is stateless, it does not necessarily make it an obligation for States to give their nationality to every child born in their territory.'¹⁷⁷

Although there is a multitude of provisions stating the right to a nationality, there is in general no right to acquire a *specific* nationality.¹⁷⁸ Such an obligation for states may however emerge in certain situations. The Convention on the Reduction of Statelessness sets out an obligation for the state parties to grant their nationality to a person born in their territory who would otherwise be stateless.¹⁷⁹ In the European context, the ECN from 1997 obliges states parties to grant their nationality to children *ius sanguinis*, to foundlings found in its territory that would otherwise be stateless, and to children born on its territory who do not acquire another nationality at birth.¹⁸⁰ In the Americas, the ACHR article 20.2 states that every person has the right to the nationality of the state in whose territory she was born if she does not have the right to any other nationality. ACHR is thereby the only general human rights instrument that grants a right to a nationality of a specific state.

Also, the human rights principles of equality before the law and non-discrimination may lead to the result that a state cannot exclude some groups from the right to its nationality when they give it to others. In such situation, it is not a question of a right to a nationality as such, but rather a right to be treated equally, also in regard to nationality. CEDAW obliges its parties to grant women equal rights with men to acquire their nationality and with respect to the nationality of their children.¹⁸¹ CERD article 5 obliges states to prohibit and eliminate racial discrimination, and guarantee the right of everyone to equality before the law in the enjoyment of the right to nationality. With regard to article 5, the CERD Committee has held that states should ensure that particular groups of non-citizens are not discriminated against with regard to naturalization.¹⁸² The CERD Committee has expressed concern over the fact that states do not apply the

¹⁷⁶ The general comment on the meaning of article 24.3 does not deal with whether this applies also to adults, HRC, *General Comment no. 17* para 8. At what age a child attains her/his majority should be determined by each state party in the light of the relevant social and cultural conditions, HRC, *General Comment no. 17* para 4.

¹⁷⁷ HRC, *General Comment no. 17* para 8.

¹⁷⁸ That 'international law in general [does not] [provide] for the right to acquire a specific nationality' was, *inter alia*, noted recently by the ECtHR in *Petropavloskis v Latvia* para 83.

¹⁷⁹ The Convention on the Reduction of Statelessness, article 1.1.

¹⁸⁰ ECN, article 6.

¹⁸¹ CEDAW, article 9. The issue of discriminatory rules affecting women and their children, such as impossibility for women to transmit their nationality to their children, is frequently acknowledged by the CEDAW committee and other human rights monitoring bodies as an issue of high concern.

¹⁸² CERD *General Recommendation XXX (Sixty-fifth session, 2004): Discrimination Against Non-Citizens*, A/59/18 (2004) 93 para 13.

same criteria for naturalization to different national groups.¹⁸³ Likewise, it has expressed concern over *de facto* obstacles for specific groups to naturalization.¹⁸⁴ ECN article 5.1 states that nationality legislation shall not contain distinctions or include practices that amount to discrimination. Its explanatory report clarifies that the requirement of knowledge of the national language in order to be naturalized is a justified ground for differentiation or preferential treatment.¹⁸⁵ It is further not contrary to ECN to give more favourable treatment to nationals of certain other states as regards naturalization. For example, it is in line with the Convention for EU states to require a shorter period of residence of nationals from other EU states. To promote on the basis of nationality, the explanatory report establishes, is further not the same as to promote on the basis of national or ethnic origin, which is a prohibited discrimination ground.¹⁸⁶

In conclusion, in international law, there is no general obligation for states to grant their nationality. However, states may be so obliged in case where by signing international instruments they have undertaken specific duties to do so. In such instruments, two principles by which the right to a nationality may arise are the predominant; the prevention of statelessness and non-discrimination. It differs, however, what the obligation to grant a nationality, either as such or as corollary of the principles of prevention of statelessness and non-discrimination, effectively means. It depends on the formulation of the provision as such, how the monitoring body has interpreted it, and the binding nature of the statements of the monitoring body.

4.1.2 A right to naturalization in international law?

This section discusses if and, if so, in what circumstances a right to naturalization may emerge in international law. As explained in chapter 1.3, it will focus on the ECHR-system. However, as also explained in chapter 1.3, to shed light on the way the Strasbourg Court has solved the matter of an eventual right to naturalization, it is contrasted to the way in which the IACtHR has approached the matter, although Denmark, Germany and Sweden are not, from a formalistic point of view, bound by the IACtHR's decisions. The section starts by describing the approach of the IACtHR and then proceeds to that of the ECtHR.

4.1.2.1 The approach of the IACtHR

¹⁸³ See Croatia, CERD, A/57/18 (2002) 24 at para. 100; Qatar, CERD, A/57/18 (2002) 38 para 193.

¹⁸⁴ Switzerland, CERD, A/57/18 (2002) 46 para 251; Estonia, CERD, A/57/18 (2002) 60 paras 353- 354; Lithuania, CERD, A/57/18 (2002) 35 at para 171; Latvia, CERD, A/58/18 (2003) 75 para 449; Côte d'Ivoire, CERD, A/58/18 (2003) 19 para 29.

¹⁸⁵ Explanatory report to the ECN para 40.

¹⁸⁶ Explanatory report to the ECN, para 41.

In the *Proposed Amendments* opinion from 1984, the IACtHR had been asked to give an opinion on whether amendments to the Costa Rican nationality act were in violation of the right to a nationality according to ACHR article 20. The amendments would place different criteria regarding required length of residence for naturalized and native-born Central Americans, Spaniards and Ibero-Americans. They would also introduce language and country knowledge-requirements.¹⁸⁷ The IACtHR began its reasoning by establishing that it is generally accepted today that nationality is an inherent right of all human beings. Not only, it held, does it form the basis for the exercise of political rights; it also has important implications for an individual's legal capacity.¹⁸⁸ Then, in a section already referred to above, it held that 'the classic doctrinal position, which viewed nationality as an attribute granted by the state to its subjects, has gradually evolved to the point that nationality is today perceived as involving the jurisdiction of the state as well as human rights issues.' Turning to the proposed legislation before it, however, the Court noted that no Costa Rican would lose, be deprived of, or have her nationality affected if the amendments were enacted.¹⁸⁹ The amendments would hence not contravene article 20 in 'any formal sense'.

However, the Court did not stop at this point. On its own initiative,¹⁹⁰ it proceeded to examine whether the amendments were in violation of the right to equality before the law (article 24 ACHR). The notion of equality, the Court held, springs directly from the oneness of the human family and cannot be reconciled with a given group having the right to privileged treatment because of its perceived superiority.¹⁹¹ Despite this statement, the Court concluded that the proposed amendments of residence criteria were not 'clearly discriminatory in character'.¹⁹² Regarding the language and country knowledge requirements, the Court held that although they *prima facie* fell within the jurisdiction of the state, in practice such requirements risked becoming a vehicle for arbitrary judgments and discriminatory policies, which could well be the consequence of its application.¹⁹³

Two judges dissented to the majority's conclusions. Judge Buergenthal could not accept the difference made between naturalized and born Central Americans. His colleagues, however, partly gave him right. Subsequent to

¹⁸⁷ *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica* para 7.

¹⁸⁸ *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica* para 32.

¹⁸⁹ *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica* para 42.

¹⁹⁰ The questions asked by the Costa Rican government only referred to the right to a nationality and equality between spouses (the latter not being dealt with in this thesis), para 7.

¹⁹¹ *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica* para 55.

¹⁹² *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica* para 61.

¹⁹³ *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica* para 63.

reaching the conclusion in their majority opinion, they held that, although mindful of the margin of appreciation afforded to states in establishing requirements for naturalization, their conclusion should not ‘be viewed as approval of practices which...constitute clear instances of discrimination on the basis of origin or place of birth, unjustly creating two distinct hierarchies of nationals in one single country.’¹⁹⁴ Judge Piza Escalante, on his part, could not accept the proposed language and country-knowledge requirement. He could not, in view of ‘the nature and purpose of nationality, as they are described in this opinion’, find it reasonable to limit nationality for ‘reasons of educational level’.¹⁹⁵ The tests furthermore draw his memory to ‘similar practices for granting the vote in the United States (to know the Constitution), which for years allowed the exclusion of southern Negroes.’ This, he held, made it unnecessary to comment further.¹⁹⁶

The strong stand on equality among the IACtHR judges has been cherished in later cases. In 2003, the Court declared that the principles of equality before the law, equal protection before the law and non-discrimination have achieved *jus cogens* status.¹⁹⁷ Equality as *jus cogens* was interpreted, in a case from 2005, as obliging states to, when regulating mechanisms for granting nationality, abstain from regulations that are discriminatory or have discriminatory effects on certain groups of the population when exercising their rights.¹⁹⁸

Conclusively, in the field of nationality, the IACtHR acknowledges the sovereignty of states, but considers that it is significantly limited by human rights. This means that, although there is no right as such to naturalization in the text of the ACHR, the result may emerge from the substantive equality-oriented interpretation of the Convention that the Court, and even more so some of its members, demonstrated in the *Proposed Amendments* opinion. In this regard, it must however be noted that the ACtHR has not, although the ACHR in contrast to the ECHR contains a provision on the right to a nationality, had much opportunity to elaborate on the topic of naturalization, or on other topics, simply because of the size and resources of the institution (the ACtHR delivers a few judgments a year, compared to the ECtHR that monthly produces 100 rulings on the merits).¹⁹⁹ Concluding thoughts on the

¹⁹⁴ *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica* para 62. This means that although the IACtHR in the Proposed Amendments opinion examined an eventual right to naturalization and the right to not be discriminated against in the naturalization procedure, it also took the opportunity to formulate itself on the topic of the *content* of citizenship, thus the dimension of citizenship dealt with in the next section, 4.2.

¹⁹⁵ *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*, Dissenting opinion of Judge Piza Escalante, para 25.

¹⁹⁶ *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*, Dissenting opinion of Judge Piza Escalante, para 26.

¹⁹⁷ *Juridical Condition and Rights of the Undocumented Migrants* para 101.

¹⁹⁸ *The Girls Yean and Bosico v Dominican Republic* para 141.

¹⁹⁹ Compare Dembour at 48-51, where she cautiously suggests the difference in size and settlement between the two Courts as one possible sociological explanation as to the difference in approach to migration-related matters; on the one hand, the ACtHR as a young idealist institution and, on the other, the ECtHR as a bureaucratic ditto which devotes a lot

comparison between IACtHR and ECtHR are presented in the concluding section of this chapter, 4.3.

4.1.2.2 The approach of the ECtHR

The ECHR does not contain any provision on a right to a nationality.²⁰⁰ In 1985, one year after the *Proposed Amendments* opinion was released, the then still existing Commission held that not only is the right to acquire a particular nationality not covered by the convention, neither is it sufficiently related to any of its provisions.²⁰¹ Whereas the IACtHR underlined the implications of the right to a nationality for the enjoyment of other right, the ECtHR, in *Fehér and Dolník v Slovakia* (which concerned the fact that the applicants' loss of citizenship meant that they could not vote in the parliamentary election), simply stated that there is no right to a nationality under the ECHR, and that no issue arose under article 3 of protocol no 1,²⁰² despite the loss of citizenship.²⁰³

Nevertheless, in a number of decisions on inadmissibility, the Court has held that it did not exclude that a complaint about arbitrary denial of citizenship might be admissible under article 8 of the Convention because of the impact of such a denial on the private life of the individual.²⁰⁴ But since the Convention guarantees no right to nationality, the meaning of 'arbitrary' as to raise an issue under the Convention should be determined with reference to domestic law.²⁰⁵

The ECtHR did not find admissible any complaint regarding the denial of naturalization or any other matter of nationality law until the year 2011 and the case of *Genovese v Malta* (the *Genovese* case).²⁰⁶ Since the applicant

of its attention to get rid of its enormous backlog. Compared to the IACtHR, Dembour writes at 50, the ECtHR 'appears heavy and bureaucratic, thus less propitious for ambitious interpretations which would be more destabilising of state interests.'

²⁰⁰ According to Dembour, the drafting states were not interested in rights of importance for migrants; the European Convention was drafted to protect (those who already were) citizens, Dembour, at 71-72. She discusses this traditional lack of attention to migrants within the ECHR system in relation to article 16 ECHR (which restricts aliens' rights under articles 10, 11 and 14 of the Convention), a clause that neither has equivalence in the UDHR nor the ACHR. Although hardly ever applied, Dembour nevertheless discusses article 16 as a significant marker of a possibly still enduring discriminatory and closed attitude towards migrants in Europe.

²⁰¹ *Family K. and W. v The Netherlands*.

²⁰² Article 3 of protocol 1 ECHR sets out the right to free elections, which, as the Court in *Fehér and Dolník v Slovakia* also recognized, implies individual rights.

²⁰³ *Fehér and Dolník v Slovakia* para 49.

²⁰⁴ See *Karashev v Finland*.

²⁰⁵ *Fehér and Dolník v Slovakia* para 41.

²⁰⁶ The Grand Chamber judgment from 2012 in the case of *Kuric and Others v Slovenia* from 2012, which concerned 'the erased' who lost their citizenship following the dissolution of Yugoslavia and the independency of Slovenia, failed to deal with the issue of loss of citizenship due to the Chamber judgment's conclusion that the complaint was not in compliance with the Convention *rationae temporis*. Para 231.

was born out of wedlock by a non-Maltese mother he could not, in accordance with domestic law at the time which provided that a Maltese father's citizenship only transmitted to his child if he was married to the child's mother, acquire Maltese citizenship *ius sanguinis pater* at birth. Without elaborating on how, the Court found that the denial of citizenship had such impact on the applicant's social identity as to bring it within the ambit of private life in article 8.²⁰⁷ The complaint was thus admissible under article 8 (although whether it was, in accordance with the decisions described in the past paragraph, 'arbitrary' in view of domestic law was not dealt with). The Court noted that Maltese law expressly granted the right to citizenship by descent. Hereby, Malta had gone beyond its obligations under article 8.²⁰⁸ This right should be secured without discrimination according to article 14. On the merits of the case, the Court held that since the government had not presented any legitimating argument as to why children born in and out of wedlock should be treated differently, the Court found that article 14 in conjunction with article 8 was breached.²⁰⁹

In *Petropavlovskis v Latvia* (the *Petropavlovskis* case) from 2015, although not claimed by the applicant, the Court for the first time touched upon the issue of whether a right to naturalization could be claimed under the Convention. The question was whether a denial of naturalization due to perceived lack of loyalty was a punitive measures for the applicant's political activities and thereby a violation of his freedom of expression. The Court held that the requirement of loyalty, which as such democratic states are entitled to impose, is a distinct matter from the freedom of expression and assembly.²¹⁰

Although the *Petropavlovskis* case did not concern a right to naturalization but rather whether the naturalization decision actually was a punitive measure for the applicant's political activities, the Court focused on the question whether the applicant had a right to naturalize in Latvia.²¹¹ It started its reasoning by establishing that 'in accordance with international law, decisions on naturalisation or any other form of granting of nationality

²⁰⁷ Regarding admissibility, the Court excluded the possibility that any issues arose in relation to the applicant's family life. The applicant argued that Maltese citizenship would have enabled him to spend unlimited time in Malta with his father. However, the Court noted that the father had no intention of acknowledging his son or maintaining a relationship with him. Thus, the denial of citizenship could not be said to hamper the applicant's exercise of family life with his father. Para 33.

²⁰⁸ *Genovese v Malta* para 34.

²⁰⁹ *Genovese v Malta* para 48.

²¹⁰ *Petropavlovskis v Latvia* para 85.

²¹¹ The case is quite recent, a request for referral to the Grand Chamber is pending and it has thus not yet received attention in scholarship. However, in a blog post, 'The Fourth Section's Curious Take on Article 10 in *Petropavlovskis v. Latvia*: Two Comments', Corina Heri writes that the emphasis on the right to obtain Latvian nationality 'which demonstrates a certain reluctance by the Court to engage with the broader context of the applicant's allegations, led to rather unconvincing reasoning in the Fourth Section's judgment.' The author agrees.

are matters primarily falling within the domestic jurisdiction of the State.’²¹² The applicant argued that this principle is limited by the demands posed by human rights law, referring to the UDHR and the case-law of the IACtHR. The Court dismissed the applicant’s argument. Unlike in the UDHR, it held, there is no right to a nationality under the Convention. The reference to IACtHR was likewise misguided since ACHR, in contrast to ECHR, explicitly provides for a right to a nationality.²¹³ It then turned to the Convention system. It reiterated that arbitrary or discriminatory decisions in the field of nationality law might raise issues under the Convention, but that the matter of whether there is a right to a nationality must be resolved with reference to the terms of domestic law.²¹⁴ Naturalization criteria are, the Court held, linked to the nature of the bond between an individual and the state that each society finds necessary.²¹⁵

The Court did not in the *Petropavlovskis* case recognize a right to naturalization under the Convention, but when it in the particular context of naturalization reiterated its earlier established principles that arbitrary or discriminatory decisions in the field of nationality law might raise issues under the Convention, it did not exclude the possibility that such a right might arise. With that said, at this moment, there is *in general* neither a right to a nationality nor (presumably) to naturalization within the ECHR system.

4.1.3 Analysis

Among the norms described in the past two sections that concern or have been interpreted as concerning the matter of naturalization, Denmark, Germany and Sweden are bound by the CERD, ECHR and ECN.²¹⁶ The ICCPR, the provisions of which the countries are also bound by, only briefly states that every child has a right to acquire a nationality and the general comment regarding this provision does not contain anything on naturalization.²¹⁷ In the following, the accordance of the countries’ naturalization legislation with the relevant provisions of international law is discussed, with particular focus on the ECHR system, in light of the quite different approach of the ACHR system.

ECN demands states to not implement discriminatory naturalization practices. The explanatory report states that this shall be distinguished from practices which promote nationals from certain states, and from tests

²¹² *Petropavlovskis v Latvia* para 80. In this regard it is perhaps interesting to note that the ICJ in the *Nottebohm* case, which the Court refers to in concluding what is ‘in accordance with international law’, found that it was ‘not necessary to determine whether international law imposes any limitations on its freedom of decision in this domain’, but it did not as such exclude the possibility that international law so did.

²¹³ *Petropavlovskis v Latvia* para 81.

²¹⁴ *Petropavlovskis v Latvia* para 84.

²¹⁵ *Petropavlovskis v Latvia* para 84.

²¹⁶ They are bound to the obligations to prevent statelessness as described in the section above, but this is not relevant for the analysis of rules on ordinary naturalization.

²¹⁷ HRC, *General Comment no 17* para 8.

demanding knowledge of the national language. To promote on the basis of nationality is further not the same as to promote on the basis of national or ethnic origin, which is a prohibited discrimination ground. This means that all three countries' favourable treatment of nationals from other EU-states, including Denmark's and Sweden's favourable treatment of other Nordic citizens, is not contrary to the ECN. Neither are the language tests employed in Denmark and Germany problematic from the viewpoint of the ECN.

According to the CERD Committee, the principle of non-discrimination obliges states to ensure that particular groups of non-citizens are not discriminated against with regard to naturalization.²¹⁸ In relation to different states, the Committee has further expressed concern over *de facto* obstacles for specific groups to naturalization.²¹⁹ However, the general recommendations do not constitute binding norms. Neither are the states affected by recommendations expressed to other countries. Although these decisions provide room for argument as to how the principle of non-discrimination according to CERD should be interpreted in relation to any of the naturalization criteria in the three states, they do not have any normative force.

There is no right to a nationality in the ECHR. The former European Commission further explicitly held that neither does it *per se* follow from any of its provisions. The Court continuously reiterates that 'there is no right to a nationality under the Convention'. To this general rule, it has found some exceptions, of which only one has led the Court to actually find a violation of the Convention. If a denial of citizenship affects the private life of an individual to a certain (unclear) extent, the denial may fall within the ambit of article 8. This was the case in the *Genovese* case, which made it admissible. In that case, Malta gave a right to citizenship *ius sanguinis pater*. In accordance with article 14, this right should be enjoyed in a non-discriminatory manner. Considering that nationality matters generally fall outside the scope of the Convention, a discriminatory denial of citizenship does not automatically raise an issue under the Convention.²²⁰ It must, in accordance with the *Genovese* case, affect the individual's private life as to bring it within article 8. In a number of admissibility decisions, the Court has held that an arbitrary denial of citizenship may raise issues under the Convention because of the impact on the individual's private life. Again, accordingly, an arbitrary denial of citizenship does not automatically render a matter admissible. The Court has never found that a nationality decision has been arbitrary. From the above, regarding nationality in general, the following principles thus emerge:

²¹⁸ CERD *General Recommendation XXX (Sixty-fifth session, 2004): Discrimination Against Non-Citizens*, A/59/18 (2004) 93 para 13.

²¹⁹ Switzerland, CERD, A/57/18 (2002) 46 para 251; Estonia, CERD, A/57/18 (2002) 60 paras 353- 354; Lithuania, CERD, A/57/18 (2002) 35 at para 171; Latvia, CERD, A/58/18 (2003) 75 para 449; Côte d'Ivoire, CERD, A/58/18 (2003) 19 para 29.

²²⁰ Unless the relevant state has signed protocol 12 to the ECHR which contains a general prohibition of discrimination.

1. There is no right to a nationality under the ECHR.
2. A denial of citizenship may be admissible under the Convention if:
 - a) It had such an impact on the individual's private life as to bring it within article 8 and there was a right to citizenship in domestic law, or
 - b) It had such an impact on the individual's private life as to bring it within article 8 and the denial was arbitrary in view of domestic law.

Principle 2a entails that a denial of citizenship violates the Convention if it is illegitimately discriminatory. What it takes for principle 2b to be anything else than theoretical, in other words what it takes for a denial to be arbitrary in view of domestic law, is not yet clear. An incorrect application of domestic law? Procedural deficiencies? The Court has not yet expanded on this. Whether a denial of nationality which solely has an impact on the individual's private life as to bring it within article 8, but which is neither discriminatory nor arbitrary, may lead to a violation of the Convention under article 8 cannot be entirely answered by reviewing the current case-law. When the Court in the *Genovese* case reviewed its case law, it held that 'the denial of citizenship may raise an issue under Article 8 because of its impact on the private life of an individual'²²¹, without mentioning the arbitrariness requirement. It further did not even consider whether the denial of citizenship in that case was arbitrary, and neither did it hold that what corresponds to principles 2a and 2b above were the only situations in which a nationality matter might bring issues under the Convention. A potential implication of the *Genovese* case is thus that it is not necessary for a denial of citizenship to be either arbitrary or discriminatory but solely sufficiently impacting on the private life of the individual to raise an issue under the Convention (in contrast to earlier cases, where the arbitrariness is a clear prerequisite).

How the principles above relate to the question of whether there is a right to naturalization under the Convention is not clear. The most informing answer to this is the rather ambiguous reasoning in the *Petropavlovskis* case. The Court did not exclude that denial of naturalization could pertain to the exceptions according to principles 2a-b above, when it reiterated in what circumstances decisions in the field of nationality law might raise issues under the Convention. When stating that '[t]he choice of criteria for the purposes of granting citizenship through naturalization in accordance with domestic law is linked to the nature of the bond between the State and the individual concerned that each society deems necessary to ensure', it merely did a factual and not a normative description. However, considering the Court's reluctance to engage with matters of nationality at all and in view of the judgment as a whole, which general emphasis is on the state prerogative to decide on nationality matters, it might be a qualified guess that it is not eager to find a right to naturalization. In conclusion, to principle 2 above, a parenthesis might be added, which reads '[a] denial of citizenship

²²¹ *Genovese v Latvia* para 33.

(presumably including denial of naturalization) may be admissible under the Convention if (a) it had such an impact on the individual's private life as to bring it within article 8 and there was a domestic right to citizenship; or (b) it had such an impact on the individual's private life as to bring it within article 8 and the denial was arbitrary in view of domestic law.²²² There is further no reason as to why what was held above about the possible implications of the *Genovese* case would not also apply to denial of naturalization.

The above entails that the discretionary character of naturalization in the Danish and Swedish system, as such, is not in violation of the Convention. However, if a denial of naturalization would have such impact on an applicant as to bring it within the ambit of article 8, theoretically, there could be a violation of the Convention if the decision was arbitrary (principle 2b). Since neither Denmark nor Sweden provides a right to naturalization, a discriminatory application of naturalization law falls out of the scope of the Convention *rationae materiae* (principle 2a does not apply).

If, as suggested above, it is enough that a denial of naturalization has sufficiently substantial impact on an individual to bring it within the ambit of article 8, the lack of possibility to appeal a naturalization decision in Denmark might in theory raise issues under article 13. In the *Fehér and Dolník* decision, it was argued by the applicants that the decisions regarding nationality were not 'accompanied by any procedural guarantees permitting them to seek the protection of their rights.'²²² The Court however reiterated its principle that a breach of article 13 required an 'arguable' complaint under the Convention, which the applicants were found to not have.²²³ It did however not as such exclude the possibility of evoking article 13 when a nationality decision affected another right under the Convention. Thus, again, the lack of any review of naturalization decisions in Denmark could theoretically raise a claim under article 13. (The lack of review is of course not problematic under article 12 of the ECN, which explicitly obliges the states to provide a right thereto, since Denmark has made a reservation to this provision).

The German regulation does provide a right to naturalization. Accordingly, in theory, if the private life of an applicant for naturalization would be affected to the extent as to bring it within article 8, the eventual fact that the right to naturalization was not enjoyed equally could violate article 14 in conjunction with article 8 (principle 2a). How these principles would apply to denial of naturalization however appears vague. So far, the Court has not expanded on what impact a denial of citizenship must have as to bring it within article 8. In the *Genovese* case, it gave no explanation as to why the applicant's social identity was affected to such an extent as to fall under the Convention. Will it be possible for a migrant in Germany to claim that a negative naturalization decision had such impact on her private life as to bring it within the ambit of article 8? About this one can only speculate (but

²²² *Fehér and Dolník v Slovakia* para 38.

²²³ *Fehér and Dolník v Slovakia* para 57.

the pessimistic nature, again in view of the Court's reluctance to engage with matters of nationality at all, and perhaps in view of what Dembour argues is the ECHR's inherent arrogance towards matters that are of importance for migrants,²²⁴ does not see this as possible in the near future).

Lastly, it should be noted that the loyalty requirements in Denmark and Germany are clearly not problematic from the viewpoint of the Convention. Requirements of loyalty to the state is the only naturalization requirement that the ECtHR has examined. Not only are such requirement not in violation of the Convention, on the contrary, 'a democratic state is entitled to require naturalizing citizens to be loyal...'²²⁵

To sum up; the fact that Denmark and Sweden do not provide a right to naturalization is not in violation of their obligations under international law. There are further clear norms in international law (in particular on a European level), by which the countries are bound, which state that the language and loyalty requirements in Denmark and Germany and the preferential treatment of EU and Nordic nationals in all states are not contrary to international law. Lastly, nothing in international law has emerged which suggests that the countries' decency, country knowledge and self-sufficiency criteria may be against the international obligations that they are bound by.

4.2 The right to family reunification in international law

This section is divided in two parts. Section 4.2.1 briefly describes the right to family life in international law, in particular according to the ECHR-system, followed by a complete focus on how the ECtHR has handled the matter of family reunification. In section 4.2.2, the case law of the Court regarding family reunification is analysed and applied to the regulation thereof in Denmark, Germany and Sweden. As held in chapter 1.4, it focuses solely on how the rules relates to international norms on family reunification, although for example the general principles of the best interest of the child and non-discrimination could be relevant for the accordance of the rules with international law.

4.2.1 Citizens' equal rights to family life?

The right to family life is protected by multiple provisions in international law. To name a few: according to the ICCPR article 23.1 and the ACHR article 17.1, the family is 'the natural and fundamental group unit of society and is entitled to protection by society and the State.' ICESCR article 10.1 states; 'The widest possible protection and assistance should be accorded to

²²⁴ Dembour, *supra* note 199.

²²⁵ *Petropavlovskis v Latvia* para 85.

the family...’ ACHPR article 18.1 states that ‘[t]he family shall be the natural unit and basis of society. It shall be protected by the State...’

In the ECHR, the right to everyone to respect for her family life is established in article 8. At the core of the right to family life, is the right to live together so that family relationships may ‘develop normally’,²²⁶ and so that the family members can ‘enjoy each other’s company’.²²⁷ Over the years, which family relations that are afforded protection under the Convention have developed significantly. The Court has gradually afforded protection to children born out of wedlock,²²⁸ to same-sexed couples wishing to adopt,²²⁹ and has declared that transsexuals have a right to marry someone of their ‘former’ sex (this does however not fall under article 8 but under article 12).²³⁰ The increased protection of various forms of family life has nevertheless not been accompanied by a widened protection of family life when someone in the family is a *migrant*. That is, family reunification. This thesis is about citizens’ equal rights. Therefore, in the following, the case law of the Court regarding family reunification when a family member is a citizen is reviewed. Is there an equal right to family life for citizens regardless of the migration background of the family members under the ECHR?

In 1985, the ECtHR delivered its judgment in the case of *Abdulaziz, Cabales and Balkandali v the UK* (the *Abdulaziz* case). The case concerned three women whose non-British husbands were refused spousal-based residence permits. One applicant was a naturalized British citizen. The law in force at the time refused male applicants of spousal reunion unless the wife was a UK citizen born in the country, or was a UK citizen with at least one parent born in the country. The aim of the legislation was to protect the domestic labour market by curtailing the immigration of those who could be expected to seek full-time work in order to support a family.²³¹

The Court examined whether the refusals violated the applicants’ right to family life under article 8 of the Convention. It formulated two principles (in italics below).

1. Firstly, it held that it is ‘a well-established principle of international law’ that *states have the right to control the entry of non-nationals into its territory*.²³²
2. Secondly, it held that there was *no general obligation for states under article 8 to respect the choice by couples of the country of*

²²⁶ *Marckx v Belgium* para 31.

²²⁷ *Olsson v Sweden* para 59.

²²⁸ *Marckx v Belgium*.

²²⁹ *X and Others v Austria*.

²³⁰ *Christine Goodwin v The United Kingdom*.

²³¹ *Abdulaziz, Cabales and Balkandali v The United Kingdom* para. 21.

²³² *Abdulaziz, Cabales and Balkandali v The United Kingdom* para. 67.

their matrimonial residence and to accept non-national spouses for settlement in that country.²³³

Whether there was an obligation in accordance with principle 2 depended on the circumstances in the specific case. The applicants did not face any obstacles in establishing their family life in their own or their husbands' home countries. At the outset, they knew that it would be difficult for the husbands to get a residence permit in the UK. For these reasons, the Court concluded that there had been no violation of article 8.²³⁴ Thus, a third principle was established:

3. An obligation to allow family reunification may arise under the ECHR due to specific circumstances in the individual case, such as when family life otherwise would be ruptured.

Mrs. Balkandali, the UK citizen among the applicants, argued that she had been discriminated against on the ground of birth. Husbands of female citizens who had been born or had a parent born in the UK were not refused residence permits. All applicants further complained of discrimination on the ground that the rules were racist in effect and purpose. In relation hereto, the Court added two principles to those it had already established (in italics below).

4. The Court held that a person who, like Mrs. Balkandali, had been settled in a country for several years might also have formed close ties with that country, even if he or she was not born there. Nevertheless, the Court found that '*there are general persuasive social reasons for giving special treatment to those whose link with a country stems from birth within it.*'²³⁵ It thus found that the aim of the rule, explained by the government to be 'to avoid the hardship which women having close ties to the United Kingdom would encounter if, on marriage, they were obliged to move abroad in order to remain with their husbands',²³⁶ justified the difference in treatment.
5. The Court acknowledged that 'the mass immigration' against which the rules were directed mainly consisted of people from the New Commonwealth and Pakistan. Thereby, the rules affected fewer white people than others. Nevertheless, the Court concluded that 'Most immigration policies - restricting, as they do, free entry - differentiated on the basis of people's nationality, and indirectly their race, ethnic origin and possibly their colour' but while states cannot implement policies of 'a purely racist nature', *preferential treatment of persons from countries with which a state had the*

²³³ *Abdulaziz, Cabales and Balkandali v The United Kingdom* para. 68.

²³⁴ *Abdulaziz, Cabales and Balkandali v The United Kingdom* paras 68-69.

²³⁵ *Abdulaziz, Cabales and Balkandali v The United Kingdom* para 88.

²³⁶ *Abdulaziz, Cabales and Balkandali v The United Kingdom* para 87.

closest links was to be distinguished from racial discrimination. The Court therefor also dismissed this complaint.²³⁷

The Court has remained loyal to the principles it developed in the *Abdulaziz* case. It has as a main rule held that article 8 does not guarantee a right to choose the most suitable place to develop family life. In decisions where this has been a reason to dismiss complaints about the refusal of a residence permit for *children*, the Court has attributed weight to facts such as whether the child has reached an age where she/he is not as dependent on the care of the parents, and to whether the child has grown up in the cultural and linguistic environment of the country of origin.²³⁸ In child-parent reunion cases where the Court actually found that article 8 was breached, this has been due to specific circumstances of the individual cases, such as whether the parent has given birth to other children in the country she had migrated to, a circumstance which the Court found impeded the possibilities for establishment of family life in the country of origin.²³⁹

The *Abdulaziz* case also guided the Court in a chamber judgment from 2014, *Biao v Denmark* (the *Biao* case), where it examined the Danish attachment requirement for spousal reunification and its 28 year-exception.²⁴⁰ In 2003, the Ghanaian wife of a naturalized Danish citizen was refused a residence permit. The Danish spouse had naturalized in 2002. The attachment requirement thus applied. The Court found that the family could settle in Ghana instead and that family life by the denial of a residence permit therefore was not ruptured (principle 3 above).²⁴¹ Accordingly, the Court did not find any violation of article 8.²⁴²

The couple furthermore complained under article 8 in conjunction with article 14 that the 28-year-rule implied indirect discrimination between Danes who acquired their citizenship by birth and those who acquired it later in life. Although the rule formally applied equally to all Danes, in reality it affected naturalized citizens far more often and with a far greater impact than citizens by birth. Naturalized citizens had to wait until later in life before they had a right to family reunion equal to that of citizens by

²³⁷ *Abdulaziz, Cabales and Balkandali v The United Kingdom* paras 84-85, where the Court refers to the Commission's report. Therein, the quoted position is found in paras 113-116.

²³⁸ See for example *Benamar v The Netherlands*; and *I.M. v The Netherlands*.

²³⁹ *Tuquabo-Tekle and Others v The Netherlands* para. 47; and *Şen v The Netherlands* para 40.

²⁴⁰ Today, the exception has been reduced to require 26 years of citizenship. The reason for making the attachment requirement generally applicable for citizens was that it was considered, on the basis of a concern that there was a 'widespread pattern to marry a person from their country of origin', that there were Danish nationals who were not well-integrated, for which reason the integration of the newly arrived spouse would involve problems. The reason for exempting couples where one of the spouses had been a national for more than 28 years was to make it possible for Danish expatriates to return to Denmark also after many years, which was not considered to forfeit the aim of the attachment requirement.

²⁴¹ *Biao v Denmark*.

²⁴² *Biao v Denmark* paras 53-59.

birth.²⁴³ The couple moreover argued that the rule entailed indirect discrimination on grounds of ethnicity or of race. Citizenship by birth usually coincided with being of Danish ethnic origin and citizenship later in life with being of foreign ethnic origin.²⁴⁴

The Court noted that according to the *wording* of the 28-year-rule, it distinguished neither between a) citizens by birth and naturalized citizens, nor between b) citizens of Danish and non-Danish origin.²⁴⁵ Turning to the *effects* of its application, with regard to (a), it held that there was indeed a difference in effects for different groups of citizens, but rather on the ground of *length of citizenship* (28 years or not).²⁴⁶ It then turned to the alleged discrimination on the ground of ethnic origin. It agreed that the 28-year-rule had the consequence of creating an indirect difference in treatment between Danes of Danish ethnic origin and Danes of foreign ethnic origin.²⁴⁷ The Court reiterated that preferential treatment of persons from countries with which a state had the closest ties was to be distinguished from racial discrimination. In view of this together with the fact that non-nationals born and raised in Denmark were likewise exempted from the attachment rule, in the Court's view it could not be a matter of racial discrimination.²⁴⁸ By in this context reiterating the distinction between racism and preferential treatment that might have the effect of creating a difference in treatment between people according to race or ethnicity, the Court potentially²⁴⁹ developed a fifth principle:

6. Preferential treatment of persons with whom it has the 'strongest ties' is to be distinguished from racial discrimination.

The Court thus only examined the issue of discrimination on the ground of length of citizenship (28 years or not).²⁵⁰ For a difference in treatment according to article 14 not to be discriminatory and in violation of the Convention, there must be a relationship of proportionality between the means employed and the legitimate aim sought. The Court held that the aim of the difference in treatment was legitimate, in view of the *Abdulaziz* case and the states' right to give special treatment to those who have strong links with a country.²⁵¹ The means by which this aim was sought was the 28-year-

²⁴³ To the Danish applicant, for example, who naturalized when he was 31, the attachment requirement would apply until he was 59 years old, as compared to a Danish-born person who would cease to be covered by the requirement from the age of 28.

²⁴⁴ *Biao v Denmark* paras 81-82.

²⁴⁵ *Biao v Denmark* paras 84.

²⁴⁶ *Biao v Denmark* paras 86-89.

²⁴⁷ *Biao v Denmark* paras 90.

²⁴⁸ *Biao v Denmark* paras 87 and 90.

²⁴⁹ I write 'potentially' since the case was heard before the Grand Chamber in April 2015, and its judgment is pending.

²⁵⁰ *Biao v Denmark* paras 90-91.

²⁵¹ *Biao v Denmark* para 94. The applicability of the *Abdulaziz* case might however be questioned, since aim of the 28-year-rule was not to give preferential treatment to those 'whose link with a country stems from birth within it' (*Abdulaziz, Cabales and Balkandali v The United Kingdom* para 88) but rather to expatriates, who might never have lived, or have been born in Denmark.

rule. The Court found that this appeared ‘excessively strict’.²⁵² It further held that it appeared ‘almost illusory’ that a citizen who had naturalized as an adult could reunite with her spouse in Denmark, since ‘they either had to wait 28 years... or they had to create such strong aggregate bonds in other ways to Denmark, despite being separated, that they could fulfil the attachment requirement.’²⁵³ However, with reference to the case of *Taxquet v Belgium*, the Court did not find its task to be to ‘review relevant legislation in the abstract’.²⁵⁴ It therefore turned to the individual circumstances of the case. The legitimate aim of the rule was to privilege citizens with which Denmark had closest ties. The applicants could not be said to have such close ties to Denmark. Therefore, it had not been disproportional to not allow them family reunification.²⁵⁵ Accordingly, the Court did not find the rules discriminatory and therefore in violation of the Convention.

A long and very critical minority opinion followed, authored by judges Sajó, Vucinic and Küris. Like the majority, it noted that whether the attachment rule applied or not, was based on the length of citizenship (28 years or not). The majority had also noted that the 28-year-rule rendered it ‘almost illusory’ for naturalized citizens to ever get to enjoy spousal reunification, but had declared its lack of competence to ‘examine the rule in the abstract’. Therefore, it focused solely on the proportionality of, in view of the aim of the rule, denying family reunion in the applicant’s individual case. It is the least to say that the minority deplored this. It held that the *Taxquet* case, which the majority had quoted to reach its conclusion that it could not ‘review the legislation in the abstract’, had not been properly cited. In its entirety, the relevant parts from it read; ‘the Court’s task is not to review the relevant legislation in the abstract. Instead, it must confine itself, as far as possible, *without losing sight of the general context*, to examining the issues raised by the case before it’²⁵⁶ (emphasis added as in the *Biao* minority opinion). For this general context, the Court has developed a tool that could be applied in this case; its indirect discrimination doctrine. As the majority had noted, the 28-year-rule had the effect that citizens who were denied family reunion tended to be naturalized. This, the minority held, meant that *indirectly*, the rule differentiated on the ground of *national origin* (and different treatment of groups on the basis of national origin ‘has some potential to shift to ethnic racism.’)²⁵⁷ When a rule has a categorizing effect on people and one group is disadvantaged, the state has to prove that this is proportionate to the aim. According to the minority, very weighty reasons had to be brought forward by the government in order to justify a differentiation in treatment that distinguished people on the basis of national origin. It returned to the individual case before it to illustrate the disproportionality of the 28-year-rule: the family were unable to live together in Denmark, of which two of its

²⁵² *Biao v Denmark* para 103.

²⁵³ *Biao v Denmark* para 101.

²⁵⁴ *Biao v Denmark* para 94.

²⁵⁵ *Biao v Denmark* para 106.

²⁵⁶ *Taxquet v Belgium* para 83.

²⁵⁷ *Biao v Denmark*, joint dissenting opinion of judges Sajó, Vucinic and Küris para 13.

members were citizens (the couple had during the period given birth to a son who was a Danish citizen *ius sanguinis pater*, a fact which was not considered by the majority), until 2030. The couple's son, a Danish citizen, would then not have been brought up in Denmark if his parents decided to live together with him as a family. If the son wanted to marry before the age of 28, he, by never having lived in Denmark, would have a hard time fulfilling the attachment requirement. This illustrated that the 28-year-rule created a 'second-class citizenship'²⁵⁸, which was impossible to think would be permitted under article 14 of the Convention.²⁵⁹

To conclude, as for now, there is in general no right to family reunion under the Convention, and neither are states prohibited from implementing family reunion criteria that favour citizens without a migration background over others with a migration background. The *Biao* case was heard before the Grand Chamber in April 2015 and the judgment is pending. Whether the last principle, which according to the minority permitted a 'second-class citizenship', will endure to be seen.

4.2.2 Analysis

The description of the current state of affairs in the case law of the ECtHR regarding family reunification shows a number of characteristics, which could be summarized as follows:

1. In accordance with 'a well-established principle of international law'²⁶⁰, migration law is a matter of sovereign concern. There is thus no general obligation for states to allow family reunification on its territory.
2. An obligation to allow family reunification may arise under the ECHR due to specific circumstances in the individual case, most importantly when family life could not be enjoyed elsewhere.
3. There are general persuasive social reasons for giving special treatment to those whose link with a country stems from birth within it.
4. Preferential treatment of persons from countries with which a state has the closest links, which are not of 'a purely racist nature', is to be distinguished from racial discrimination.
5. Preferential treatment of persons with whom it has the strongest ties, which are not of 'a purely racist nature', is to be distinguished from racial discrimination.²⁶¹

²⁵⁸ *Biao v Denmark*, joint dissenting opinion of judges Sajó, Vucinic and Küris, para 8.

²⁵⁹ *Biao v Denmark*, joint dissenting opinion of judges Sajó, Vucinic and Küris.

²⁶⁰ In this thesis, there is no room to question this assumption of the Court. Dembour, however, so does. Dembour at 153-154.

²⁶¹ Put more simply: according to ECtHR, 1. There is no right to family reunion. 2. There might however be a right in some situations. 3. It is ok to privilege citizens who never were migrants over citizens who were migrants. 4. 3 is not the same as racism. 5. Neither is it racism to privilege migrants from countries with which a state has 'close links'.

Regarding principles 1-2; when a case of family life also concerns issues of migration, the Court is privileging the state's prerogative to decide on the composition of its population, i.e. to decide who is welcome and who is not, over the human rights of individuals within the state to be with their families there (the family members' right to 'enjoy each other's company')²⁶². The starting point is that there is no obligation on the part of the state to allow transnational family reunion. It is only in case where particular circumstances emerge on the individual's side that such an obligation appears. This means that the assessment of whether there has been a violation of the right to family life is reversed in comparison with cases concerning family life where matters of migration law are not involved. In such cases, the starting point is that there is a human right to family life. The second step in the Court's analysis is then to determine whether there are any interests of public concern that legitimately may infringe upon this right. In cases of family reunion, on the other hand, the starting point is that, although within the scope of family life, there is no right to family reunion. Instead, there must be convincing reasons on the part of the individual/s as to why a right in the specific case should emerge.²⁶³ This means that when family life involves issues of migration, migration concerns triumph over family concerns; the state's right to control migration triumphs over the individual's human right to family life.

In effect, principle 3 means that it is not contrary to the Convention to favour citizens without a migrant background over citizens with a migrant background (citizens by birth over naturalized citizens). In fact, there are even 'general persuasive social reasons' to do so (the Court did not elaborate in *Abdulaziz*, nor in *Biao*, what these reasons are). Furthermore, according to the *Biao* case, although this in effect also entails indirect differential treatment between people on the ground of colour or ethnicity, this is remarkably not discriminatory on the ground of race (principle 5).

The answer to the overarching question of whether there is an equal right to family life regardless of the migration background of the family members under the ECHR, is hence no.

Since the *Biao* case was about the Danish rules on spousal reunification (which have only changed to the extent that the exception from the attachment-requirement now applies after 26 instead of 28 years), there is not much this thesis could add about the impact on positive human rights norms on Denmark's regulation of spousal reunification more than to conclude what the *Biao* case tells: the Danish rules on family reunification, which entail indirect difference in treatment between citizens on the ground of their foreign background, are in accordance with the ECHR. The Grand Chamber however has the opportunity to follow the minority's path, and thereby adhere to a substantive equality-approach to discrimination in migration-related matters, which for the IACtHR, as shown in 4.1.2.1, appears much more natural. By adhering to such an approach the Grand

²⁶² *Olsson v Sweden* para 59.

²⁶³ Compare *Dembour*, at 155.

Chamber, furthermore, not only has the opportunity to spell out the indirect discrimination between citizens of a migrant background and citizens by birth, but also to fully explore what the Chamber minority only implied: whether the rules, by indirectly also distinguishing between citizens on the ground of national origin, were also *racist*.

The Danish rules on family reunion between parents and their non-Danish children slightly differ from those on spousal reunion. The child cannot be over 15 years old. As a general policy, in line with the case law of the Court, this is not in violation of the Convention. Also, when considering whether any circumstances speak for a right to family reunion in the individual case, according to case law, the fact that a child is 15 years old or older would only speak to the contrary.

The Danish rules further provide that in case a child is over six years old and live in her country of origin with one of her parents, the main rule is that there is no right to family reunion, unless the child has or is able to obtain such ties with Denmark that there is a basis for successful integration. Considering that the Court, when assessing whether a child has a right to family-based residence permit, considers factors such as independence of the residing parent and whether the child has grown up in its linguistic and cultural environment, this requirement seems to accord with the Convention.

The German and the Swedish rules treat citizens equally, regardless of the migration background of the family members. Since this thesis is not about the equality between citizens and non-citizens, but about equality between citizens, it is just briefly noted that Sweden's favourable treatment of EEA and Swiss citizens compared to other foreigners, is not in violation of the prohibition of discrimination on the ground of race according to article 14 Convention (according to principle 5).

4.3 Concluding thoughts on citizenship in international law

The idea of universal human rights, theoretically and to a certain extent in practice, has implications for citizenship. The human rights regime grants rights on the basis of personhood rather than nationhood. In other words, it attributes rights to 'all human beings', rather than merely to citizens of a state.²⁶⁴ To the extent that human rights in fact are granted 'to all', substantial citizenship in the nation state – the content of membership, which once was reserved for citizens only but today partly also is enjoyed by 'foreigners' who permanently reside in a country, as noted in chapter 2.1 – has thus expanded to include more people. Nevertheless, the same international system that grants universal human rights based on personhood rather than nationhood, locates the responsibility for their upholding and

²⁶⁴ However, positive human rights law make similar distinctions between citizens and others as mentioned in chapter 2.1; the right to enter one's country and political rights are reserved for citizens, see ICCPR articles 12.4 and 25 respectively.

implementation to the nation-state.²⁶⁵ Therefore, international human rights law confirms the nation-state and its sovereignty while it paradoxically at the same time contests it.

This tension between state sovereignty and universal human rights based on personhood is reflected in positive European human rights law concerning naturalization and family reunion. On the one hand, the ECHR obliges states to respect human rights²⁶⁶ to private life (of which matters of nationality according to the ECtHR may form part), to family life and to not be discriminated against. On the other, the ECtHR repeatedly emphasises states' sovereign rights to decide over migration matters (who is allowed to become part of the population) and over nationality matters (who is allowed to become part of the people). The tension between the duty to include and the right to exclude seems inherent in the institution of legal human rights as such.

In the two specific matters of naturalization and family reunion, the ECtHR allows the states' sovereign right to exclude to triumph over their duty to include. The starting point is that there is no right to become a citizen, and then, once or if one is a citizen, there is no right to live with one's beloved in one's own country, if that would entail that one's beloved one would become part of the population, which the state is not obliged to allow. The latter has serious implications for substantial citizenship, as the *Biao* case shows. It forces individuals to choose whether to enjoy their citizenship at all, since they cannot both live in their country of citizenship and live with the ones they love. Love is a fundamental matter of human life. To not be allowed to love whomever one wants in one's country of citizenship is to disconnect the full spectra of human life from citizenship, and vice versa. For those citizens who love 'right', in this context someone who does not evoke matters of migration, this is not a problem. For those who love 'wrong', in this context transnationally, this puts them in a position where they have to choose between living as citizens (that is, in their country of citizenship) and living to enjoy all their humanness. By, as a general rule, not obliging states to give a right to family reunion, the ECtHR permits not only hierarchies between citizens, but also hierarchies between human beings, where some have the right to both citizenship and love, and some have to choose.

These hierarchies between individual citizens turn into hierarchies between *groups* of citizens, when the right to love (or, conventionally speaking, to family life) is not merely dependent on whether the object of a citizen's love is a migrant, but also on some characteristics on the part of the citizen. This was the case in both *Abdualziz* and *Biao*: the right to family reunion was partly²⁶⁷ dependent on whether a citizen was a citizen by birth and the

²⁶⁵ Soysal, 'Toward a Postnational Model of Membership'.

²⁶⁶ Universally 'within their jurisdiction', article 1.

²⁶⁷ I write partly since, in *Biao*, although the attachment requirement did not apply for those who had been citizens for 28 years, there were still a couple of other eligibility criteria. The

length of citizenship respectively. Then the state's prerogative to control migration no longer affects a random sample of citizens, but a specific group of citizens who are divided and denied their right to family life on the mere basis of belonging to that group. The ECtHR's favouring of state sovereignty over human rights however allows, even finds it 'generall[y] persuasive' due to undefined social reasons, to divide groups of citizens in this way.

Does the above thus mean that there is no hope for recourse to human rights law and the rights based on personhood, when the promise of the equality in citizenship (as described in chapter 2.2) is failed?

The tension between state sovereignty and universal human rights in migration-related matters, which come out in favour of the former, as argued, and can create hierarchies between citizens, has been interpreted differently in San José and in Strasbourg. This appears from the two Courts' distinct approach to nationality matters in general and naturalization matters in particular, as examined in chapter 4.1.

In 2015, the ECtHR interpreted the state of affairs in international law regarding nationality in the following manner: '[i]n accordance with international law, decisions on naturalisation or any other form of granting of nationality are matters primarily falling within the domestic jurisdiction of the State...' ²⁶⁸ In 1984, the IACtHR's interpreted international thusly: 'the classic doctrinal position, which viewed nationality as an attribute granted by the state to its subjects, has gradually evolved to the point that nationality is today perceived as involving the jurisdiction of the state as well as human rights issues.' ²⁶⁹

Where a 'generally accepted' ²⁷⁰ inherent right clearly appeared in San José in 1984, in Strasbourg 27 years later it was not as much as spotted. At the IACtHR, there is not only a right to a nationality, but also tendencies, in view of 'the nature and purpose of nationality', ²⁷¹ to completely dismiss discriminatory naturalization criteria. ²⁷² At the ECtHR, decisions on naturalisation or any other form of granting of nationality are instead

attachment requirement however appears as the main obstacle for family reunion, since it is for some people in theory impossible to fulfil.

²⁶⁸ *Petropavlovskis v Latvia* para 80.

²⁶⁹ *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica* para 33.

²⁷⁰ *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica* para 32.

²⁷¹ *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*, Dissenting opinion of Judge Piza Escalante para 25.

²⁷² This supports professor Marie-Bénédicte Dembour's general argument in *When Humans Become Migrants*; that where the bias of the IACtHR is directed towards the human being and the migrant, the bias of ECtHR is directed towards the state. The starting point in the respective Court's case law is thus each other's opposite. Dembour at 43-45, where she summarizes these contrasting biases.

matters ‘primarily falling within the domestic jurisdiction of the State.’²⁷³ Where the IACtHR, although not even asked to rule on it, could not accept practices which ‘constitute clear instances of discrimination on the basis of origin or place of birth, unjustly creating two distinct hierarchies of nationals in one single country,’²⁷⁴ the ECtHR refused to see the effects of a practice which divided and disadvantaged groups of the population.²⁷⁵

In the IACtHR’s view, there is a ‘generally accepted’ inherent right of all to a nationality as such, and nationality is central for the enjoyment of other rights. The IACtHR thus seems to embrace an approach to nationality as a right to have rights (or at least as important thereto), and its members show their eagerness to act upon it. In contrast, although the ECtHR in the *Genovese* case finally found that a nationality matter fell within the ambit of article 8, it did not interpret the otherwise broad article 8 as to include a right to a nationality. To the ECtHR, citizenship rather appears as a privilege; in the *Fehér and Dolník* decision, the fact that citizenship had implications for other rights was simply not an issue under the Convention.

When the ECtHR’s case law on nationality as above is viewed in the light of the approach of the IACtHR, it becomes apparent that the *starting point* for an international legal reasoning in nationality matters (state sovereignty or human rights?), the interpretation of *the state of affairs in international law* (‘nationality are matters primarily falling within the domestic jurisdiction of the State’ or ‘nationality is today perceived as involving the jurisdiction of the state as well as human rights issues’), and the view of *the character of nationality* (privilege or right?), *could* all be very different.

Although the tension between sovereignty and universal rights seems inherent in the institution of legal human rights as such, and although the ECtHR favours the former at the expense of the latter in cases where migrants’ and former migrants’ rights are at stake, the case law of the IACtHR shows that it potentially *could be different*. Human rights law is not necessarily indifferent to whether domestic law fails the promise of equality in citizenship. Perhaps the reason as to why at the European level it is the case in migration-related cases must be sought elsewhere, outside the law itself? It might be suggested that the answer lies in the very institutional organization of human rights, i.e. the fact that the responsibility for human rights is located to states themselves. The inherent paradox in human rights

²⁷³ *Petropavlovskis v Latvia* para 80. In this regard it is perhaps interesting to note that the ICJ in the *Nottebohm* case, which the Court refers to in concluding what is ‘in accordance with international law’, found that it was ‘not necessary to determine whether international law imposes any limitations on its freedom of decision in this domain’, but it did not as such exclude the possibility that international law so did.

²⁷⁴ *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica* para 62.

²⁷⁵ In this regard, I have in mind the fact that the ECtHR in the *Biao* case noted that the 28-year-rule rendered it ‘almost illusionary’ for naturalized citizens to ever get to enjoy spousal reunification, but declared its lack of competence to ‘examine the rule in the abstract’ and thus did not, as the minority argued that they should have, apply the indirect discrimination doctrine.

law would thus entail that it is a similarly inherent feature of human rights law that it is never stronger than the political will of states. What is the political will of the European states as regards the rights of migrants and former migrants? Without scope to do more than merely raise this open question, the thesis now closes this chapter and moves on to analyse one expression for such will in three states, namely domestic legislation of naturalization and family reunification.

5 Ideals of citizenship in legal practices

In chapter 2.3, it was held that scholars argue that there is an *ideal of whiteness* in Europe, which exists in the minds of the general public but which also is institutionalized, although not explicitly. What is investigated in this chapter is if, and how, the thesis regarding the white European ideal membership from chapter 2.3 affects the dimensions of citizenship as described in chapter 2.1 and 2.2. More specifically, are the rules on naturalization and family reunion in Denmark, Germany and Sweden reflecting an imagining of the ideal citizen as white? Or do the rules also/instead evoke other ideals of membership and belonging, and, if so, which? And what are the implications of the ideal(s) emerging for citizenship as a right to equal rights, that is, substantive full membership (as regards family reunification)? The rules of naturalization are analysed in 5.1 and the rules of family reunification in 5.2. Some concluding thoughts on the results and the interrelation between citizenship as status and citizenship as a right to equal rights are presented in 5.3.

5.1 Ideal citizenship in the rules of naturalization

The analysis in this section is performed in two steps. Firstly, the patterns emerging from the comparative empirical study are presented. Secondly, the ideals they evoke are analysed.

5.1.1 What patterns emerge from the rules of naturalization?

In all three countries, citizens of other EU and EEA states (and, in Denmark and Sweden, other Nordic citizens) are exempted from many criteria, or favourably treated. The primary conspicuous feature of the development of naturalization regulations in Denmark and Germany specifically, is that the list of requirements in both countries have become longer and longer over the past 15 years. New and/or stricter decency requirements, oaths or declarations of loyalty, language requirements, country knowledge requirements and self-sufficiency requirements are all conditions that have gradually been introduced since the year 2000. In Sweden, a similar legal development has not taken place, but the integration concerns that motivated the expanding list of requirements in the other two countries were similarly reflected in the preparatory works to the new Swedish Citizenship Act (and has indeed formed part of public discourse).

Although integration concerns as held are prevalent in all countries, ‘integration’ seem to refer to slightly different things in the respective states.

In Denmark, illustrated by the Declaration on Integration and Active Citizenship and also by the aim of some of the rules on family reunion (the development of which has been intertwined with that of naturalization regulation), 'integration' seems to in particular refer to adherence to, or embodiment of, certain values; to integrate into Danish society is to embrace the values of gender equality and tolerance (rather universal values which however in general are considered 'Western' rather than 'Danish'). In Germany, the focus is not on the embodiment of certain values. The integration course aims at enabling foreigners 'to act independently', and those who are 'successful' in integrating, assumingly mastering whatever is considered to enable them to 'act independently', are rewarded by deduction of the required years of residence. In both countries, it is the responsibility of the migrant herself to integrate; in Denmark this responsibility is codified, and in both Denmark and Germany the failure of integration is 'punished' by having implications for, *inter alia*, acquisition of a permanent residence permit. Integration becomes hereby a set of actions on the part of the migrant, not a mutual process. In both countries, furthermore, the logic behind the strict naturalization requirements is that citizenship is something one may acquire when integration is fulfilled; integration is thus a *means* to citizenship.

In Sweden, it is not as clear what integration means. There seems to be a consensus among political parties that Swedish skills are integral to integration. In the preparatory works to the 2015 amendments of the Swedish Citizenship Act, Swedish skills in their turn were said to be important because they enabled success in the labour market and because they enabled people to fully participate in the democratic process. To the extent that Swedish skills are connected to integration, integration thus seems to both mean some sort of independency and political participation in society. The latter emphasis is a feature which stands out; neither Denmark nor Germany speaks about the political life of migrants and naturalizing citizens. From the preparatory works of the amended Citizenship Act, we know that integration in Sweden is *not*, as in Denmark and Germany, a means to citizenship. Rather, citizenship is something that can *enhance* integration, by giving the new citizen the experience of forming part of the community.

All three states have a minimum requirement for those who want to become a citizen (these are also applicable to those who otherwise are subjects to major exceptions, such as other EU or Nordic citizens): decency or lack of a criminal record. In Denmark and Germany, those who have committed certain crimes are eternally excluded from Danish and German citizenship respectively. Sweden has a more generally formulated decency requirement which in practice is applied as referring to lack of criminal activity. In Germany, in addition to the decency requirement, a provision explicitly targeting the crime of terrorism was introduced in 2004.

Denmark and Germany further have some form of self-sufficiency criteria. This means that they demand that, as a minimum, naturalizing citizens

should be economically independent, and also show that they have a history of not being dependent on the state. That independency is important in the German context is further underlined by the aim of the integration course as explained above. In Denmark, no exactly similar discourse on the importance of ‘independency’ emerges, but, in the declaration on Integration and Active Citizenship, it is stated that in Denmark one assumes responsibility for oneself and one’s family. In Sweden, there is no self-sufficiency criterion or integration course or contract that aim at independency. But those who are independent, or rather very much more than that, are promoted by the naturalization rules, by the fact that occasionally, the judiciary has let prominent researchers or sportsmen naturalize although the requirements are not fulfilled. Although considerations about independency in fact are not explicitly expressed in any positive rules, preparatory works to the current Citizenship Act show that language, which is considered important for integration, is considered to be a means to enhance one’s possibilities of success in the labour market. ‘Independency’, in relation to the state, is thus valued also in the Swedish context, although it has no coercive effect in the legislation on naturalization; it is not *demande*d.

Both Denmark and Germany demand language skills and country knowledge. Both tests in both countries were enacted out of integration concerns during the past 15 years. In Germany, the country knowledge test can be prepared for within an integration course. By privileging individuals who reach varying degrees of ‘success’ in this course by deducting the required years of residence, Germany does not only demand a certain ‘performance’ on the way towards citizenship, but also rewards ‘good performance’. Neither language nor country knowledge requirements have found their way into the Swedish legislation, although in the legislative context it has been discussed whether to introduce some form of language requirement, for similar integrative reasons.

5.1.2 What ideals are evoked?

To a certain extent, the thesis about the white ideal is confirmed in the emerging patterns as described above. Some of the rules either *in effect* make access to naturalization easier for white subjects and more difficult for non-white subjects, or are *constructed based on general assumptions* about how non-white subjects are and therefore ideologically privilege white subjects.

In effect, firstly, the language requirements in Denmark and Germany may, but not necessarily, privilege white subjects and exclude non-white subjects. Language requirements are of course easier for people who speak languages in the same linguistic family, who when writing on their mother-tongue use the same alphabet, or who in general speak many languages (which facilitates the learning of new ones). People from some countries in Europe and English-speaking countries (who in general more often are white than people from other parts of the world) thus should have an easier time

passing the German and Danish language tests. Furthermore, one could argue that, in general, people from Western countries are richer and hence have more opportunity to travel, which might, but not necessarily, enhance the chances of learning other languages, and to education, which more certainly exposes these people to other languages. To the extent that these inequalities follow national and racial lines, and one might similarly argue that they do, language requirements may privilege white subjects.

In effect, secondly, all three countries have exceptions for citizens of other EU and, in the case of Denmark and Sweden, Nordic countries. They are exempted from the requirements of a permanent residence permit, language requirements, length of residence, renouncement of citizenship. This means that nationals of these countries have much easier access to naturalization. Yet, they do not seem to naturalize. Only about 11 % of those who acquired citizenship of a EU-28 member state in 2012 were previously citizens of a EU country. Naturalized citizens were instead mainly from Africa and Asia (25 % each).²⁷⁶ There is thus a discrepancy between the subjects who the naturalization regulations promote as citizens, and those to whom naturalization seem to be important. To the ones who actually naturalize, naturalization is difficult. For those to whom citizenship does not seem to matter as much, the door to citizenship is already half open. This discrepancy follows racial lines. The desired citizen (other EU citizens) is more or less white. The migrant who desires citizenship (African and Asian citizens) is not.

Some rules are striking in that they seem to be *constructed on general assumptions* about how non-white subjects are, that is, on stereotypes. In Germany and in Denmark, the figure of the *terrorist* pops up. It follows from the very nature of criminalisation that crimes ideally do not belong in the society where they are criminalised– that is why they are criminalised. Then, why is it in Germany necessary to specifically spell out that terrorist activities preclude naturalization; they should most probably be covered by the decency requirement? Why is it just terrorism that is specified as condemned in the Danish declaration of Integration and Active Citizenship? It must be considered common knowledge that terrorism is associated with particular cultural/ethnic features. He who is portrayed as a terrorist is a ‘Muslim’, ‘Middle-Eastern’ or maybe ‘African’ man. By explicitly spelling out terrorism as specifically condemned, which in general is linked to male non-white subjects from certain parts of the world, these provisions construct ‘Danish’ and ‘German’ as something opposite to ‘Muslim’, ‘Middle-Eastern’ or ‘African’. Provisions about *who is not welcome to become one of the people* are in other words specifically targeting a non-white male stereotype.

The Danish understanding of integration, which has influenced the enactment of the strict naturalization criteria, promotes the embodiment of certain values. These values are those of human rights, tolerance and gender

²⁷⁶

<http://ec.europa.eu/eurostat/statistics-explained/index.php/Acquisition_of_citizenship_statistics>.

equality (what are often considered to be ‘Western’ values). The Danish way of life is thus constructed as values into which applicants are expected to integrate in order to eventually naturalize. The values of those who are obliged to integrate are thus *not* expected to be those of human rights, thus the need to integrate. From the preparatory works to the Danish legislation of family reunification (see further in the next section), from the Middle Eastern man on the front cover of the Liberal’s party program restricting integration and naturalization requirements (*supra* note 50) and from the fact that other Europeans in general are exempted from many of the strict naturalization criteria, the subject who is thought to need to integrate into Danish society, is non-white.

The fact that EU and Swiss citizens are exempted from the renouncement requirement in Germany seems to *both* be based on assumptions on how people of certain nationalities (and indirectly, often non-white subjects) are, *and* have the effect of making access to naturalization harder for them. The political debate on citizenship in Germany has much surrounded the matter of whether to allow dual nationalities or not. Are dual nationalities, attachments and identities possible? As the exception for EU and Swiss citizens shows, not all multiple national identities are deemed impossible. Some naturalizing citizens are thereby already in advance assumed *to be able* to belong to Germany. Considering which countries are exempted, it is much more likely that what are still considered *impossible* multiple identities converge in non-white subjects. In other words, although there is no explicit difference in treatment between white and non-white subjects as regards the renouncement criterion, this might well be the effect. This is apparent when it is considered that many in Europe are white (and, those who, as seen above, desire naturalization in Europe are not, for example, Northern Americans, who might also be white to a larger extent than in many other parts of the world).

Does the fact that language requirements, exceptions for EU citizens, the presence of the figure of the terrorist and the underlining of ‘Danish’ values either possibly favouring white subjects, or are reflecting stereotypical ideas about non-white subjects, mean that all non-white subjects automatically fail to fulfil the ideals of citizenship that naturalization criteria evoke? The fact that non-whites naturalize in the countries examined points to that the whiteness ideal is not enough to explain the ideals of citizenship in the countries examined. Inclusion and exclusion must thus follow other lines than those of colour *as well* or *instead*. Therefore, it is necessary to analyse the rest of the requirements and see what ideals emerge.

In Denmark and Germany, the increase in naturalization requirements turns citizenship less into a right (which it in Denmark neither is) and more into something that one *deserves*. One cannot become a citizen unless one passes tests, declares one’s future deserving by promising to be loyal, and integrates well. And what for, what is the ideal? In Denmark, the discourse on integration implies that one deserves citizenship once one has integrated into the national body, when one has become ‘*Danish*’, that is, adhering to

certain values (which often are called ‘Western’ values and therefore indirectly builds on dichotomous stereotypes of Western and other, as shown above). In Germany, the discourse on integration implies that one deserves citizenship once one has become *autonomous from the state*. The ideal of autonomy is also reflected in Denmark; just like Germany, it employs self-sufficiency criteria. In other words, one cannot become a citizen unless one is economically independent. Above, language tests were analysed as potentially privileging certain nationalities and thus colours. Language tests could however also be analysed from this socio-economic perspective; they are easier for people who can afford to travel and to study, *irrespective* of such people’s nationality or colour.

The *techniques employed* to turn naturalizing citizens into ‘Danes’ and ‘independent’ respectively are the same in both countries; *the migrant is herself responsible for her integration*. In Denmark, integration (which is a means to naturalization and citizenship) is explicitly contractualized; migrants have to sign so-called integration contracts. In Germany it is not explicit but, as in Denmark, citizenship is something one can only get after certain performance (active integration). Naturalization thus assumes the form of a contract: in exchange for integration on the part of the individual, citizenship is given by the state. Who is this economically strong, self-responsible and well-performing citizenship ideal? These requirements seem to idealize the subject who is the entrepreneur of her own life; independent, self-responsible and capable to enter into her own agreements.²⁷⁷

To sum up, although Denmark the most and Sweden the least, all countries show slight tendencies of idealizing the white subject, in line with what scholars argue. However, the analysis also showed that whiteness is not solely, or necessarily at all, determinative of citizenship; the regulation of naturalization in Denmark and Germany demonstrates other ideals as well. (In Sweden these other ideals form part of public and legislative discourse, but have not - yet - found their way into the actual regulation of naturalization.) Although one comes from a country which citizens are not exempted from many of the naturalization requirements, and although one belongs to a group which in general is considered to be something opposite to what is ‘Western’, one can still naturalize if one belongs to a certain socio-economic group. To the extent that white migrants tend to belong to a

²⁷⁷ To some scholars, these naturalization rules not only *seem* to privilege the subject who is ‘the entrepreneur of her own life’. They mean that this is *exactly* what they do, and as such, these scholars argue, naturalization criteria form part of what in scholarly literature is called ‘neoliberal governmentality’, which refers to reflected practices aiming at creating neoliberal subjects in a neoliberal society. For analyses of naturalization regulation as techniques of neoliberal government, see Joppke, and further Friso van Houdt, Semin Suvarierol and Willem Schinkel, ‘Neoliberal communitarian citizenship: Current trends towards ‘earned citizenship’ in the United Kingdom, France and the Netherlands’. For a description of ‘neoliberal governmentality’ in general, see Thomas Lemke, ‘The birth of bio-politics’: Michel Foucault’s lecture at the Collège de France on neo-liberal governmentality’ and ‘Foucault, Governmentality, and Critique’, and Nikolas Rose, Pat O’Malley and Mariana Valverde, ‘Governmentality, Annual Review of Law and Social Science, Sydney Law School Research Paper No. 09/94’.

higher socio-economic group than non-white migrants, and there is unfortunately not more scope in this thesis but to point at this possibility, these two ideals coincide.

5.2 Ideal citizenship and full membership in the rules of family reunification

In this section, it is analysed whether an ideal citizen also emerges in rules on family reunification. Is there any citizen who is privileged or disadvantaged in the rules on family reunion, and, in that case, what are the implications of this for citizenship as full membership of society in the meaning of a right to equal rights?

This section is structured differently than the last one. Due to the differences in regulation of family reunification for citizens between Germany and Sweden on the one hand, and Denmark on the other, the section is structured accordingly.

5.2.1 Germany and Sweden

In Germany and Sweden, there is a right to family reunion, which both citizens and people with a permanent residence permit can enjoy. However, different rules apply depending on if you are a citizen or not.

In Germany, the requirements enacted in light of integration concerns, such as that the arriving spouse must speak some German or that children over 16 must appear to be able to integrate into German society, do not apply to German citizens. Neither in Sweden do citizens need to demonstrate self-sufficiency for their family to be able to join them in Sweden. In Sweden, EU and Swiss citizens are treated in the same way as Swedish citizens as regards family reunification. Consequently, the German and the Swedish citizens are presumed to be able to assume responsibility for the integration of their families. In Sweden, the presumption also extends to some other European citizens. Permanent residents, however, are in neither of the countries presumed to be able to and thus have to prove their ability thereto.

Citizens in Germany and Sweden have in conclusion equal rights to family reunion. The integration concerns that were so prevalent in the German naturalizing process are thus gone once one is a citizen; there are no distinctions between naturalized citizens and citizens by birth. All citizens are full members as regards family reunion, regardless of migration background.

5.2.2 Denmark

In Denmark, there is no *right* to family reunification. It is not only citizens whose family members may be issued a residence permit on the basis of their relationship, but also family members of permanent residents and

citizens of other Nordic countries. Citizenship as such is not enough to deserve family reunion and neither does non-citizenship exclude it. In the following, the extensive criteria are analysed in detail.

For spousal reunion, both spouses must be over 24 years old. The age-requirement was introduced as a means to combat ‘the widespread pattern’ of marriages between some citizens and nationals of ‘their country of origin’, which resulted from parental pressure. In other words, forced marriages. The rule was imagined as protecting young women of ‘ethnic minority backgrounds’. At a more mature age, the women would be more capable of resisting pressure from their families. The attachment requirement was introduced to complement the effectiveness of the 24-year-rule as a tool to combat forced marriages. However, statements from the preparatory works suggest that perhaps, the aim was rather to prevent a certain type of marriage from being exercised *on Danish territory*. ‘The attachment requirement enables a refusal of family reunification although the age-requirement is fulfilled...’²⁷⁸

The imagined subject in the 24-year-rule is a woman of ‘ethnic minority background’. She is ineligible for family reunion out of protective reasons, but also because she is not considered to be able to ‘ensure the best possible starting point for a successful integration for the [non-Danish] family member...’²⁷⁹ The ‘ethnic minority’ woman’s weakness and the pressure on her are linked to failed integration: ‘There is a widespread pattern to marry a person...due to parental pressure... There are thus also Danish nationals who are not well-integrated in Danish society...’²⁸⁰ As the past section argued, ‘integration’ in the Danish context refers to the embodiment of certain values, such as gender equality, which in general are considered to be ‘Western’ values. To marry a person because of parental pressure is according to the preparatory works to not be integrated. Thus, such a person is considered to not embody such Danish values. The values of the ‘ethnic minority’ woman’s culture, under which she is constructed as submissive, are thus instead *the opposite* of Danish values. The 24-year-rule hence aims at excluding a group of citizens from the right to family reunification, and is designed based on stereotypical assumptions about how it would affect them. Since the values the ‘ethnic minority’ woman is suspected of not embodying are ‘Western’ values, it is most likely that the imagined excluded subject is *non-white*. The rule has explicitly nothing to do with colour. But by referring to something that could be labelled ‘culture’, it simultaneously refers to ‘earlier ascriptions of similar qualities to the same groups under the heading of ‘race’’.²⁸¹

²⁷⁸ Prop. 2001/2 LSF 152 to Law Amending the Aliens Act and Marriage Act and Other Acts.

²⁷⁹ Prop 2001/2 LSF 152 to Law Amending the Aliens Act and Marriage Act and Other Acts.

²⁸⁰ Prop. 2001/2 LSF 152 to Law Amending the Aliens Act and Marriage Act and Other Acts.

²⁸¹ El Tayeb, at xv.

One might question the necessity of the 24-year-rule, given its aim. Since spousal reunion is prevented if it must be considered doubtful that the relationship was entered according to both spouses' desire, the 24-year-rule seems superfluous. Arguably, this enhances the assumption that the 'protective' purpose of the provision in fact was a means of restricting migration to Denmark. After all, the leading party of the government which introduced the 24-year-rule in 2004 was the one that in the opening paragraph of its 2001 party program declared that '[w]e have to limit the immigration flow to Denmark'.²⁸²

The prohibition of spousal reunion if mutual desire to enter the relationship is considered doubtful, prescribes that if the spouses are close relatives, it is presumed that the relationship is not entered voluntarily. As seen, it is Danish nationals with foreign backgrounds that are assumed to enter involuntary relations. This could be juxtaposed with the fact that marriages between cousins are not prohibited in Denmark.²⁸³ In the one case, the legislation assumes that marital relationships between relatives are concluded voluntarily, between self-responsible individuals. In the other, where it is assumed that a migrant and a national with 'foreign background' are involved, the presumption is the opposite. The way one couple's love is assumed to work is protected by the law. The way another couple's love is constructed is combatted by the law in its attempt to even exist. At least in its attempt to do so on Danish territory.

When the 28-year-rule was introduced as an exception to the attachment requirement, it was done so in order to facilitate the return of Danish nationals who might have lived their entire lives abroad. This was seen as not forfeiting the aim of the attachment requirement, since it was considered that such Danes normally maintained strong links to Denmark. The introduction of the (today) 26-year-rule could be argued to introduce a multi-levelled hierarchy among Danish citizens as regards family reunion. Ethnic Danes, who tend to be white, are in the top. This follows explicitly from the 26-year-rule and its aim as such. Next, formally, people who have not been citizens for 26 years, permanent residents and Nordic citizens follow equally. But do they in fact? They are all subject to the attachment requirement. In the assessment of whether the attachment requirement is fulfilled, factors such as whether the migrating spouse has been to Denmark or can communicate in Danish is taken into account. It is also considered how well-established on the Danish labour market the spouse in Denmark is, including if she speaks Danish at work. This means that in practice, a Swedish citizen, who arguably may be in a better position to, for example, speak good Danish than a naturalized Danish citizen from Afghanistan, may have a better right to family reunification than a Danish citizen. Furthermore, a socio-economically strong couple, which can afford the cost of the foreign spouse travelling to Denmark before applying for a residence

²⁸² *Supra* note 50.

²⁸³ *Supra* note 126.

permit, is in a better position to enjoy family reunification.²⁸⁴ The hierarchies of substantive citizenship regarding family reunion are thus not built on having Danish citizenship but are rather a complex construct in which multiple factors – nationality, colour and socio-economic elements – interplay.

Children over six years of age with no prospects of ‘successful integration’ cannot be granted a residence permit, if they live with one parent in their home country. The rule was motivated by the fear that parents would keep their children in their home country, so that they would grow up in accordance with the culture and values of their home country, rather than in accordance with Danish norms and values. The preparatory works of the six-year-rule reveals a suspicion that migrants or ‘ethnic minority’ citizens do not want to become part of Danish society and even actively avoid it. This is reflected also in other provisions, both of family reunification and naturalization. The migrant must sign integration contracts and actively assume responsibility for her Danishness, the naturalizing citizen must declare her continuous loyalty and the ‘ethnic minority’ citizen must declare her intention of active involvement in the integration into Danish society of her foreign spouse. Danish and foreignness are constructed as each other’s opposite, and it is also assumed that ‘they’ despise the Danish way of living. Considering that EU citizens are more welcome than others to form part of the people (through exceptions to the naturalization rules) and that the Danish values correspond to what is understood as ‘Western’ values, the imagined ‘ethnic minority’ woman and the child who is assumed to fail to integrate if she has lived in her country of origin for too long are most probably *not* white.

For spousal reunion (and sometimes for parent-child reunion), lastly, a strict financial criterion applies, and so do criteria of reasonably sized housing, of no due debts to the state and of employment or education during at least three out of the five years preceding the application for family reunion. These self-sufficiency requirements apply to citizens and non-citizens equally. This seems to realize the statement in the Declaration on Active Citizenship and Integration, that in Denmark one is responsible for supporting herself and her family. The ‘integration’ concerns aiming at the independency of citizens that were present in the rules on naturalization are thus similarly reflected in rules also for citizens.

In conclusion, in Denmark all citizens are *not* full members as regards family reunification. As shown, the rules are built on assumptions of the level of ‘integration’ of what in effect are non-white citizens. Since ‘integration’ in the Danish context refers to embodiment of certain values which in fact correspond to human rights, human rights are manipulated in

²⁸⁴ Rules which like the Danish attachment requirement and its exception create hierarchies that do not follow national lines are analysed in Costica Dumbrava, ‘Super-foreigners and Sub-citizens: Mapping Ethno-national Hierarchies of Foreignness and Citizenship in Europe’. As the title suggests, Dumbrava analyses these rules as expressing ethno-national rather than racial or socio-economic hierarchies.

order to legitimate exclusions (in Butler's words; a 'coercive instrumentalization of freedom')²⁸⁵. The attachment requirement and its 26-year-exception formally aim at privileging citizens by birth over naturalized citizens. The rules of family reunification in Denmark thereby fail the promise of equality in citizenship for citizens with a migration background. Furthermore, whether one actually has a(ny) possibility of enjoying family reunification is not limited to whether one has a migration background or not, rather are racial and socio-economic factors affecting this in an interrelated manner which has nothing to do with whether one actually possesses Danish citizenship.

5.3 Concluding thoughts: citizenship as status and as a right to equal rights

The analysis in 5.1 showed that the naturalization criteria in Denmark and Germany could be said to privilege white subjects (and in such case correspond to the thesis about whiteness) and exclude or be imagined to exclude what actually are non-white subjects. The thesis regarding whiteness is however insufficient to fully grasp who is the ideal citizen, and thus the desired naturalizing migrant. The ideal of whiteness can both interact with and be made insignificant by criteria demanding economic independency; some non-white migrants have less access to naturalization, but not necessarily simply because they are non-white, but because non-whiteness in some cases is interconnected with global socio-economical injustice (that is, migrants from some parts of the world, where people tend to be non-white, tend to be less wealthy than migrants from other parts of the world, where many are white). In Sweden, neither colour nor lack of economic autonomy prevents you from citizenship, although whiteness might make you acquire it faster (in general, there are more white people in the EU, which citizens are exempted from some of the naturalization requirements).

In section 5.2, it was noted that as regards family reunion, in Germany the criteria requiring subjects to be white but in particular socio-economically strong (requirements adopted out of 'integration' concerns) no longer applies when one is a citizen. The citizenship ideal from the naturalization rules is thus not determinative for full membership as regards family reunion. There are however criteria similar to those of naturalization, such as language and self-sufficiency, but for non-citizens. Hereby, the German position that integration should end in citizenship (and that, accordingly, citizenship is not acquired until then) is confirmed. In Sweden, citizens are likewise equal as regards family reunification - no particular ideal that privileges some and disadvantages others emerge from the legislation. In Denmark however, the same ideals that are reflected in the naturalization regulation are similarly determinative for the possibilities of enjoying family reunion. In particular, the whiteness ideal is reflected, though it is hidden

²⁸⁵ Butler, 'Sexual Politics, Torture, and Secular Time', at 105.

behind discourses on 'integration', which in the Danish context refers to the embodiment of certain values. This means, that although equal in status, citizenship in Denmark is not 'a right to equal rights'. There is thus a discrepancy between the status of citizenship and the content of citizenship; formal citizenship is not a guarantee for substantive full membership.

6 Conclusion

This thesis has studied three Western European countries' regulation of naturalization and family reunification, which respectively relate to formal and substantive dimensions of citizenship. It has further discussed the regulation of naturalization and family reunification in relation to norms of international law, in particular human rights law and even more specifically European human rights law. Lastly, it has analysed the normative underpinnings of the regulations of naturalization and family reunification, in particular but not only investigating whether they evoke what scholars argue is a 'white citizenship ideal', and how the regulations correspond to the ideal of equal citizenship. The questions initially posed in chapter 1.2 are answered below, followed by some general reflections on how the results presented could be understood and contextualized.

It has been examined in this thesis how citizenship through naturalization is acquired in the three countries respectively. In Germany, all eligible applicants are entitled to naturalization. In Denmark and Sweden, the naturalization decision is discretionary. The number of criteria naturalizing citizens must fulfil in order to be eligible for naturalization has increased in Denmark and Germany during the past 15 years, in particular motivated by integration concerns. Denmark and Germany require, *inter alia*, that naturalizing citizens demonstrate economic self-sufficiency, language skills and country knowledge. In Sweden, there has been a similar public discourse on integration, however this has not resulted in enactment of stricter naturalization regulation.

It has further been studied in this thesis whether the right to family life (more specifically family reunification) is the same for all citizens in the respective countries. It has been concluded that citizens in Germany and Sweden are treated equally with regards to family reunification, whereas in Denmark naturalized citizens and citizens by birth (that is, citizens with and without a migrant background) are treated unequally, due to the so-called attachment requirement and the 26-year-rule.

It has been investigated what requirements international law (and human rights law in particular) put on domestic rules of naturalization and family reunification for citizens. Many human rights instruments provide a right to a nationality, but the ECHR does not. There is also no right to naturalization under the Convention. Furthermore, there is no general right to family reunion according to the case law of the ECtHR. The thesis concluded that, according to the ECtHR, states are not prevented from treating citizens with and without a migration background unequally.

The compliance of the countries' regulation of naturalization and family reunification with norms of international law, in particular human rights law, was discussed. It was found that nothing suggests that the countries'

naturalization criteria are violating international law, according to international norms that the three countries are bound by. Neither was the regulation of family reunification in any of the three countries found to be in violation of positive human rights law. However, it was nevertheless added that there is scope to argue that the Danish rules on spousal reunification raise issues under article 14 ECHR (and that the ECtHR's Grand Chamber has the legal option to reach that conclusion). The study of citizenship in international law concluded by arguing that the matter of citizenship in the tension between state sovereignty and universal human rights, and that according to the ECHR-system, state sovereignty triumphs over human rights as regards the matters of naturalization and family reunification. This was contrasted to the way the IACtHR has discussed similar matters. It was noted that the approach by the IACtHR suggests that the tension between state sovereignty and human rights may lead to different results than it has in Europe, with possible implications for the ideal of equal citizenship.

Lastly, it was examined what ideal(s) of citizenship the rules of naturalization and family reunification in the three countries evoke, and who has full membership with regards to family reunification. It was noted that what scholars argue is a 'white' citizenship ideal is reflected in the regulation of naturalization in Denmark and Germany, but that this is not enough to explain who in effect has access to citizenship; issues of what could be labelled 'class' could both reinforce a non-white subject's disadvantaged position as well as make it irrelevant. In Sweden, the white or the socio-economically strong ideal is not as apparent, although there are certain tendencies that point to that it ideologically exists although it is not (yet) reflected in formal legislation. In Germany, once a citizen, the white and socio-economically strong subject is no longer favoured with regards to family reunification. All citizens are in that regard full members of society (as well as they are in Sweden). In Denmark, however, citizens with a migrant background are not full members with regards to family reunification; ideals of whiteness, implicitly emerging from discourses on a different 'culture', are in the attachment requirement and the 26-year-rule employed to legitimate what is a formal difference in access to rights. Together with rules that in effect give socio-economically strong subjects a better right to family reunification, the Danish rules of family reunification create hierarchies of citizenship which do not necessarily follow national lines; some foreigners have better access to rights than Danish citizens.

The results of the study indicate that the regulation of citizenship in domestic law cannot be separated from developments on a supranational level. In chapter 4, it was argued that in international law, there is a tension between sovereignty and human rights. In general, citizenship in Europe has been liberalised over the last decades, much stimulated by the increasingly well-established regime of human rights, (children born out of wedlock have acquired the right to citizenship *ius sanguinis pater*, women's and men's rights to transmit their citizenship to their children have been equalized etc.). In contrast to this liberalization, regulation of naturalization has become stricter. In Europe, human rights have not been able to triumph over

the state prerogative to decide who may form part of the people (also regardless of whether this has implications for the enjoyment of other rights). The same pattern can be traced with regards to family reunification. In general, the regulation of 'family life' in Western Europe has become increasingly liberal promoted by human rights (in contrast to earlier, same-sex couples have legal rights to marry and to get children, children born out of wedlock can inherit etc.), similarly. When family life, however, involves matters of migration, European human rights law remains remarkably passive towards whether the migration policies of states in effect deny parts of their population a right to family life.

In chapter 2, it was noted that the content or benefits of membership, i.e. the substantive citizenship, is partly extended also to non-citizens today. This was confirmed by the empirical studies of the specific field of family reunification in this thesis; permanent residents have rights thereto (however often more qualified than for citizens thus not in effect completely equal). The analysis of the case study showed, further, that citizenship might not even necessarily be determinative for substantive full membership; a regulation such as the Danish rules of family reunification might well privilege some foreigners over citizens. These two observations evoke the question of the *value* of citizenship in Western Europe today. This question cannot solely be answered with reference to the way citizenship is discussed in this thesis; meaning that it cannot solely be answered with reference to *internal* dimensions of citizenship. Domestic citizenship must be seen as forming part of a global system, where different citizenships are differently worth. From an internal perspective – does your nationality give you access to an array of rights in your country? Or is your nationality not giving you anything, is your nationality maybe even threatening to you because of the duties it entails? From an external perspective – do you possess a nationality with which you with ease can travel and work in other countries? Or do you possess a nationality because of which there are borders everywhere you look? The exclusivity that citizenship still brings with it must be seen in light of these questions. The formal status of citizenship, and only citizenship, still gives you *the unconditional right to stay in your country*. The implications of not being a citizen in the country in which you live, regardless of how many social and civil rights you might have access to, are therefore varyingly important. Who can afford not to care about citizenship?

Bibliography

Literature

Alison Kesby, *The Right to Have Rights* (Oxford University Press 2012)

Bridget Anderson, *Us and Them? The Dangerous Politics of Immigration Control*, (Oxford University Press 2013)

Eva Ersbøll, 'On Trial in Denmark, in A Re-definition on Belonging?' in (eds.) Oers, van, Ricky; Ersbøll, Eva; Kostakopoulou, Dora, *Language and Integration Tests in Europe* (Martinus Nijhoff publishers 2010)

Fatima El-Tayeb, *European Others – Queering Ethnicity in Postnational Europe* (University of Minnesota Press 2011)

Garbi Schmidt, 'Law and Identity: Transnational Arranged Marriages and the Boundaries of Danishness', in (eds.) Karen Fog Olwig, Birgitte Romme Larsen, and Mikkel Rytter, *Migration, Family and the Welfare State. Integrating Migrants and Refugees in Scandinavia* (Routledge 2014)

Hannah Arendt, 'The Perplexities of the Right of Man', in *The Origins of Totalitarianism* (Harcourt 1968)

Hersch Lauterpacht, *An International Bill of Human Rights* (Columbia University Press 1945)

Håkan Sandesjö and Kurt Björk, *Nya medborgarskapslagen: med kommentarer* (Norstedts Juridik AB 2009)

Judith Butler, 'Sexual Inversions: Rereading the End of Foucault's History of Sexuality, Vol. I', in (ed.) Hekman, J., Susan, *Feminist Interpretations of Michel Foucault. Re-Reading the Canon* (Pennsylvania State University Press 1996)

Judith Butler, 'Sexual Politics, Torture, and Secular Time', in *Frames of War: When is Life Grievable?* (Verso 2009)

Leonard, F.M, Besselink, F.M, Leonard, 'Integration and Immigration: The Vicissitudes of Dutch 'Inburgering'', in (eds.) Elspeth Guild, Cornelis Arnoldus and Sergio Carrera *Illiberal Liberal States: Immigration, Citizenship and Integration in the EU* (Ashgate Publishing Ltd 2009)

Marie-Bénédicte Dembour, *When Humans Become Migrants: Study of the European Court of Human Rights with an Inter-American Counterpoint* (Oxford University Press 2015)

Peter H. Schuck, 'Liberal Citizenship', in (eds.) Engin F Isin and Bryan S Turner *Handbook of Citizenship Studies* (Sage Publications 2002)

Roger Brubaker, *Citizenship and nationhood in France and Germany* (Harvard University Press 1992)

T.H. Marshall, 'Citizenship and Social Class', in (ed.) Tom Bottomore, *Citizenship and Social Class, 40 Years On* (Pluto Press 1992)

Thomas Hammar, 'Denizen and Denizenship', in (eds.) Kondo, Atsushi; Westin, Charles, *New Concepts of Citizenship* (CEIFO 2003)

Yaffa Zilbershats, *The Human Right to Citizenship* (Transnational Publishers 2002)

Yasemin Nuhoglu Soysal, *Limits of citizenship – Migrants and Postnational Membership in Europe* (The University of Chicago Press 1994)

Yasemin Nuhoglu Soysal, 'Toward a Postnational Model of Membership', in *Limits of citizenship – Migrants and Postnational Membership in Europe* (The University of Chicago Press 1994)

Academic journals

Alana Lentin, 'Europe and the Silence about Race' 11 (2008) *European Journal of Social Theory* 487

Christian Joppke, 'Beyond National Models: Civic Integration Policies for immigrants in Western Europe' 30 (2007) *West European Politics* 1

Costica Dumbrava, 'Super-foreigners and Sub-citizens: Mapping Ethno-national Hierarchies of Foreignness and Citizenship in Europe' 14 (2015) *Ethnopolitics: Formerly Global Review of Ethnopolitics* 296

David Theo Goldberg, 'Racial Europeanization', 29 (2006) *Ethnic and Racial Studies* 331

Étienne Balibar, 'Propositions on Citizenship' 98 (1998) *Ethics* 723

Friso van Houdt, Semin Suvarierol and Willem Schinkel, 'Neoliberal communitarian citizenship: Current trends towards 'earned citizenship' in the United Kingdom, France and the Netherlands' 26 (2011) *International Sociology* 408

Jürgen Habermas, 'The European Nation State. Its Achievements and Its Limitations. On the Past and Future of Sovereignty and Citizenship' 9 (1996) *Ratio Juris* 125

Nikolas Rose, Pat O'Malley and Mariana Valverde, 'Governmentality, Annual Review of Law and Social Science, Sydney Law School Research Paper No. 09/94', 2 (2006) 83 <<http://ssrn.com/abstract=1474131>> assessed 2015-04-13

Thomas Lemke, 'Foucault, Governmentality, and Critique', 14 (2002) *Rethinking Marxism* 49

Thomas Lemke, 'The birth of bio-politics': Michel Foucault's lecture at the Collège de France on neo-liberal governmentality' 30 (2001) *Economy and Society* 190

Working papers

Audrey Macklin, 'Kick-off contribution' in (eds.) Audrey Macklin and Rainer Bauböck, *The Return of Banishment: Do The New Denationalisation Policies Weaken Citizenship?* (EUDO Citizenship Observatory RSCAS 2015/14, 2015)

Reports and statistics

Anuscheh Farahat, *Naturalization Procedures for Immigrants, Germany* (EUDO Citizenship Observatory, Naturalisation Procedures Report, RSCAS/EUDO-CIT-NP 2013/6, February 2013)

Anuscheh Farahat and Kay Hailbronner, *Country Report on Citizenship Law: Germany* (EUDO Citizenship Observatory, Country Report, RSCAS/EUDO-CIT-CR 2015/2, revised and updated January 2015)

Eva Ersbøll, *Report on Denmark* (EUDO Citizenship Observatory, Country Report, RSCAS/EUDO-CIT-CR 2013/25, revised and updated in June 2013)

Kay Hailbronner, *Country Report: Germany* (EUDO Citizenship Observatory, Country Report, RSCAS/EUDO-CIT-CR 2012/01, revised and updated October 2012)

Maarten P. Vink and Gerard-René de Groot, *Birthright Citizenship: Trends and Regulations in Europe* (Comparative Report RSCAS/EUDO-CIT-Comp. 2010/8, November 2010)

Sara Wallace Goodman, *Naturalisation Policies in Europe: Exploring Patterns of Inclusion and Exclusion* (EUDO Citizenship Observatory, Comparative Report, RSCAS/EUDO-CIT-Comp. 2010/7, November 2010)

<http://ec.europa.eu/eurostat/statistics-explained/index.php/Acquisition_of_citizenship_statistics> assessed 2015-05-07

Newspaper Articles and Blog Posts

Corina Heri, ‘The Fourth Section’s Curious Take on Article 10 in Petropavlovskis v. Latvia: Two Comments’, Strasbourg Observers (28 January 2015) <<http://strasbourgobservers.com/2015/01/28/the-fourth-sections-curious-take-on-article-10-in-petropavlovskis-v-latvia-two-comments/#more-2751>> assessed 2015-05-22.

Niklas Orrenius, ‘Den leende nationalismen’, Dagens Nyheter (14 December 2014) <<http://www.dn.se/val/nyval-2015/den-leende-nationalismen/>> assessed 2015-04-07

International Legislation

Cases and decisions

ECtHR

Abdulaziz, Cabales and Balkandali v The United Kingdom App nos 9214/80, 9473/81 and 9474/81 (ECtHR 28 May 1985) judgment

Biao v Denmark App no 38590/10 (ECtHR 25 March 2014) judgment

Benamar v Netherlands App no 43786/04 (ECtHR 5 April 2005) decision

Family K. and W. v Netherlands App no 11278/84 (EC 1 July 1985) decision

Fehér and Dolník v Slovakia, App nos 14927/12 and 30415/12 (ECtHR 21 May 2013) decision

Genovese v Malta App no 53124/09 (ECtHR 11 October 2011) judgment

Christine Goodwin v The United Kingdom App no 28957/95 (ECtHR 11 July 2002) judgment

Hirst 2 v United Kingdom App no 74025/01 (ECtHR 6 October 2005) judgment

I.M. v Netherlands App no 41266/98 (ECtHR 25 March 2003) decision

Karashev v Finland App no 31414/96 (ECtHR 12 January 1999) decision

Kolosovskiy v Latvia App no 50183/99 (ECtHR 29 January 2004) decision

Kurić and Others v Slovenia App no 26828/06 (ECtHR 26 June 2012) judgment

Marckx v Belgium App no 6833/74 (ECtHR 13 June 1979) judgment

Olsson v Sweden App no 10465/83 (ECtHR 24 March 1988) judgment

Petropopavloskis v Latvia App no 44230/06 (ECtHR 13 January 2015) judgment

S.A.S. v France App no 43835/11 (ECtHR 1 July 2014) judgment

Sejdić and Finci v Bosnia and Hercegovina App nos 27996/06 and 34836/06 (ECtHR 22 December 2009) judgment

Şen v Netherlands App no 31465/96 (ECtHR 21 December 2001) judgment

Taxquet v Belgium App no 926/05 (ECtHR 16 November 2010) judgment

Tuquabo-Tekle and Others v Netherlands App no 60665/00 (ECtHR 1 December 2005) judgment

X and Others v Austria App no 19010/07 (ECtHR 19 February 2002) judgment

IACtHR

Juridical Condition and Rights of the Undocumented Migrants no 18/03 (IACtHR 17 September 2003) advisory opinion

Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica no 4/84 (IACtHR 19 January 1984) advisory opinion

The Girls Yean and Bosico v Dominican Republic no 130/05 (IACtHR 8 September 2005) judgment

ICJ

Nottebohm Case (Liechtenstein v Guatemala) (ICJ 6 April 1955) Second Phase, Judgment

PCIJ

Acquisition of Polish Nationality (PCIJ 15 September 1923) advisory opinion

Nationality Decrees Issued in Tunis and Morocco (PCIJ 7 February 1923) Advisory Opinion

Human Rights Committee

HRC, *General Comment no 17* (7 April 1989)

HRC, *General Comment no 25* (27 August 1996)

Committee on the Elimination of Racial Discrimination

Côte d'Ivoire, CERD, A/58/18 (2003) 19

Croatia, CERD, A/57/18 (2002) 24

Estonia, CERD, A/57/18 (2002) 60

Latvia, CERD, A/58/18 (2003) 75

Lithuania, CERD, A/57/18 (2002) 35

Qatar, CERD, A/57/18 (2002) 38

Reports and commentaries

Commentary to Draft Articles on Diplomatic Protection, Official Records of the General Assembly, Sixty-first Session, Supplement No. 10 (A/61/10)

Commentaries to Draft Articles on Nationality of Natural Persons in Relation to the Succession of States

Explanatory report to the ECN, ETS. No. 166

Extract from the Yearbook of the International Law Commission II (1952)

Domestic Legislation

Acts

Denmark

Aliens Act of 6 June 1983

Aliens Act of 19 September 2014

Amendments to the Danish Aliens Act no. 365 of 6 June 2002

Amendments to the Danish Aliens Act no. 1204 of 27 December 2003

Amendments to the Danish Aliens Act no. 427 of 9 June 2004

Amendments to the Danish Aliens Act No. 418 of 12 May 2012

Amendments to the Danish Aliens Act no. 1496 of 23 December 2014

Circular on naturalization no. 9 of 12 January 2006

Circular on naturalization no. 61 of 22 September 2008

Circular on naturalization no. 9253 of 6 June 2013

Constitutional Act of Denmark of 5 June 1953

Consolidated Act on Danish Nationality of 5 May 2004

Consolidated Act no. 1094 on Integration of Aliens in Denmark of 7 October 2014

Marriage Act of 7 October 2014

France

Act no 2006-911 of 24 July 2006

Act no 2010-1192 of 11 October 2010 prohibiting the concealment of one's face in public places.

Germany

Act to Control and Restrict Immigration and to Regulate the Residence and Integration of EU Citizens and Foreigner (Immigration Act) of 30 July 2004

Act on Implementation of the Directives of the European Union with regard to residence and asylum law of 19 August 2007

German Imperial and Nationality Act of 22 July 1913

Law to Reform the German Nationality Act of 15 July 1999

Second Act Amending the Nationality Act of 13 November 2014

Regulation on Naturalization Tests and Naturalization Courses of 5 August 2008

Residence Act of 30 July 2004

Sweden

Aliens Act (2005:716) of 29 September 2005

Amendment (2014:481) to the Swedish Citizenship Act (2001:82) of 19 June 2014

Amendment of the Aliens Act (2005:716) of 11 March 2010

Swedish Citizenship Act (2001:82) of 1 March 2001

Preparatory works and cases

Denmark

Prop 2001/2 LSF 152 to Law Amending the Aliens Act and Marriage Act and Other Acts

Prop 2003/1 LSF 6 to Law Amending the Aliens Act

Sweden

MIG 2007:36 (23 October 2007) judgment

MIG 2007:60 (16 October 2007) judgment

MIG 2013:10 (16 April 2013) judgment

Prop 1994/95:179

Prop 1999/2000:147

Prop 1996/97:25

Prop 1999/00:43

Prop 2009/10:77

Prop 2013/14:143

SOU 1999:34

SOU 2013:29

UN 02/00689 (10 April 2002) decision

USA

Trop v. Dulles 356 U.S. 86 Supreme Court (31 March 1958) judgment

Other domestic material

Belgium

<<http://inburgering.be/en>> assessed 2015-03-19

Denmark

En ny udlaendingepolitik, 17 januari 2002

Et Danmark, der står sammen, regeringsgrundlag, oktober 2011

Erklæring om integration og aktivt medborgerskab i det danske samfund,
<www.nyidanmark.dk> assessed 2015-04-16

Regeringens integrations- og udlændingepolitik – status marts 2003

Tid til forandring, party program, Venstre, 2001

<<http://www.uvm.dk/Uddannelser/Uddannelser-til-voksne/Overblik-over-voksenuddannelser/Dansk-for-voksne-udlaendinge/Statsborgerskabsproeve>> assessed 2015-04-16

<http://www.uvm.dk/~media/UVM/Filer/Udd/Voksne/PDF14/Sep/140919%20UVM_Statsborgerskabsproeven_uden%20lydikon.pdf> assessed 2015-04-16

Germany

Federal Ministry of the Interior, Immigration Law and Policy, 1 July 2004

<<http://www.bamf.de/EN/Einbuengerung/WasEinbuengerungstest/waseinbuengerungstest.html?nn=1448618>> assessed 2015-04-20

<<http://www.bamf.de/EN/Einbuengerung/WasEinbuengerungstest/waseinbuengerungstest-node.html>> assessed 2015-04-20

The Netherlands

<<http://en.inburgeren.nl/http://en.inburgeren.nl/>> assessed 2015-03-19