

Civis europaeus sum?

**Consequences with regard to Nationality Law and
EU Citizenship status of the Independence of a
Devolved Part of an EU Member State**



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Guayasén Marrero González

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Preface

This book is the result of a doctoral research that started in September 2014. At that time, studying the independence of a devolved region of a Member State and its effects on the nationality of persons and their status as citizens of the Union, seemed rather a fortune-telling or divination task than a legal one. With no direct precedent to rely on or provision in the Treaties to address the separation of a devolved region of a Member State that wishes to remain within the EU as an independent Member State, the risk of slipping into a speculative scenarios was high. However, as unpredictable as life is, the research gained ground at the same time that the independence question gained momentum, especially in Catalonia and Scotland. In the case of Scotland, furthermore, the independence debate has been reignited after the referendum on United Kingdom membership of the EU. Taking risks is, sometimes, worthwhile.

Catalonia, Flanders and Scotland represent examples of regions, within EU Member States, where independence from their respective States is being discussed. Although none of these regions have achieved their independence, the success of nationalist parties in these territories, coupled with certain political developments such as the independence referendum in Scotland and the Catalan participatory process, serve as reminders that the independence of a devolved part of an EU Member State is a very real possibility.

This book aims to shed light on the legal consequences of a potential secession process within an EU Member State with regards to citizenship in general and EU citizenship in particular. This includes a consideration of States' obligations within the scope of EU law and/or international and regional standards, as well as the individual's enjoyment of rights and freedoms attached to European citizenship. Specifically, this book analyses the situation of nationals from the seceding regions who reside in the new States and in the territory of other EU Member States, and European citizens and third country nationals residing in the seceding territories. It might seem paradoxical to address EU citizenship in the context of State succession given that this status has contributed significantly to the EU integration process. Nevertheless, a common theme amongst the independence waves in Catalonia, Flanders and Scotland is the desire to achieve that independence within the EU, born as an independent EU Member State from the outset. In line with this eagerness, it has been claimed that the status of citizen of the Union may allow a territory seceding from a

Member State to remain in the Union after independence. This claim does not take into account, however, the fact that EU citizenship unavoidably relies on possessing the nationality of a Member State. Due to the existence of this link between citizenship of the Union and nationality of Member States, it is necessary to take a step back in order to determine, first, how nationality issues are settled in a State succession scenario; and second, how nationality matters can be influenced by EU law. Only then is one correctly positioned to assess the consequences of State succession for the exercise of the rights flowing from citizenship of the Union.

This assessment requires consideration of a number of different and intertwined legal orders. Public International Law underpins the study of the State succession, right to self-determination, rules applicable to nationality matters arising in State succession and States membership of international organisations. This latter question is also assessed as a matter of EU law, together with the role of European citizenship and nationality law from the Member States that compromise the territorial scope of the research (Spain, Belgium and the United Kingdom). Nationality law falls under the auspices of domestic law, nationality matters fall within the *domaine réservé* of the States but both Public International Law and European Law curtail this sovereign prerogative.

Nationals of EU Member States can plea for the rights attached to EU citizenship status. But could nationals of a newly created State, as a consequence of a State succession from a Member State, invoke “*civis europaeus sum*”?

As already pointed out, taking risks is, sometimes, worthwhile. But I could never have taken those risks without the dedicated support of a core group of people and institutions to whom I am really grateful: my supervisors, Prof. Dr. G.-René de Groot and Dr. Sergio Carrera Núñez, the Dean of the Faculty of Law, Prof. Dr. Hildegard Schneider, the members of my assessment committee, Bruno de Witte, Jo Shaw, Maarten Vink and Patrick Wautelet, Maastricht University and the Faculty of Law, Fundació la Caixa and its ‘*programa Europa*’, my friends and family.

Tenerife, Spring 2017

Table of contents

Preface	I
Table of contents	III
List of abbreviations of international treaties, protocols and recommendations	VII
Other abbreviations	VIII
Glossary of Latin terms	X
Glossary of legal terminology related to State succession	XII
Chapter 1: Introduction	1
1. State Succession “within” the European Union	1
2. Research Questions	8
3. Scope	10
3.1 Nationality Law	11
3.2 Territorial Scope	14
3.3 Personal Scope	18
4. Methodology and Structure	19
5. Concluding Remarks	29
Chapter 2: State Succession and Nationality in International Law	31
1. State Succession: General Overview	31
1.1 Brief Notes on Statehood	31
1.2 State Succession.	35
2. Self-Determination	39
3. Membership of International Organisations	46
4. Automatic State Succession to Human Right Treaties	54
5. State Succession and its Effects on Nationality of Natural Persons: The attribution of Nationality upon Independence	58
5.1 UN - International Law Commission	58
5.2 Council of Europe	63
6. The Decolonisation Process	66
6.1 Spain	66
6.1.1 Ifni	67
6.1.2 Equatorial Guinea	70
6.1.3 Western Sahara	71
6.2 Belgium	79
6.3 The United Kingdom	82
6.4 Identified Patterns	92
7. Concluding Remarks	94

Chapter 3. State Succession in the EU: Catalonia, Flanders and Scotland	101
1. Introduction	101
2. Catalonia	101
3. Flanders	122
4. Scotland	126
5. Referenda, Consultation, Electoral rights and First Determination of nationals (Catalan, Flemish and Scottish proposals)	136
5.1 Catalonia	137
5.1.1 Eligibility to Vote in the Independence Query	137
5.1.2 Eligibility for Catalan Nationality ab initio in a Potential New Catalan State	139
5.2 Flanders	147
5.2.1 Introductory Remarks on an Independence Query in Flanders	147
5.2.2 Eligibility for Flemish Nationality ab initio in a Potential New Flemish State	148
5.3 Scotland	151
5.3.1 Eligibility to Vote in the Independence Query	151
5.3.2 Eligibility for Scottish Nationality ab initio in a Potential New Scottish State	151
6. Concluding Remarks	155
Chapter 4: State Succession in the EU. EU Citizenship and Nationality Law	157
1. Introduction	157
2. EU citizenship vs. Member State Nationality	158
3. CJEU case law	164
3.1 Mario Vicente Micheletti and Others v Delegación del Gobierno en Cantabria	165
3.2 The Queen and Secretary of State for the Home Department v Manjit Kaur	167
3.3 Kunqian Catherine Zhu, Man Lavette Chen v Secretary of State for the Home Department	169
3.4 M. G. Eman, O.B. Sevinger v College van burgemeester en wethouders van Den Haag	171
3.5 Janko Rottmann v. Freistaat Bayern	173
4. Maltese Citizenship-for-Sale Programme	176
5. Concluding Remarks	179
Chapter 5. State Succession and the Right to Reside Permanently	181
1. The Kurić doctrine	181
1.1 The Facts of the Case	181
1.2 Proceedings before the Third Section	186
1.3 Proceedings before the Grand Chamber	187
2. Applying the Kurić Doctrine in a State Succession Scenario “within” the EU	189
3. Right to Reside as a Non-EU Member State National in an EU Member State upon Independence	194
3.1 The Specific Case of Former British nationals residing in the UK	202

TABLE OF CONTENTS

4. Right to Reside in the Newly Independent States	204
4.1 Nationals of the Predecessor State and EU citizens residing in the Newly Independent State	204
4.2 TCNs residing in the Newly Independent State	206
5. Remarks on the Position of Minors	207
6. Concluding Remarks	212
Chapter 6: Conclusions	219
Bibliography	233
Treaties, legislation, reports and other documents	247
United Nations documents	247
Council of Europe documents	250
Bilateral treaties	250
Other documents	252
EU law	253
Other EU related documents	257
Domestic law	259
Belgium	259
Canada	259
Congo	259
France	259
Malta	260
Slovenia	260
Spain	260
United Kingdom	265
Case law	269
Resumé	273

List of abbreviations of international treaties, protocols and recommendations

CEDAW	1979 Convention on the Elimination of All Forms of Discrimination against Women
CRMN	1963 Convention on Reduction of Cases of Multiple Nationality
CRMN (1st)	1977 Additional Protocol to the CRMN
CRMN (2nd)	1993 Second Protocol amending the CRMN
CRS	1961 Convention on the Reduction of Statelessness
DASS	1999 Draft Articles by the International Law Commission on Nationality of Natural Persons in Relation to the Succession of States
ECN	1997 European Convention on Nationality
ECSS	2006 Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession
HCNL	1930 Hague Convention on Certain Questions relating to the Conflict of Nationality Laws
ILEC	Involuntary Loss of European Citizenship
Rec 2009/13	Recommendation CM/Rec (2009)13 of the Committee of Ministers to member states of the Council of Europe on the nationality of children
UDHR	1948 Universal Declaration of Human Rights

Other abbreviations

BGBL.	<i>Bundesgesetzblatt</i> (German official gazette)
BOE	<i>Boletín Oficial del Estado</i> (Spanish official gazette)
Cc esp.	<i>Código civil español</i> (Civil code of Spain)
CETS	Council of Europe Treaty Series
CiU	<i>Convergència i Unió</i>
CJEU	Court of Justice of the European Union
CoE	Council of Europe
DGRN	<i>Dirección General de Registros y Notariado</i>
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECR	European Court Reports
Ed(s).	Editor(s)
EEC	European Economic Community
ERC	<i>Esquerra Republicana de Catalunya</i>
Et al.	<i>Et alii</i>
ETS	European Treaty Series
EU	European Union
EUDO	European Union Democracy Observatory on Citizenship
Ff.	And following
<i>Ibid.</i>	<i>Ibidem</i>

OTHER ABBREVIATIONS

ICJ	International Court of Justice
i.e.	<i>id est</i>
ILC	International Law Commission
JORF	<i>Journal Officiel de la République Française</i> (French official gazette)
LNTS	League of Nations Treaty Series
MEP	Member of the European Parliament
N-VA	<i>Nieuw-Vlaamse Alliantie</i>
OJ	Official Journal
P(p).	page(s)
SEW	<i>Sociaal Economische Wetgeving, Tijdschrift voor Europees en economisch recht</i>
S.C.R.	Supreme Court Reports (Canada)
SNP	Scottish National Party
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
UNTS	United Nations Treaty Series

Glossary of Latin terms

<i>A priori</i>	Lit.: from the earlier
<i>Ab initio</i>	from the beginning
<i>Ad litem</i>	Lit.: for this action. Guardian <i>ad litem</i> someone chosen by a law court to do something for another person when that person is not able to do it him/herself
<i>Conditio sine qua non</i>	a necessary condition without which something is not possible
<i>De facto</i>	factually; in fact
<i>De iure</i>	legally
<i>Eo nomine</i>	by that name
<i>Ex lege</i>	by operation of the law, automatically
<i>Ex nunc</i>	without retroactivity
<i>Ex tunc</i>	with retroactivity
<i>Exempli gratia</i>	for example
<i>Inter alia</i>	among other things
<i>Ipsa iure</i>	by the law itself; by operation of the law
<i>Iure sanguinis</i>	by ius sanguinis
<i>Iure soli</i>	by ius soli
<i>Ius sanguinis</i>	Lit.: right of the blood: a person acquires the nationality of a parent at birth or by the establishment of a child-parent family relationship.

<i>Ius sanguinis a matre</i>	Lit.: right of the blood from the mother: a person acquires the nationality of the mother at birth or by the establishment of a child-mother family relationship.
<i>Ius sanguinis a patre</i>	Lit.: right of the blood from the father: a person acquires the nationality of the father at birth or by the establishment of a child-father family relationship.
<i>Ius soli</i>	Lit.: right of the soil: a person acquires the nationality of his country of birth
<i>Per se</i>	by or in itself; intrinsically
<i>Prima facie</i>	Lit.: at first sight
<i>Status quo</i>	existing state of affairs
<i>Stricto sensu</i>	in the restricted sense; in the narrow sense
<i>Supra</i>	above
<i>Sui generis</i>	Lit.: in a class or group of its own: not like anything else
<i>Vice versa</i>	Lit.: in-turned position

Glossary of legal terminology related to State succession

Predecessor State:	State that is replaced by another following a State succession. The predecessor State, in the process of State succession, can disappear or continue to exist, preserving in that case the legal status of the existing State, although limited geographically. In the situation object of this research, the predecessor State would be the remaining EU Member State.
Successor State	State that comes to replace the previous predecessor State. In the situation object of this research, the successor State would be a new non-EU Member State.
Continuing State:	State which is regarded as having the same international legal personality as the predecessor State despite a change in circumstances, e.g. a loss of territory or population.
Right of self-determination:	This right entails the free determination of the political status of “peoples” and their economic, social and cultural development.
External self-determination:	The exercise of the external self-determination amounts to right to independent Statehood
Internal self-determination:	The exercise of the internal self-determination does not amount to right to independent Statehood, but to recognition and protection of particular groups’ culture and identity within the territory of an existing State.

- Remedial secession: Solution of last resorts whereby a particular group within the territory of an existing State is denied basic democratic freedoms and is subjected to severe human rights abuses.
- Succession in respect of part of territory: Category of State succession that takes place when part of the territory of a State becomes part of the territory of another State. Also falling under this general category is the transfer of part of the territory of a State, *i.e.*, the situation where a dependent territory becomes part of the territory of a State other than the State which was previously responsible for its international relations.
- Unification of States: Category of State succession that takes place when two or more States unite and thereby form one successor State.
- Separation of part(s) of a State: Category of State succession that takes place when a part or parts of the territory of a State separate to form one or more States, whether or not the predecessor State continues to exist.
- Dissolution of a State: Category of State succession that takes place when a State dissolves and ceases to exist and the parts of the territory of the predecessor State form two or more successor States.

Chapter 1: Introduction

1. State Succession “within” the European Union

State succession is defined as the replacement of one State by another in the responsibility for the international relations of a certain territory.¹ The phenomenon of State succession experienced its golden years in the decades following World War II,² in particular during the decolonisation period.³ Furthermore, interest in this subject has been renewed as a result of discussions in some EU Member States with regard to the independence aspirations of parts of their territories. The independence

¹ For further elaboration of concepts related to State succession see Chapter 2, section 1.

² Jaques de Burel, *Nationalité des personnes physiques et décolonisation*, Bruylant, Brussels, 1975. Compare also Karl Matthias Meessen, *Die Option der Staatsangehörigkeit*, Duncker and Humblot, Berlin, 1966. For older treaties on nationality and State succession, see: Maurice Costes, *Des Cessions de Territoires. Envisagées dans leur principe et dans leurs effets relatifs au changement de souveraineté et de nationalité*, Rivière and Diron, Paris and Toulouse, 1914; Josef L. Kunz, *Die Völkerrechtliche Option*, Hirt, Breslau, 1928, pp. 302-356; Emile Szlechter, *Les options conventionnelles de nationalité à la suite de cessions de territoires*, Sirey, Paris, 1948, pp. 357-361.

³ *Inter alia*, Philippines (1946), Jordan (1946), Syria (1946), India (1947), Pakistan (1947), Sri Lanka (1948), South Korea (1948), North Korea (1948), Laos (1949), Indonesia (1945/1949), Libya (1951), Cambodia (1953), Vietnam (1954), Tunisia (1956), Morocco (1956), Ghana (1957), Malaysia (1957), Guinea (1958), Iraq (1958), Burkina Faso (1960), Cameroon (1960), Chad (1960), Republic of the Congo (1960), Côte d'Ivoire (1960), Gabon (1960), Mauritania (1960), Niger (1960), Sierra Leone (1961), Kuwait (1961) Uganda (1962), Jamaica (1962), Trinidad and Tobago (1962), Algeria (1962), Kenya (1963), Malta (1964), Rhodesia (1965), Barbados (1966), Guyana (1966), Botswana (1966), Lesotho (1966), Mauritius (1967), Swaziland (1967), Equatorial Guinea (1968), Bahrain (1971), Qatar (1971), Oman (1971), United Arab Emirates (1971), Bahamas (1973), Guinea-Bissau (1974), Angola (1975), Mozambique (1975), Cape Verde (1975), São Tomé and Príncipe (1975), Suriname (1975), Papua New Guinea (1975), Seychelles (1976), Djibouti (1977), Belize (1981), Antigua & Barbuda (1981), Namibia (1990), Estonia (1991), Latvia (1991), Lithuania (1991), Ukraine (1991), Belarus (1991), Moldova (1991), Armenia (1991), Georgia (1991), Azerbaijan (1991), Kazakhstan (1991), Uzbekistan (1991), Tajikistan (1991), Kyrgyzstan (1991), Turkmenistan (1991), Slovenia (1991), Croatia (1991), Macedonia (1991), Bosnia and Herzegovina (1992), Eritrea (1993), Hong Kong (1997), Macau (1999), East Timor (2002), Montenegro (2006) or South Sudan (2011). On the specific cases of Spanish, Belgian and British decolonisation process after World War II see Chapter 2, section 6.