

**EU and National Citizenship: Explaining the Lack of Member States’
Response to the Rottmann Ruling of the CJEU**

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Submitted to
Central European University
Department of International Relations and European Studies

In partial fulfillment of the requirements for the degree of Master of Arts

Supervisor: Professor Marie-Pierre Granger

Word Count: 14, 893.

Budapest, Hungary
2013

Abstract

This thesis aims at uncovering the reasons for the lack of EU Member States' response to the *Rottmann* ruling of the Court of Justice of the European Union. The study adopts the conceptual framework of Michael Blauberger presented in his article "With Luxembourg in Mind ... the Remaking of National Policies in the Face of ECJ Jurisprudence". Process tracing was applied in order to examine the impact of the pressure of interested political actors (or the absence of it) on Member States' motivation to initiate legislative adjustments to comply with *Rottmann*. The case studies (Belgium and Ireland) showed that some political actors demonstrated concern with the implication of the case on nationality laws of Member States, while others revealed no reaction.

Acknowledgements

I would like to thank my supervisor, Professor Marie-Pierre Granger, for her patience, direction and encouragement throughout the research and writing processes. I am grateful to instructors of the Center of Academic Writing, Robin Bellers and Sanjay Kumar, for their feedback and suggestions concerning my thesis. I would also like to thank my family and friends for their support and encouragement throughout the past year.

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Introduction

The 2010 Rottmann ruling by the Court of Justice of the European Union (hereafter referred to as “the CJEU” or “the Court”,) marked a new step in the development of the citizenship of the European Union.¹ It also, controversially, put into question the autonomy of national citizenship policies, until then firmly anchored as an exclusive competence of the Member States.

Many scholars and legal experts acknowledged the significance of the case. The Court, for itself, did not clearly define the scope of the ruling – however, together with later CJEU citizenship judgment, such as *Zambrano*², the Rottmann ruling highlighted the potential for EU citizenship to interfere with national sovereignty, including policies regarding access to national citizenship. Based on these assumptions, scholars identified various provisions of national citizenship laws, which could conflict with EU citizenship, as it came out of the Rottmann ruling. Yet, the judgment triggered little reaction in the domestic media and politics.

The more surprising is the absence of reaction to the Rottmann case on the part of Member States’ executives and legislators, given analysts’ arguments that many domestic provisions fell short of complying with EU citizenship conditions set out in the ruling. By contrast, the later *Zambrano* case, often ‘read’ together with *Rottmann* received significant attention of both media and national political elites. This thesis seeks to uncover the reasons and investigate the conditions that led to such passivity in domestic quarters. In order to do so, it borrows the conceptual framework developed by Michael Blauberger in his article “With Luxembourg in Mind ... the Remaking of National Policies in the Face of ECJ Jurisprudence”, where he explored ‘why and how member state governments regulate ‘with

¹ Case C-135/08. Judgment of the Court (Grand Chamber) of 2 March 2010. Janko Rottman v Freistaat Bayern (EUR-Lex).

² Case C-34/09. Judgment of the Court (Grand Chamber) of 8 March 2011. Gerardo Ruiz Zambrano v Office national de l’emploi (ONEm). (EUR-Lex).

Luxembourg in mind', i.e. bring national legislation in conformity with CJEU case law while trying to preserve domestic regulatory autonomy as much as possible'.³ Blauberger argues that Member States balance full compliance with CJEU's case law and preservation of preferred domestic regulations. He identifies a series of factors, which create pressure on national government to initiate compliance procedures with CJEU case law. These are (a) the existence of misfits between domestic legislation and the CJEU ruling and (b) pressure from the side of interested actors (i.e. mobilization of domestic political actors, ability and will of the European Commission to push for national reforms, and national interests and political culture).

The thesis adopts a process tracing methodology, more specifically the Hoop Test, in order to examine in what way actors, supposedly interested in the implications of the Rottmann ruling in Belgium and the UK based on the theoretical framework of Blauberger, put pressure (or not) on national governments to initiate legislative adjustments in response to the Rottmann ruling. Indeed, a review of the literature suggests that there is a wide spectrum of conditions, which may lead to compliance or non-compliance decisions taken by Member States, which are not exhaustively reflected in the theoretical framework of Blauberger. Thus, the characteristics of the Hoop Test, discussed in greater details in Chapter 3, fit well the nature of the study, which claims that the satisfaction of conditions of Blauberger's framework in this particular case is necessary, but not sufficient to force a Member State to choose a legislative response to the case law. The cases for the study were selected based on their ability to satisfy the first necessary precondition (the 'misfit' condition) for national governments to acquire the need to consider compliance with the Rottmann ruling. More precisely, national citizenship laws of both countries, selected as case studies, were highlighted by scholars as containing provisions that conflicted with the Rottmann ruling.

³ Michael Blauberger, "With Luxembourg in Mind ... the Remaking of National Policies in the Face of ECJ Jurisprudence." *Journal of European Public Policy* vo. 19 no. 1 (2012): 109-26.

The outcomes of the study of Belgian and the UK cases indicate that the lack of mobilization for compliance from domestic political actors contributed to the indifference of national government with regard to Rottmann.

The first part of Chapter 1 exposes the facts of the Rottmann case, and offers a brief review of the relevant parts of the opinion of the Advocate General Poiares Maduro, and of the judgment. The second part of Chapter 1 explores the implications of the judgment on national citizenship legislation and the relationship between national and European citizenships, as viewed by scholars and legal experts. Chapter 2 examines the literature on EU law compliance/non-compliance. The aim of the chapter is to prepare theoretical ground for the further examination of the reasons for member States' compliance 'passivity'. Chapter 3 opens with methodological considerations regarding the two case studies, before proceeding to the analysis and presentation of the findings. Chapter 3 is followed by the concluding remarks on the accomplishments and shortcomings of the thesis project, as well as suggestions for further research.

Chapter 1. Rottmann and Its Implications for National Citizenship Laws

The chapter exposes the Rottmann case, rulings and implications. The goal of the chapter is to demonstrate that the case potentially creates multiple implications for national citizenship legislation, which national governments tend to underestimate or even disregard.

1.1. Rottmann. Facts and Provisions of the Judgment

On March 2, 2010, the Court of Justice of the European Union released its judgment on the Rottmann case, which evoked a lot of interest in academic and legal circles. The case concerns Dr. Janko Rottmann, born in Austria and thus possessing Austrian citizenship. In the early 1990s, he was prosecuted in Austria for alleged financial fraud. Despite being involved in judicial proceedings, Dr. Rottmann moved to Germany in 1995, before sanctions against him were applied. Following this up, the Austrian authorities issued a warrant for his arrest. At the same time, Dr. Rottmann applied for German citizenship, concealing from the German authorities the fact that he was a subject of criminal proceedings in Austria. In 1999, he was granted German citizenship and, as a result, lost his Austrian citizenship, as required by Austrian law.⁴ The same year, Germany learned from Austrian authorities that Dr. Rottmann was undergoing criminal proceeding against him during the period he was applying for and receiving his German citizenship. As a consequence, Germany took the decision to withdraw Rottmann's German citizenship, based on the fact that he had obtained this citizenship in violation of German law.⁵ Here arose an important aspect to the case: withdrawal of German citizenship would not only make Dr. Rottmann stateless, but also

⁴ Paragraph 27(1) of German law on nationality, Staatsbürgerschaftsgesetz (the StbG, BGBl. 311/1985), states that "any person who acquires foreign nationality at his own request, or by reason of a declaration made by him or with his express consent, shall lose his Austrian nationality unless he has expressly been given the right to retain [it]" (Judgment of the Court (Grand Chamber) of 2 March 2010. Case C-135/08. Janko Rottmann v. Freistaat Bayern, § 9).

⁵ Article 48(1) of the Code of administrative procedure of the Land of Bavaria, Bayerisches Verwaltungsverfahrensgesetz (BayVwVfG), which was recognized as compatible with German law, even though the withdrawal of citizenship would result in statelessness, prescribes withdrawal of a person's naturalization on the basis of the first sentence (Judgment of the Court (Grand Chamber) of 2 March 2010. Case C-135/08, § 29).

automatically result in loss of his European Union citizenship and all the rights attached to this status. According to Article 20(1) of the Treaty on the Functioning of the European Union (TFEU), only nationals of Member States are citizens of the European Union.

Thus, Dr. Rottmann challenged the decision to withdraw his citizenship under German law based on that the withdrawal of German citizenship would deprive him of the rights conferred upon him by European Union citizenship. The case subsequently reached the German Supreme Federal Administrative Court⁶ which, looking for a solution, addressed the CJEU on two questions for preliminary ruling. The German court inquired in one of the questions that is relevant for the thesis:

*Is it contrary to Community law for Union citizenship (and the rights and fundamental freedoms attaching thereto) to be lost as the legal consequence of the fact that the withdrawal in one Member State (the Federal Republic of Germany), lawful as such under national (German) law, of a naturalisation acquired by intentional deception, has the effect of causing the person concerned to become stateless because, as in the case of the applicant [in the main proceedings], he does not recover the nationality of another Member State (the Republic of Austria) which he originally possessed, by reason of the applicable provisions of the law of that other Member State?*⁷

The second question presupposed positive answer to the first one and inquired what should be the actions of both Germany and Austria in such a case. The CJEU did not answer the question, justifying it by that the decision on withdrawal of Dr. Rottmann's citizenship was not taken yet. In order to approach the questions addressed by Germany, the CJEU had to clarify first whether the issues touched upon in the inquiry are within the jurisdiction of the Court. EU law, including the CJEU case law prior to Rottmann, assumed that only situations with cross-border element fell within the scope of Union law,⁸ and international law typically considers citizenship law an internal matter.

⁶*Bundesverwaltungsgericht*

⁷ Judgment of the Court (Grand Chamber) of 2 March 2010. Case C-135/08, §35.

⁸ Nathan Cambien, "Case Law. Janko Rottman v Freistaat Bayern." *Columbia Journal of European Law* no. 17 (2010-2011): 381.

The ruling referred to Article 3 of the European Convention on Nationality, which was adopted by the Council of Europe in 1997 and entered into force on 2000, provides that each state has a right to determine rules defining who its nationals are. Each state is, however, expected to ensure that its citizenship laws are in accordance with relevant international conventions, customary international law and the principles of law generally recognized with regard to nationality.

EU law also recognizes the authority of national governments to exercise control and to legislate in the policy area. The Treaty on the European Union clearly places the European citizenship under the subjection of the national citizenship.⁹ Declaration No. 2 on nationality of a Member State, annexed by Member States to the final act of the Treaty on European Union, clarifies that “...wherever in the Treaty establishing the European Community reference is made to nationals of the Member States, the question whether an individual possesses the nationality of a Member State shall be *settled solely by reference to the national law of the Member State concerned*. ...’

A more detailed description of the European citizenship-national citizenship relationship was given within the framework of the European Council meeting in Edinburgh in 1992. According to the Edinburgh decision, “[t]he provisions of Part Two [for instance, Article 9] of the Treaty establishing the European Community¹⁰ relating to citizenship of the Union give nationals of the Member States additional rights and protection as specified in that Part. They do not in any way take the place of national citizenship. The question whether an individual possesses the nationality of a Member State will be settled solely by reference to the national law of the Member State concerned.”

Citizenship law is thus a matter of national authority. Nevertheless, the CJEU came to the conclusion that the national decision to withdraw Dr. Rottmann’s citizenship should be

⁹ Article 9 of the Treaty on European Union.

¹⁰ Nowadays Treaty on European Union.

examined through the prism of the EU citizenship law. Importantly, the CJEU rejected the arguments of some intervening Member States that the situation bore a purely national (internal) character.¹¹

The Court indicated that it is the right of each Member State to define the rules for the acquisition and loss of national citizenship; however, this should always be done with “due regard to Community [now Union] law”.¹² The Court drew attention to the fact that “...with a decision withdrawing his [applicant’s] naturalisation, adopted by the authorities of one Member State, and placing him, after he has lost the nationality of another Member State that he originally possessed, in a position capable of causing him to lose the status conferred by Article 17 EC [i.e. Union citizenship] and the rights attaching thereto falls, by reason of its nature and its consequences, within the ambit of European Union law”.¹³

Interestingly, Advocate General Maduro came to the same conclusion, but using a different road. He also argued that the case is indeed not purely internal in its nature and should be solved with due respect to the European law. However, Advocate Maduro justified this on the basis of use of the freedom of movement.¹⁴ According to EU case law¹⁵, situations that include exercise of fundamental freedoms of the European Union, especially the freedom of movement, established by the Article 21 TFEU, cannot be classified as bearing purely internal nature, thus are subject to Union law. As Dr. Rottmann used the right of free movement when he moved from Austria to Germany, prior to the situation that unfolded

¹¹ Case C-135/08. Opinion of Advocate General M. Poiares Maduro, §§ 37-38; Case C-135/08. Judgment of the Court (Grand Chamber) of 2 March 2010, § 8.

¹² Case C-135/08. Judgment of the Court (Grand Chamber) of 2 March 2010, § 32.

¹³ Ibid. § 42.

¹⁴ Case C-135/08. Opinion of Advocate General M. Poiares Maduro, § 12.

¹⁵ See Case C-224/98, Marie-Nathalie D’Hoop v Office national de l’emploi, § 29; Case C-148/02, Carlos Garcia Avello v Belgian State, § 24; Case C-76/05, Herbert Schwarz and Marga Gootjes-Schwarz v Finanzamt Bergisch Gladbach, § 87; Case C-209/03, The Queen, on the application of Dany Bidar v London Borough of Ealing and Secretary of State for Education and Skills, § 33; Case C-403/03, Egon Schempp v Finanzamt München V, §§ 17-18; Case C-499/06, Halina Nerkowska v Zakład Ubezpieczeń Społecznych Oddział w Koszalinie, §§ 26-29.

around his potential loss of German and consequently European citizenship, the Advocate judged the case to be subject to Community law.

The judges of the CJEU took note of the possibility to involve a cross-border element in the judgment. Nevertheless, their conclusion was that in *Rottmann* circumstances making use of freedom of movement was not the primary concern, as “... the person concerned exercised his right to freedom of movement before his naturalisation cannot of itself constitute a cross-border element capable of playing a part with regard to the withdrawal of that naturalisation”.¹⁶ This conclusion did not in any form prevent the CJEU from recognizing the case as being under the jurisdiction of Community law, although on other grounds.

Having set that the questions addressed by Germany were under its jurisdiction, the Court went on to delineate the conditions that Member States are to fulfill in cases like *Rottmann*. The CJEU has fully recognized that in this case the decision of Germany to withdraw Rottmann’s citizenship was in full compliance with international law, even if the withdrawal would render Dr. Rottmann stateless. In its judgment, the Court reminded that Article 8(2) of the Convention on the reduction of statelessness allows a state to deprive its citizen of the state’s nationality, regardless of that the act results in statelessness for the person, if the nationality was acquired in a fraudulent manner. Article 7(1) and (3) of the European Convention on nationality, similarly, accept the possibility of a person to become stateless, if a rejection of a request to reclaim one’s citizenship is justified on the basis of “fraudulent conduct, false information or concealment of any relevant fact attributable to that person”.

Having established the legality of the potential act of citizenship withdrawal, the CJEU rules, however, that it is still necessary for a concerned Member State to apply the

¹⁶ Case C-135/08. Judgment of the Court (Grand Chamber) of 2 March 2010, § 38.

principle of proportionality to the case.¹⁷ The proportionality test, conducted by the national court, is necessary in order to identify whether the use of the radical measure is justified enough. The CJEU has underlined that the proportionality check should be conducted in the light of both national and European Union law. Thus, first, taking a decision to withdraw citizenship from an individual, national courts are expected to consider if the consequences to be evoked by the decision are proportionate to the offense committed by the individual. Second, the national court is to evaluate as well whether the offense is grave to the extent that it justifies loss of the European citizenship all together with the national citizenship.

1.2. Implications of Rottmann from the Perspective of Scholars

The Rottmann judgment started off a lively debate in academic and expert circles on the issue of Member States' autonomy in the definition of national citizenship laws. Legal scholars and political analysts largely regarded the judgment on the Rottmann case as a milestone in the sphere of nationality law. The more detailed evaluation of the case was, however, ambiguous.

The legitimacy of the CJEU decision to answer the questions for preliminary ruling referred to it by Germany raised almost no concerns in scholarly circles. Hardly anyone expressed the point of view that it was not within the competence of the Court to address the issue. Many regarded the judgment as a logical continuation of Micheletti and Kaur cases.¹⁸ As reported by Kostakopoulou, in both cases the Court acknowledged the autonomy of

¹⁷ Case C-135/08. Judgment of the Court (Grand Chamber) of 2 March 2010, § 55.

¹⁸ Gareth T. Davies, "The Entirely Conventional Supremacy of Union Citizenship and Rights" in *Has the European Court of Justice Challenged Member State Sovereignty in Nationality Law?*, ed. Jo Shaw (EUDO Observatory on Citizenship); Dimitry Kochenov, "Two Sovereign States vs. a Human Being: CJEU as a Guardian of Arbitrariness in Citizenship Matters" in *Has the European Court of Justice Challenged Member State Sovereignty in Nationality Law?*, ed. Jo Shaw (EUDO Observatory on Citizenship); Kostakopoulou, Dora, "European Union Citizenship and Member State Nationality: Updating or Upgrading the Link?" in *Has the European Court of Justice Challenged Member State Sovereignty in Nationality Law?*, ed. Jo Shaw (EUDO Observatory on Citizenship).

Member States in the definition of nationality law (acquisition and loss of nationality, in the Kaur case), however, making note that the national law should have due regard to EU law.¹⁹

The lack of direct instructions provided in the *Rottmann* judgment contributed to the conviction of scholars that the Court did not have the goal to usurp the power of Member States to define national citizenship law. As mentioned by Davies, "... it is difficult to portray it [the Rottmann ruling] as an outrageous interference".²⁰ According to him, the Court was simply trying to bring more order to the under-coordinated citizenship-related legal area that exists between Member States and the European Union.²¹

Not everyone was, however, convinced with this legitimacy explanation. D'Oliveira, for instance, characterized the ruling as "short, sweet, and ... incorrect".²² He considered that the judgment entered too deeply into the territory of exclusively national competences. D'Oliveira did not appreciate the Court's move to qualify the situation of Rottmann as going beyond the scope of internal (national) matters. According to him, this practically made the distinction between cases bearing internal and external nature disappear.²³ D'Oliveira argues that in the Rottmann ruling the CJEU encroached upon the autonomy of Member States in defining of who belongs to their body of citizens, which is an irreplaceable component of national identity.²⁴ The scholar stressed that Member States did not voluntarily transfer the authority of legislation in the area of nationality to the Union and that Article 4 TEU, which underlined that the Union respects the member states' identity, is still in full power.²⁵

¹⁹ Kostakopoulou in ed. Jo Shaw

²⁰ Davies in ed. Jo Shaw

²¹ Ibid.

²² Jessurun H.U. d'Oliveira, "Decision of 2 March 2010, Case C-315/08. Janko Rottman V. Freistaat Bayern. Case Note 1. Decoupling Nationality and Union Citizenship?," *European Constitutional Law Review* no. 7 (2011): 139.

²³ Ibid.147.

²⁴ Ibid.148.

²⁵ Ibid.148.

Many scholars have additionally raised the question of how far the Court went, if it went at all, in the re-definition of the relationship between national and European citizenships in *Rottmann*. In his commentary on the *Rottmann* case, Davies reminds that EU citizenship has been widely recognized as subject to national citizenship.²⁶ Thus, Member States were traditionally perceived as “gatekeepers”, free to decide on the conditions for acquisition and loss of their national citizenships.²⁷ However, as mentioned before, this commonly accepted idea conceals a multitude of case laws, in which the CJEU has pointed out that national citizenship law should always look back at the provisions of the EU law.²⁸ This means that the status of European citizenship and the EU law provisions delineating it cannot be simply moved to the margins by national legislators.

Some scholars considered that with the *Rottmann* ruling the CJEU moved the relationship of European and national citizenship to a whole new level. De Groot and Seling regarded the ruling as “a milestone in the sphere of nationality law”.²⁹ Calling the CJEU’s move ‘avant-garde’, De Groot and Seling believe that *Rottmann* demonstrates the resolution of the Court to challenge the current distribution of authority between national and Union citizenship.³⁰

D’Oliveira largely shares the opinion expressed by De Groot and Seling. He evaluates the behavior of the CJEU within the framework of the *Rottmann* case as “dissident relative to the three other institutions of the Union”³¹, arguing that numerous Member States, representing the Council of the European Union, and even the European Commission itself,

²⁶ Davies in ed. Jo Shaw.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Gerard René De Groot and Anja Seling, “The consequences of the *Rottmann* judgment on Member State autonomy - The Court’s avant-gardism in nationality matters” in *Has the European Court of Justice Challenged Member State Sovereignty in Nationality Law?*, ed. Jo Shaw (EUDO Observatory on Citizenship).

³⁰ Ibid.

³¹ D’Oliveira 146.

submitted their observations, claiming that the issue at stake is not within the competence of the Union. Thus, according to him, the Rottmann ruling helps the CJEU on one side and the European citizenship on another to move away from their dependent status on nation states in the matter of nationality.³² Moreover, D'Oliveira argues that what the Court is doing is actually trying to turn round the authority of Member States' nationalities and Union citizenship.³³

However, some scholars do not share the perspective of De Groot, Seling and Oliveira. It is far from clear to all that the CJEU was trying to claim some of the Member States' autonomy in the sphere of nationality. Many are inclined to view the Rottmann judgment as a failure of the CJEU to finally bring clarity and order in the relations between European and national citizenships. Indeed, with the ruling the CJEU made an attempt to clarify that the scope of the aspects of national citizenship that are under jurisdiction of the Union has grown.³⁴ Nevertheless, in the broader perspective, this attempt did not any significant contribution to the consolidation of Union citizenship as a strong and valuable status.³⁵ The proportionality test proposed by the CJEU was largely regarded by scholars as "lacking teeth", because it left it to the national court to decide on the appropriateness of the measures, which could result in loss of Union citizenship.³⁶

Dimitry Kochenov, for his part, identifies multiple weaknesses of the Rottmann judgment, among which the inability of the Court to keep up with the interests of the Union as an integration project, the inappropriateness of the measures selected to solve the problem

³² D'Oliveira 141.

³³ Ibid.147.

³⁴ Davies in ed. Jo Shaw.

³⁵ Michael Dougan, "Some Comments on Rottmann and the "Personal Circumstances" assessment in the Union Citizenship Case Law" in *Has the European Court of Justice Challenged Member State Sovereignty in Nationality Law?*, ed. Jo Shaw (EUDO Observatory on Citizenship); Dennis-Jonathan Mann and Kai P. Purnhagen, "The Nature of Union Citizenship between Autonomy and Dependency on (Member) State Citizenship - a Comparative Analysis of the Rottmann Ruling, or: How to Avoid a European Dred Scott Decision?," *Wisconsin International Law Journal* vo. 29 no. 3: 484.

³⁶ Mann and Purnhagen 485; Kochenov in ed. Jo Shaw; Davies in ed. Jo Shaw.

of the Rottmann case (the proportionality test), and the inability to protect Dr. Rottmann, “a human being caught between two omnipotent sovereign states”.³⁷ According to Kochenov, instead of taking up the opportunity of bringing logic and consistency in the current legal situation, the Court only brought in more chaos by hiding behind the provisions of international law, when it came to the protection of an individual from the threat of statelessness.³⁸ This statement is perhaps a bit extreme, as the CJEU could hardly deny the legitimacy of the possible withdrawal of Dr. Rottmann’s nationality, backed up by the Convention on the Reduction of Statelessness.³⁹ Nevertheless, Kochenov’s general idea sounds in unison with many other scholarly opinions: the Court did not use the opportunity to promote the status of Union citizenship in relation to national citizenships with the help of the Rottmann ruling.⁴⁰

One of the most important questions raised with regard to the Rottmann case concerns its scope. If considering only the circumstances of the case, they provide the ruling with a quite narrow scope: a citizen of a Member State changes his nationality in favor of another Member State, giving up the initial one; the Member State of the individual’s current nationality cannot withdraw his or her nationality without conducting a proportionality test with regard to both national and European law, if the withdrawal could result in loss of rights conferred upon the individual by Union citizenship. Indeed, situations, similar to the one in

³⁷ Kochenov in ed. Jo Shaw.

³⁸ Ibid.

³⁹ Article 8 of the Convention on the Reduction of Statelessness provides:

“1. A Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless.

2. Notwithstanding the provisions of paragraph 1 of this article, a person may be deprived of the nationality of a Contracting State:

(a) in the circumstances in which, under paragraphs 4 and 5 of article 7, it is permissible that a person should lose his nationality;

(b) where the nationality has been obtained by misrepresentation or fraud. [...]”

⁴⁰ Kochenov in ed. Jo Shaw.

which Dr. Rottmann found himself, are not an often-occurring phenomenon.⁴¹ Nevertheless, the ruling does not clearly clarify its scope, letting experts elaborate on possible conditions and circumstances, under which the Rottmann ruling could be re-applied.

One of the shared assumptions of scholars with regard to the applicability of the ruling was that it should apply not only to the cases of loss, but also equally to the acquisition of the national, and, thus EU citizenship.⁴² As pointed out by De Groot and Seling, the Court was always giving special attention to “measures, which prevent the exercise of rights just as much as with those which hinder them”.⁴³ Thus, conditions, posing obstacles for lawful acquisition of the European citizen status could also be regarded as a disproportionate measure.⁴⁴ In other words, the rejection of an application for national citizenship, if regarded as disproportionate, could fall within the scope of the aspects covered by the Rottmann ruling.

Additionally, Davies noticed that the CJEU implies in the Rottmann ruling that the refusal of Austria to grant nationality back to Dr. Rottmann under the particular circumstances could be regarded as disproportionate.⁴⁵ This observation assumes that the cases on acquisition of nationality fall within the Rottmann scope.

A number of scholars supported the idea that the ruling was also applicable to both loss and acquisition of national citizenship by third-country nationals. The reasoning would be similar to the one on the acquisition of nationality: it is in the interest of the CJEU to ensure that all individuals gain lawful access to the benefits of the European citizenship.

⁴¹Davies in ed. Jo Shaw.

⁴²Davies in ed. Jo Shaw; De Groot and Seling in *Jed. o Shaw*; D’Oliveira 147.

⁴³De Groot and Seling in ed. Jo Shaw.

⁴⁴Cambien 385; Davies in ed. Jo Shaw.

⁴⁵Davies in ed. Jo Shaw.

Decisions on nationality matters, taken on the Member State level directly influence their possibility to benefit from the rights conferred by Union citizenship.⁴⁶

Scholars, nonetheless, admit that the Court does not seem keen to expand the scope so far. Cambien, for instance, talks of the reluctance of the Court to conduct validity assessments of Member States' nationality laws.⁴⁷ This is of no surprise to him: the Court is usually reluctant to engage in such sensitive matters as nationality.⁴⁸ It could possibly carry on the same line of argument as in *Rottmann* in further cases, though, in a very conscious way applying it only to very obvious cases.⁴⁹

In one way or another, there are opportunities for the Court to apply the *Rottmann* ruling beyond the factual context of the case. The question is whether this case law with its applicability span creates implications for national citizenship laws. The answer to the question is positive. A broad reading of the case carries significant implications for national laws governing access to and withdrawal of citizenship.⁵⁰

In his commentary to the *Rottman* case, Davies provides a multitude of examples of national laws that appear to be non-compliant with a broad reading of *Rottmann*. For example, the recent Spanish nationality policy provides with facilitated access to South Americans of Spanish origin to the acquisition of Spanish nationality. The facilitated procedure quickly acquired popularity and attracted a large number of applicants from the South American continent. Obviously, this resulted in a large number of recently naturalized EU citizens, who then could travel the EU in search of employment opportunities. With

⁴⁶Cambien 383; Davies in ed. Jo Shaw; De Groot and Seling in ed. Jo Shaw.

⁴⁷ Cambien 390.

⁴⁸ Ibid.

⁴⁹ Ibid. 391.

⁵⁰ Davies in ed. Jo Shaw.

regard to the situation, Davies claims that the policy could raise appropriateness concerns and potentially be assessed against the proportionality test required in the Rottmann ruling.⁵¹

Another example brought in by Davies concerns the similar situation with eased access to national citizenship of certain Member States for natives of former colonies. The author mentions specifically the privileged positions of Gurkhas, Gastarbeiters, Hong Kong residents, or Germanic minorities in Transylvania. These special policies could be evaluated for their compliance with the proportionality requirements of the Rottmann ruling. There is a possibility that the policies would fail the proportionality test due to their discriminatory nature based on historical heritage.⁵²

Probably the most popular example of a nationality law that lacks compliance with the Rottmann ruling is the one of the Netherlands..⁵³ One of the questionable provisions of the law states that once the Minister of Justice of the Netherlands withdraws the nationality of a Dutch citizen; the person immediately loses the status, even if he or she decides to appeal. Besides this, in the Netherlands not so long ago there were discussions concerning the withdrawal of Dutch nationality from first or second-generation Dutch citizens who committed serious or multiple crimes. The legislative proposal could also be considered disproportionate, as according to Davies, because it would be hard to justify the use of the serious measure, which leads to the loss of Union citizenship, even if it is applied to an individual, who committed grave or multiple crimes.⁵⁴

It can be concluded based on these examples that the Rottmann ruling creates significant implications for national citizenship laws of at least some EU Member States. It

⁵¹ Davies in ed. Jo Shaw.

⁵² Ibid.

⁵³ De Groot and Seling in ed. Jo Shaw.

⁵⁴ Davies in ed. Jo Shaw.

suggests that adjustments measures should be initiated in these member states, to bring them in compliance with EU law.⁵⁵

Many commentators responded to the *Rottmann* case with potential solutions of the problem, which is at the core of the case. Possible loss of Union citizenship as a result of withdrawal of national citizenship from an individual could be avoided if Member States introduce dual or even multiple citizenship practice. Currently, at least 10 out of 27 Member States of the EU demand that persons willing to acquire their nationality declare renunciation of their previous nationality.⁵⁶ No doubt, this requirement implies identity- and sovereignty-related significance. However, as pointed out on multiple occasions by Kochenov in his article “Double Nationality in the EU: An Argument for Tolerance”, this strict ‘one nationality’ rule brings Member States no noticeable difference. The right to vote and stand for election at the national level and access to the jobs in public service are the only two significant rights inherent in national citizenships that are not accessible to residents and nationals of other Member States.⁵⁷ Thus, Kochenov argues that due to the European integration the significance behind single nationality policy has faded.⁵⁸

Another suggested solution requires the detachment of Union citizenship from national citizenship. A number of scholars presented the option as one of the possible steps that could be undertaken in order to avoid situations, similar to *Rottmann*; however, all of them admitted that in the current political atmosphere there is almost no hope that such a move could get enough support from the side of national governments.⁵⁹ Total harmonization

⁵⁵ Gerard René De Groot and Anja Seling, “Decision of 2 March 2010, Case C-315/08. Janko Rottman V. Freistaat Bayern. Case Note 2. The Consequences of the *Rottmann* Judgment on Member State Autonomy – The European Court of Justice’s Avant-Gardism in Nationality Matters,” *European Constitutional Law Review* no. 7 (2011): 159.

⁵⁶ Kochenov 2011 337.

⁵⁷ *Ibid.* 333.

⁵⁸ *Ibid.* 343.

⁵⁹ D’Oliveira 149; De Groot and Seling 2011 160; Kochenov in ed. Jo Shaw; Kostakopoulou in ed. Jo Shaw.

of nationality laws within the European Union deems to be a currently improbable option as well, as it will require Treaty amendments.⁶⁰

Besides, there is another variant that Member States could use to eliminate the problem. They could and, as d'Oliveira believes, should come up with a legislative act, possibly with an amendment to the Treaty, that will explicitly state that Member States reserve for themselves the absolute right to decide upon the matter of national citizenship.⁶¹ However feasible this may sound, the option is still quite impractical. Indeed, it is theoretically possible that Member States initiate rewriting of a piece of legislation or reverse an unwanted case law. However, these threats are unlikely to materialize and bring any significant impact on the CJEU issuing judgments.⁶²

The Rottmann case has proven to be controversial, judging by the subsequent scholarly reaction. Nevertheless, commentators on the case were predominantly united with regard to two issues: first, it is quite unlikely that Member States will come up with any of the solutions, described in this chapter, thus, the legal setting is unlikely to change; second and more importantly, the Rottmann ruling creates multiple implications for national citizenship laws, which require amendments in order to comply with the CJEU's proportionality requirements. It is then quite logical to expect that national governments should demonstrate some concerns or initiate amendment procedures in the aftermath of the Rottmann case. It appears, however, that the ruling evoked no interest of national governments.⁶³ Jo Shaw in her commentary on the Rottmann judgment explained the absence of reaction from the side of Member States by their complete indifference to the implications

⁶⁰ Kochenov in ed. Jo Shaw.

⁶¹ D'Oliveira 149.

⁶² Karen Alter. "Who Are the "Masters of the Treaty"? European Governments and the European Court of Justice". *International Organization* vo. 52 no. 1 (1998): 136-137.

⁶³ The perspective is shared by such scholars as Jo Shaw, Gareth T. Davies, Dennis-Jonathan Mann, and Kai P. Purnhagen.

that the judgment creates.⁶⁴ Additionally, Shaw notes that the personality and situation of Dr. Rottmann evoked no sympathy from the side of civil society and media especially, the lack of which could explain the relative invisibility of the case.⁶⁵

Davies too notes Member States the lack of interest in the case. Only few Member States intervened in *Rottmann*. According to Davies, this is because national governments perceive the implications of the case as very narrow and, thus, hardly believe that they will ever have to deal with a similar situation.⁶⁶ Besides, the quite reserved behavior of the CJEU in the case hints that the Court, despite statement of principles, remains reluctant to intervene in the specificities of national citizenship laws.⁶⁷

Mann and Purnhagen confirm the lack of attention to Rottmann by providing empirical evidence: national courts already fail to follow the prescriptions of Rottmann in their practice.⁶⁸ Interestingly, the failure comes from Germany, the state that was directly involved in the Rottmann procedures. After the Rottmann ruling became public, the German national court did not really account for the advice that came with it, when deciding on the destiny of Dr. Rottmann. So, Dr. Rottmann's German nationality was withdrawn before the Austrian authorities got a chance to decide on the restoration of the former nationality.⁶⁹ This quite hasty decision signals Member State's reluctance to accommodate the Rottmann proportionality test in practice.

Perhaps the absence of actions undertaken by Member States following the Rottmann ruling could also be explained by lack of motivation for legal compliance. Not only Member States consider *Rottmann* to be relatively non-influential and narrow in its applicability, but

⁶⁴ Shaw in ed. Jo Shaw.

⁶⁵ Ibid.

⁶⁶ Davies in ed. Jo Shaw.

⁶⁷ Ibid.

⁶⁸ Mann and Purnhagen 530-531.

⁶⁹ BVerwG (Bundesverwaltungsgericht, German term for Federal Administrative Court), Nov. 11, 2010, 5 C

they also lack motivation to adjust their national legislation in accordance with the ruling. The following part of the thesis takes this as a hypothesis. After examining the relevant literature on Member States' compliance with the Union law in Chapter 2, the paper takes up the theory of Michael Blauberger, which explains why and how Member States balance between non-compliance and regulatory surrender. In Chapter 3 the theory of Blauberger is applied to the situation after the publication of the Rottmann ruling with the intention to understand whether it is possible to explain the absence of Member States' reaction to the case by their lack of motivation for compliance.

Chapter 2. Theoretical Explanations of Member States' Compliance/Non-Compliance with the CJEU Case Law

The purpose of this chapter is to shortly overview the literature on compliance and to define different theoretical possibilities to explain what motivates Member States to comply with the CJEU rulings. The academic literature provides a spectrum of theoretical explanations, which is within the framework of the chapter classified into instrumental, normative, and hybrid. Instrumental approaches suggest that the behavior of Member States is guided by self-interest to gain from the benefits of compliance, as well by the wish to avoid costs of enforcement procedures. Normative explanations consider that Member States comply with the CJEU case law, because they feel the duty and value of adhering to EU law, which is now deeply rooted in the national legal systems. Hybrid approaches mix both logics. Beyond these different dynamics, instrumental or normative pressure for compliance may result from the mobilization of civil society or corporate actors, or lack thereof. In short, compliance or non-compliance results from the 'battle' between different interests, lead towards either at the preservation of domestic status quo or at the promotion of Europeanization.

2.1. Instrumental Explanations

Instrumental explanations of what guides Member States' decisions whether to respond to new case law with legislative adjustments or not are based on weighing costs of compliance against assumed costs of non-compliance.⁷⁰ Delineating the enforcement approach explaining compliance, Tallberg explains that Member States are rational actors, which choose whether to comply based on their estimation of costs and benefits of such a

⁷⁰ Derek Beach. "Why Governments Comply: an Integrative Compliance Model that Bridges the Gap between Instrumental and Normative Models of Compliance," *Journal of European Public Policy* vo. 12 no. 1 (February 2005): 114.

decision.⁷¹ Thus, if the cost of being sanctioned is lower than the cost of reforms, a Member State would prefer to avoid compliance. The likelihood of choosing non-compliance depends on the nature of the situation. The enforcement approach identifies two types of situations. In collaboration situations, states are more inclined towards non-compliance, as they can try to get possible advantages out of the situation without paying the ‘price’ of compliance.⁷² In cooperative situations states cannot be better off if their fellows avoid compliance with the commonly set rules; thus, in such situations strong mechanisms of monitoring and sanctions are put in place.⁷³ This approach raises concerns of managerial theorists, who point out that it cannot convincingly explain cases of compliance, when punishment mechanisms are not in place.⁷⁴

The management approach, which opposes the enforcement explanation,⁷⁵ states that non-compliance is not a decision, but rather a result of particular circumstances.⁷⁶ First, Member States happen to misinterpret provisions of Union law, which is not intentional; second, non-compliance may be a result of capacity problems (administrative limitations, financial constraints, lack of resources), faced by Member States; and, third, strategies pursued by Member States do not always bring expected results.⁷⁷ Thus, the answer to non-compliance should not be punishment, but capacity building, law interpretation, and transparency between Member States in order to raise awareness of best practices.⁷⁸ Unfortunately, empirical results demonstrate that the theory does not have enough

⁷¹ Jonas Tallberg, “Paths to Compliance: Enforcement, Management, and the European Union,” *International Organization* vol. 56 no. 3 (Summer 2002): 611.

⁷² Tallberg 612.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Ibid.* 613.

⁷⁶ Abram Chayes and Antonia Handler Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (Cambridge, Mass.: Harvard University Press, 1995), 22.

⁷⁷ Tallberg 613.

⁷⁸ *Ibid.*

explanatory power, as variations in compliance of Member States are not justified based on the wealth and availability of resources.⁷⁹

Garrett, Kelemen, and Schultz propose another instrumental explanation, which states that significant domestic costs of obeying the CJEU rulings could lead to Member States' reluctance to comply.⁸⁰ However, the authors, whose explanation is based on the concept of self-interest, continue that the costs of non-compliance could be potentially much higher than the immediate costs of reforms in the long run. Besides non-compliance sanctions from the Court, the decision to disobey may cause damage to the Member State's image among fellow countries and in front of the Court. As Garrett, Kelemen, and Schultz point out, Member States are well aware that the benefits of the common market became possible thanks to the rule of law, thus, they are inclined to respect the decisions of the CJEU in order not to disrupt the economic advantages brought by the EU.⁸¹ This explanation did not find empirical proof according to studies of Beach and Bazel et al., which demonstrated lack of correlation between the benefits of the Internal Market for a Member State and its level of compliance.⁸²

2.2. Normative Explanations

In addition rather than in contrast to the previously discussed instrumental explanations, Jeffrey Checkel provides a normative explanation of Member States compliance with EU law. Also acknowledging the reason behind rationalist instrumental approaches, he underlines that these approaches do not exhaustively incorporate all the conditions that influence Member States' compliance decisions.⁸³ Explaining what can hinder

⁷⁹ Bazel et al., "Recalcitrance, Inefficiency, and Support for European Integration: Why Member States Do (not) Comply with European Law", Center for European Studies Working Paper Series no. 151 (2007): 19.

⁸⁰ Geoffrey Garrett, R. Daniel Kelemen, and Heiner Schultz. "The European Court of Justice, National Governments, and Legal Integration in the European Union", *International Organization* vo. 52 no. 1 (Winter 1998): 159.

⁸¹ Garrett, Kelemen, and Schultz 156.

⁸² Bazel et al. 16.

⁸³ Checkel 556-557.

compliance with the EU norms, Checkel concentrates attention at historically constructed domestic norms. According to him, such domestic norms, inherent in the legal systems of Member States, become ‘institutionalized’ with time, gaining political influence.⁸⁴ Talking specifically about citizenship rights, which are of interest for this thesis, Checkel argues that the presence of solid historically transmitted domestic norms hinders compliance with European legal norms, while the absence of such norms makes it much more likely that expected law adjustments will be carried out.⁸⁵

Discussing normative explanations of compliance, Beach, in contrast to Checkel, underlines that over the years European norms “become embedded within the national legal system”.⁸⁶ With the internalization of the European norms, which are largely associated with such fundamental principles as the rule of law, Member States act within the framework defined by principles.⁸⁷ In such a way, complying with the EU norms Member States demonstrate normative concerns.

2.3. Hybrid Explanations

In order to provide a comprehensive explanation of why governments decide to comply with CJEU case law, Derek Beach proposes integration of instrumental and normative explanations. Acknowledging the general effectiveness of instrumental explanations, Beach, however, dismisses the sufficiency of their arguments and reveals their fallacies.⁸⁸ He underlines that the instrumental approaches cannot explain high compliance rate in cases, when Member States did not have to fear sanctions from the CJEU and their

⁸⁴ Checkel 565.

⁸⁵ Ibid. 581.

⁸⁶ Beach 124.

⁸⁷ Ibid.

⁸⁸ Ibid. 122.

costs of compliance were high.⁸⁹ Here Beach argues that in such cases compliance is explained by the normative power of the EU law.⁹⁰

Jonas Tallberg, also, believes that only a combination of approaches may bring an explanation for Member States' compliance or non-compliance. This framework reconciles enforcement and management approaches. Tallberg believes that, just like the EU system incorporates the compliance-ensuring mechanisms of both enforcement and managerial nature,⁹¹ the reasons for non-compliance can also be dual in character.⁹²

2.4. Role of Interested Actors

Lisa Conant takes another perspective, to expose under what conditions Member States are forced to react to EU case law. As she argues, governments are most likely to provide with a legislative response to case law which triggered reaction of societal actors.⁹³ So, the effectiveness of proponents and opponents of a particular case law mobilizing their capacities to influence a national government play a significant role in how exactly the government will respond to case law. Thus, the lack of interest from the side of societal actors could result in indifference by the government to the case, as it experiences no pressure to get involved in compliance actions. However, vivid interest of societal actors increases costs of non-compliance.

Michael Blauberger largely shares this opinion of Conant, setting out his theoretical framework. Answering the question why and how Member States balance between full compliance with the CJEU case law and preservation of preferred domestic legislation Blauberger defines, as well, that the initiation of compliance by the national government is

⁸⁹ Beach 114.

⁹⁰ Ibid.114-115.

⁹¹ Tallberg 614.

⁹² Ibid. 623.

⁹³ Lisa Conant, *Justice Contained: Law and Politics in the European Union* (Ithaca, N.Y.: Cornell University Press, 2002), 214.

largely dependent on the pressure from interested actors.⁹⁴ Blauberger joins Conant in reaffirming that the need to adjust legislation to case law is a necessary, however not a sufficient, condition for governments to initiate compliance procedures, and supports the view that Member States need external pressure.⁹⁵ Besides activation of societal actors, Blauberger also underlines the importance of the European Commission's readiness to enforce the case law, noted as well by Conant.⁹⁶ Additionally, the scholar posits that the political culture of the government itself defines its motivation to initiate legislative adjustments.⁹⁷ In this way, if a government finds preservation of initial domestic legislation a more desirable option, compared to what is prescribed by the case law, it will have less incentives to conduct adjustments of domestic legislation.

Academic literature offers alternative theories for examining the reasons for Member States' choice to comply or not to comply with CJEU case law. Not all of them have strong explanatory power in the *Rottmann* case. The enforcement approach can perhaps provide the least plausible explanation of Member States' lack of response. Preliminary rulings of the CJEU have binding effect only on the state that applied for the ruling (Germany in *Rottmann*), thus, all the other Member States are free to decide whether to follow judicial decision of the CJEU or not.⁹⁸ In practice, national courts often base their decisions on CJEU case law, but it happens same way often that their decisions contradict prior CJEU rulings.⁹⁹ One way or another, none of Member States, except perhaps Germany, could be at all concerned with sanctions, as compliance with *Rottmann* is not obligatory.

⁹⁴ Blauberger 112.

⁹⁵ Blauberger 112, Conant 15.

⁹⁶ Blauberger 112-113; Conant 214.

⁹⁷ Blauberger 113.

⁹⁸ Conant 69.

⁹⁹ *Ibid.* 67-68.

This thesis adopts the approach of Blauberger, which provides a comprehensive framework for analysis of compliance/non-compliance cases, which is possible to test on the example of the Rottmann case. One of the purposes of Blauberger's analytical approach is to specify conditions, under which Member States initiate legislative adjustments, which directly provides the thesis project its theoretical basis. The necessary conditions that could possibly trigger governments' legislative response described by Blauberger are (1) existence of mismatch between domestic legislation and the case law, and (2) presence of actors, who are interested in either preservation of the legal status quo or initiation of amendments to ensure compliance.¹⁰⁰

The study of Blauberger proposes three factors to be examined: readiness of the European Commission to promote the need for national reforms, specific political culture installed by a Member State's government, and pressure from the side of domestic interested actors. According to Blauberger, Member States move balance from fully complying with the ECJ's case law to the side of supporting preferred domestic regulations or vice versa depending on the absence or presence of pressure from interested actors on the national or Union level.¹⁰¹

First, if the new case law of the ECJ does not touch upon any interest of political actors on national level (for instance, state agencies, representatives of civil society, trade unions and lobbies), then national governments appear to be more motivated to preserve initial domestic legislation.¹⁰² Second, European Commission's limited enforcement capacities in particular policy areas (shared and supporting competences) permit Member States to stick less strictly to the provisions of the ECJ.¹⁰³ This happens because Member

¹⁰⁰ Blauberger 112.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Ibid.

States do not apprehend initiation of infringement procedures against them. Third, Member States are more persistent in preserving regulatory status quo, when national governments dictate particular political culture, which goes against the provisions of the ECJ case law.¹⁰⁴ These three factors are taken up in Chapter 3 and examined in the setting of two Member States – Belgium and Ireland.

¹⁰⁴ Blauberger 112.

Chapter 3. Explaining the Lack of Member States' Response to *Rottmann*:

Role of Interested Actors

Chapter 3 intends to reveal the impact of interested actors on Member States' motivation to bring their nationality laws in compliance with the *Rottmann* ruling. The goal of the study is to provide possible explanations for the lack of Member States' response to *Rottmann*. The theoretical approach of the study is built on the conceptual framework developed by Michael Blauberger in his article "With Luxembourg in Mind ... the Remaking of National Policies in the Face of ECJ Jurisprudence".

3.1. Defining Cases

The choice of cases for the study had to be defined based on a compulsory criterion, provided by Blauberger: existence of a mismatch between domestic legislation and the case law. As the *Rottmann* ruling did not clearly define the scope of applicability of the case, it is only to presuppose what national laws could be non-compliant with the ruling. Many scholars took up the challenge of examining national citizenship laws of Member States with the intention to identify potential incompliances. In this way the cases of Ireland and Belgium were uncovered.

3.1.1. Case of Ireland

One of the aspects of nationality legislation that got in the spotlight in *Rottmann* is the conditions for the loss of national citizenship. It was found out that some Member States have grounds for loss of citizenship that go beyond the scope of recognized by the international law. Besides deprivation based on fraudulent conduct during a naturalization procedure, they recognize also some other grounds, which apply exclusively to individuals, who did not acquire the citizenship by birth.¹⁰⁵ Ireland is among the countries of the EU that have such a

¹⁰⁵ De Groot and Seling 2011 157.

‘special condition’ explicitly described in their legislation. Section 19(1) of Irish Nationality and Citizenship Act provides:

“The Minister may revoke a certificate of naturalisation if he is satisfied— [...] (c) that (*except in the case of a certificate of naturalisation which is issued to a person of Irish descent or associations*) the person to whom it is granted has been ordinarily resident outside Ireland (otherwise than in the public service) for a continuous period of seven years and without reasonable excuse has not during that period registered annually in the prescribed manner his name and a declaration of his intention to retain Irish citizenship with an Irish diplomatic mission or consular office or with the Minister...”¹⁰⁶

Such a type of discriminatory treatment is definitely inappropriate and conflicts with the principle of proportionality. Thus, the aspect of Irish nationality law, described in the section, which potentially conflicts with the Rottmann ruling, permits Ireland to qualify as a case study for the thesis, as the case satisfies Blauberger’s ‘misfit’ prerequisite.

3.1.2. Case of Belgium

One of the contributions of *Rottmann* recognized by experts is that it makes clear that a decision regarding an individual’s nationality status should be challengeable.¹⁰⁷ Indeed, in the Rottmann judgment the CJEU refers to Article 15(2) of the Universal Declaration of Human Rights and in Article 4(c) of the European Convention on Nationality, which provide that no one can be *arbitrarily* deprived of his or her citizenship, even due to a legally established wrongdoing.¹⁰⁸ De Groot and Seling also draw attention to Article 12 of the European Convention on Nationality, which states that all decisions concerning nationality status must be subject to an administrative or judicial review. In other words, all individuals should be able to use their right to appeal and contest decision on their citizenship. Not all the Member States have this right embedded in their national citizenship laws.¹⁰⁹ Belgium, for instance, never signed and ratified the European Convention on Nationality and its Code of

¹⁰⁶ “Irish Nationality and Citizenship Act, 1956.” *Irish Statute Book*. Office of the Attorney General

¹⁰⁷ De Groot and Seling 2011 157.

¹⁰⁸ Case C-135/08. Judgment of the Court (Grand Chamber) of 2 March 2010, § 53.

¹⁰⁹ De Groot and Seling 2011 158.

Citizenship does not provide individuals with this right of appeal.¹¹⁰ Scholars have considered the absence of such a right to be disputable: it is disproportionate, as it can lead to the loss of Union citizenship without the right to contest the decision.¹¹¹

Except for the absence of the right of appeal, there is another provision of Belgian Code of Citizenship, which is similar in its character to Section 19(1) of Irish Nationality and Citizenship Act. Article 23.1 of the Code describes grounds, based on which those citizens of Belgium, who were not born on the territory of the state, could be deprived on national citizenship. The Article provides that Belgians who did not acquire their Belgian nationality by the right of their birth and the Belgians not included in Article 11¹¹² may be deprived of state nationality if it was acquired (1) on the basis of fraudulent conduct, false information, forgery and/or use of false or forged documents, identity fraud or fraud related to the obtaining the right of residence; (2) if they seriously fail in their duties to the state.¹¹³

Belgium also satisfies Blauberger's 'misfit' criterion having at least two aspects of Belgian nationality law that potentially contradict the Rottmann ruling and is, thus, selected as a case study for this thesis.

3.2. Defining Analytical Approach

The thesis adopts process-tracing approach to examine causal inference between the pressure of interested actors on national governments (Blauberger's framework) and

¹¹⁰ "European Convention on Nationality. CETS No.: 166. Status as of: 31/5/2013," *Council of Europe*. Treaty Office; "Code de la nationalité belge," *Service publique fédéral Justice*.

¹¹¹ De Groot and Seling 2011 158.

¹¹² Article 11 of Belgian Code of Citizenship mentions children (1) born in Belgium to parents who are not anymore citizens of Belgium; (2) born in Belgium and adopted by foreigners. "Code de la nationalité belge," *Service publique fédéral Justice*.

¹¹³ Article 23.1 du Code de la nationalité belge stipule que:

"Les Belges qui ne tiennent pas leur nationalité d'un auteur belge au jour de leur naissance et les Belges qui ne se sont pas vu attribuer leur nationalité en vertu de l'article 11 peuvent être déchus de la nationalité belge :

1° s'ils ont acquis la nationalité belge à la suite d'une conduite frauduleuse, par de fausses informations, par faux en écriture et/ou utilisation de documents faux ou falsifiés, par fraude à l'identité ou par fraude à l'obtention du droit de séjour;

2° s'ils manquent gravement à leurs devoirs de citoyen belge..."

"Code de la nationalité belge," *Service publique fédéral Justice*.

governments' response to the CJEU case law. Generally, process tracing finds its appropriate application in studies that seek to expose "descriptive and causal inferences from diagnostic pieces of evidence".¹¹⁴ Process-tracing studies are normally based on prior knowledge. According to Collier, one of the ways to use process tracing is to ground a study on an existent conceptual framework.¹¹⁵ The framework should set interrelated concepts that would link the phenomena that are central to the conducted study. The framework of Blauberger that this thesis intends to test on the Rottmann case provides with such a set of concepts, which makes process tracing a suitable choice of analytical approach for this study.

It is assumed within the framework of this study that the following factors could push national governments to respond to *Rottmann* in the form of legislative adjustments: the interest of the European Commission and national political actors in adoption of the ruling on national level combined with particular political culture. The study also assumes that no motivation to comply with the Rottmann ruling explains the absence of the motivation to introduce legislative adjustments in accordance with *Rottmann*. The *hypothesis* then states that the absence of Member States' response to the case is explained by the lack of pressure of interested actors on national governments.

The academic literature on which the thesis draws demonstrates the variety of explanations for compliance/non-compliance. This makes the study admit the possibility of other causes for the lack of response on the part of Member States. Besides other possible theoretical frameworks available to explain the lack of response to *Rottmann* on national level, there is also a possibility to test assumptions of scholars presented in their commentaries to the case. Shaw, for instance, Therefore the study regards the 'pressure'-based explanation as *necessary*, but *not sufficient* to explain the lack of national

¹¹⁴ David Collier, "Understanding Process Tracing", *Political Science and Politics* vo. 44, No. 4 (2011): 824.

¹¹⁵ *Ibid.*

governments' response to *Rottmann*. The logic directs the thesis towards the choice of a hoop test as a process-tracing method.

Hoop tests presuppose that for a hypothesis to remain valid it must “jump through the hoop”; this, however, will not be enough to affirm the hypothesis.¹¹⁶ If a hypothesis does not pass a hoop test, it is eliminated as invalid.¹¹⁷ Thus, if the analysis conducted in this chapter reveals that some factors identified by Blauberger actually took place, the hypothesis of the study is eliminated.

In order to conduct a hoop test, a researcher must identify an intermediate mechanism between a cause and an outcome that make up a study. According to Mahoney, the identified cause cannot be necessary for the outcome unless it is necessary for the intermediate mechanism. In this study the lack of pressure of interested actors represents a cause, which leads to no response of national governments to *Rottmann* (outcome). No motivation to comply with the *Rottmann* ruling is an intermediary step between the cause and the outcome. Blauberger's conceptual framework establishes that pressure of interested actors is necessary to trigger legislative adjustments (to comply). If this study finds evidence for the absence of the will of interested actors to push for Member States' compliance with *Rottmann*, the hypothesis of this study will pass.

The remainder of this chapter traces the reactions of the European Commission, Irish and Belgian domestic interested actors and the governments themselves to the CJEU judgment on *Rottmann*.

¹¹⁶ Collier 826; James Mahoney, “The Logic of Process Tracing Tests in the Social Sciences”, *Sociological Methods & Research* no. 41 (2012): 580.

¹¹⁷ Mahoney 574.

3.3. Role of Interested Actors in the Lack of Domestic Response to Rottmann

3.3.1. Role of the European Commission

The initial position of the European Commission on the Rottmann case got its reflection in the CJEU judgment. In the observation submitted to the Court the Commission expressed the opinion that “the rules on the acquisition and loss of nationality fall within the competence of the Member States.”¹¹⁸ In his commentary on *Rottmann* d’Oliveira notes that the perspective of the Commission is not surprising: it was always rather reluctant to make substantial statements on the matter of national citizenship.¹¹⁹ In order to justify his position, the author provides some evidence. In distant 1987 in its written answer to an enquiry by a Member of the European Parliament (MEP), Mr. Luis Perinat Elio, who requested information on different practices of Member States in granting citizenship,¹²⁰ the European Commission answered that it was not in its competence to address the question.¹²¹ It seems like the position of the Commission did not change much over years.

In another enquiry a MEP Sir Graham Watson was directly referring to *Rottmann*. On December 7, 2011 he asked the European Commission to react to the 2007 amendments to Cypriot legislation (Annex A(f) of the Third Table of the Population Records Laws 2002-2003 (Proposal No 879/2007)), after the introduction of which over 50 persons were granted Cypriot citizenship, most of whom were third country nationals (Russians).¹²² The MEP, who seemed to consider the Cypriot amendment disproportionate according to *Rottmann*, wanted

¹¹⁸ Case C-135/08. Judgment of the Court (Grand Chamber) of 2 March 2010, § 37.

¹¹⁹ D’Oliveira 145.

¹²⁰ “Written Question No 1694/87 by Mrs Raymonde Dury (S—B) to the Commission of the European Communities (12 November 1987) (88/C 123/31)” in Official Journal of the European Communities no. C 123 (10 May 1988): 15.

¹²¹ “Answer given by Lord Cockfield on behalf of the Commission (19 February 1988)” in Official Journal of the European Communities no. C 123 (10 May 1988): 16.

¹²² “Question for Written Answer to the Commission. Rule 117. Sir Graham Watson (ALDE),” Parliamentary Questions, *European Parliament*, December 7, 2011.

to know (a) whether the Commission was aware of the Rottmann ruling, (b) whether it agreed with the CJEU's position on the necessary compliance of national citizenship laws with Union law, and (c) whether the Cypriot situation falls within the scope of *Rottmann* according to the Commission.¹²³ In the written answer to the questions the European Commission assured the MEP of its knowledge of the Rottmann case and declared that:

“ [it] wishes to underline that the Rottmann judgment regarded an individual administrative decision withdrawing the naturalisation of the person concerned on the ground that he had obtained this naturalisation by deception. It does not concern the acquisition of nationality nor mass naturalisation. For these reasons, the Commission observes that the situation referred to by the Honourable Member in his question differs from the situation in the Rottman case.”¹²⁴

The answer of the Commission rather demonstrates its unwillingness to elaborate on the issue and, above all, indicates its resolution not to give the case a broader interpretation. Obviously, the European Commission recognizes the applicability of the case only within the factual framework of it.

Furthermore, in two reports dated 2010¹²⁵ and 2013¹²⁶ on progress towards effective EU Citizenship 2011-2013 the European Commission only pursues the same narrow interpretation of the Rottmann case. The report of 2010 states that the Commission encourages initiatives that serve the exchange of good practices among Member States in administration of situations and procedures that lead to the loss of national citizenship and,

¹²³ “Question for Written Answer to the Commission. Rule 117. Sir Graham Watson (ALDE),” Parliamentary Questions, *European Parliament*, December 7, 2011.

¹²⁴ “Answer given by Mrs Reding on behalf of the Commission.” Parliamentary Questions. *European Parliament*, February, 2012.

¹²⁵ *Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee under Article 25 TFEU. On Progress towards Effective EU Citizenship 2007-2010*. Brussels: European Commission, October 27, 2010.

¹²⁶ *Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee and the Committee of the Regions under Article 25 TFEU. On Progress towards Effective EU Citizenship 2011-2013*. Brussels: European Commission, May 8, 2013.

consequently, Union citizenship.¹²⁷ This being said, the Commission underscores that the initiatives are to be conducted “*without encroaching on national competences*”.¹²⁸

The statements of the European Commission give no reason to believe that it searches to create pressure on national governments to comply with *Rottmann*. The narrow way of interpreting the case law demonstrates the Commission’s caution, taking into account that it considers itself to be in no position to elaborate on the matters of national citizenship legislation.

3.3.2. *Role of Domestic Political Culture*

Within the conceptual framework of Blauberger domestic political culture means political interests and agenda of a national government.¹²⁹ If CJEU case law is in line with a Member State’s goals, then the Member State may introduce legislative adjustments to comply with the case law. This could be particularly beneficial for national governments if the amendments that they justify by the need to comply with the CJEU’s prescription are unpopular with the population.¹³⁰ In the opposite case, when CJEU case law aims at introducing undesirable changes, Member States face a choice between non-compliance and ‘legislative surrender’, choosing the less costly option for them.¹³¹ This section of Chapter 3 aims at exploring some of the recent amendments to nationality laws of Belgium and Ireland. The intention of this overview is to identify the general moods and, if possible, attitudes towards *Rottmann* that prevail in national governments.

¹²⁷ *Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee under Article 25 TFEU. On Progress towards Effective EU Citizenship 2007-2010.* Brussels: European Commission, October 27, 2010: 5.

¹²⁸ Ibid.

¹²⁹ Blauberger 112-113.

¹³⁰ Ibid.

¹³¹ Ibid. 113.

Belgium had been always known for its relatively modest requirements for acquisition of national citizenship.¹³² Multiple procedures ensuring flexibility of access to Belgian citizenship were introduced in 2000: the law provided a simple declaration procedure for those, (1) who were once born in Belgium, (2) who were born to a parent, possessing at the moment of birth Belgian citizenship, and (3) who legally resided on the territory of Belgium for the last 7 years.¹³³ Introduction of the facilitated procedure significantly increased the number of applications, which evoked a lot of criticism and added controversy to the law.¹³⁴ Besides, since 2001 the residence requirement for citizenship application was lowered from five years to three.¹³⁵ As for the conditions of loss of Belgian citizenship, since 2006 both those, who acquired Belgian citizenship being third-country nationals, and Belgian citizens, who obtained a foreign citizenship, are not obliged to renounce their initial citizenships.¹³⁶ All these easing procedures were defined as a part of a bigger project that started in 1984 and aimed at facilitation of foreigners' integration in Belgium.¹³⁷ However, more recent changes in Belgian citizenship law indicate the change in the Member State's approach to the management of its citizenship.

In 2010, just a bit earlier than the Rottmann judgment was published, Belgian government adopted a bill, which restricted conditions for access to national citizenship. Since the adoption of the bill only foreigners holding a residence permit of unlimited duration could apply and subsequently be granted Belgian citizenship.¹³⁸ Before the amendment, even

¹³² Marie-Claire Foblets and Zeynep Yanasmayan, "Country report: Belgium", *EUDO Citizenship Observatory* (January 2010): 25.

¹³³ Foblets and Yanasmayan 8-9.

¹³⁴ *Ibid.*

¹³⁵ Patrick Wautelet, "Naturalization Procedures for Immigrants. Belgium," *EUDO Citizenship Observatory*.

¹³⁶ Foblets and Yanasmayan 13.

¹³⁷ *Ibid.* 18.

¹³⁸ "Belgium: Bill to Tighten Access to Naturalisation." *EUDO Observatory on Citizenship*.

possession of a permanent residence permit did not constitute a requirement for citizenship application.

Another restricting amendment followed in December 2012: Belgian government introduced an act that added more conditions to be fulfilled for the acquisition of nationality. Now in order to acquire Belgian citizenship one should prove his or her ability of contribute to ‘the international fame of Belgium’.¹³⁹ In other words, in order to become eligible for Belgian citizenship an applicant should provide with justifications of his or her ability to bring the Belgian state benefits of scientific, cultural or sports-related character. Experts indicate that the addition to Belgian citizenship law will definitely reduce the number of both applications and naturalizations.¹⁴⁰

The novelties of Belgian Code of Citizenship do not create an impression that the government of the Member State is willing to accommodate new provisions in its legislation, which will somewhat untighten the control over acquisition and withdrawal of national citizenship. Unfortunately, this research did not find any source to provide direct Belgian interpretation of the *Rottmann* ruling. However, it could be presupposed that due to no direct threat of enforcement by the European Commission of the *Rottmann* ruling, it is ‘less costly’ for the Belgian government not to initiate any compliance procedures. Instead, Belgium would mostly likely interpret the *Rottmann* ruling in the narrowest way, unless the provisions of Belgian Citizenship Code that are supposedly contradictory to *Rottmann* are directly challenged in front of the CJEU.¹⁴¹

¹³⁹ “Art. 19 § 1er. Pour pouvoir demander la naturalisation, l’intéressé doit : [...] 3° et avoir témoigné ou pouvoir témoigner à la Belgique de mérites exceptionnels dans les domaines scientifique, sportif ou socioculturel et, de ce fait, pouvoir apporter une contribution particulière au rayonnement international de la Belgique [...]”
 “Code de la nationalité belge,” *Service publique fédéral Justice*.

¹⁴⁰ Wautelet 2.

¹⁴¹ Conant 214-215.

Recent changes in Irish citizenship law appear to be also more restrictive. In 2009 Irish government announced the review of citizenship and naturalization laws. The intention of the review was to modernize and operationalize existent procedures in order to “reduce the numbers incorrectly completed and substantially contribute to more efficient and streamlined processing times”.¹⁴² Only the introduction of a dramatic cut in fee for application for naturalization (from 950 Euro to 175) led to availability of the procedure for many more applicants.¹⁴³ Nevertheless, many of the reforms led to the amendment of earlier legislation, which was not anymore desired by both government and population.

Prior to 2004, Irish law automatically granted Irish nationality to every newborn on its territory and also on the territory of Northern Ireland, the UK, regardless of the origin of its parents.¹⁴⁴ Such a provision appeared to be very ‘welcoming’: Ireland was attracting more and more mothers-to-be to give birth to their children.¹⁴⁵ After the acquisition of citizenship by the child parents were often claiming legal residence permits based on their parentage of a newborn Irish citizen. Even though they were not automatically entitled to Irish citizenship based on their family connection, it was still relatively easy for them to acquire nationality.¹⁴⁶ The situation was raising multiple concerns not only on national, but also on Union level: acquiring European citizenship together with Irish one, the families were moving all over the EU.¹⁴⁷ Perhaps the last event for Irish government to demonstrate the need to adjust national citizenship law was the Chen case.¹⁴⁸ After CJEU judgment on the case, Ireland could not but

¹⁴² “Minister Shatter introduces major changes to citizenship application processing regime”. *Department of Justice and Equality*.

¹⁴³ John Handoll, “Country Report: Ireland”, *EUDO Citizenship Observatory*, October 2012: 17.

¹⁴⁴ Karolina Rostek and Gareth Davies, “The Impact of Union Citizenship on National Citizenship Policies”, *Tulane European & Civil Law Forum* vo. 22 (2007): 127.

¹⁴⁵ *Ibid.*

¹⁴⁶ *Ibid.*

¹⁴⁷ *Ibid.* 129.

¹⁴⁸ “Case C-200/02. Judgment of the Court (Full Court) of 19 October 2004. Kunqian Catherine Zhu and Man Lavette Chen v Secretary of State for the Home Department,” *EUR-Lex*.

admit that the eased conditions for access to Irish citizenship are often abused, which creates impact not only on Ireland, but on other EU Member States as well.¹⁴⁹ Thus, an amendment to citizenship law was approved on a referendum on 11 June 2004, despite opposition of some political parties.¹⁵⁰ After the referendum, Article 6 on Irish citizenship by birth or descent of the Irish Nationality and Citizenship Act provides the following:

- (1) Every person born in Ireland is an Irish citizen from birth.
- (2) Every person is an Irish citizen if his father or mother was an Irish citizen at the time of that person's birth or becomes an Irish citizen under subsection (1) or would be an Irish citizen under that subsection if alive at the passing of this Act.
- (3) In the case of a person born before the passing of this Act, subsection (2) applies from the date of its passing. In every other case, it applies from birth.
- (4) A person born before the passing of this Act whose father or mother is an Irish citizen under subsection (2), or would be if alive at its passing, shall be an Irish citizen from the date of its passing.
- (5) Subsection (1) shall not confer Irish citizenship on the child of an alien who, at the time of the child's birth, is entitled to diplomatic immunity in the State.

This amendment was introduced after approving results of a referendum, but, interestingly, the former birthright citizenship provision was also adopted based on results of a referendum in 1998.¹⁵¹

One of the priorities of Irish government, when conducting the citizenship reforms, was to preserve consistency between the rules governing access to national and European citizenship. According to Irish Minister for Justice and Equality, Alan Shatter, “as well as being a significant event in the life of its recipient, the granting of Irish citizenship through naturalisation as provided for in law is also a major step for the State which confers certain rights and entitlements not only within the State but also at European Union level and it is

¹⁴⁹ Catherine Zhu, an ethnically Chinese child was born in Northern Ireland, the United Kingdom, which falls within the territorial scope of the Irish nationality law. As a result, based on Article 6 of Irish Nationality and Citizenship Act (version before 2004) she automatically became an Irish citizen. Her mother claimed legal residence right in the UK, based on her daughter's Irish citizen status and the fact that the child exercised its right of free movement, being in another Member State – the UK. The United Kingdom refused to grant residence rights to both mother and baby. The Chen family appealed and the case came before the Court of Justice. In brief, the decision of the Court provided that an Irish-born child has a right of reside in any Member-State of the Union together with its primary caretaker, even if the caretaker does not dispose of the Union citizenship.

¹⁵⁰ Rostek and Davies 131.

¹⁵¹ Ibid. 134.

important that appropriate procedures are in place to preserve the integrity of the process.”¹⁵²

The next step in reforming citizenship for Ireland will become the introduction of a compulsory language test, which is now in the process of development.¹⁵³

Ireland is conducting citizenship reforms aims at improvement of the system’s efficiency. The statement of Minister for Justice and Equality somewhat hints that it may be in the agenda of Irish government to devote more attention and significance to the Union citizenship, while conducting national reforms. However, not much of the collected evidence permits to make conclusions about Ireland openness or motivation to initiate compliance with *Rottmann*.

The overview of the latest changes in citizenship laws conducted in this section of Chapter 3 did not reveal any direct compliance responses to the *Rottmann* ruling. However, the recent amendments that were presented in this part of the thesis still indicate the moods in Belgian and Irish governments. On one hand, the governments demonstrate that their interests are not contradictory to those of the Union. Belgium, for instance, allows dual citizenship, which is by all means beneficial for the EU citizenship regime, as Kochenov pointed it out. Ireland, furthermore, clearly indicates that the reforms undertaken in recent years were aimed at facilitation of the integration of ‘newcomers’ and at preservation of consistency between national and European norms. On the other hand, many of the domestic legislative changes make it clear that these states try to secure their nationality by restricting access to it.

3.3.3. *Role of Domestic Political Actors*

In order to identify what kind of role domestic political actors had in shaping Belgian and Irish motivations to comply with *Rottmann*, this section of Chapter 3 looked for

¹⁵² “Written Answers - Naturalisation Applications. Wednesday, 4 July 2012”. *Houses of the Oireachtas*, Dáil Éireann Debate vo. 771 no. 2.

¹⁵³ Hilikka Becker and Catherine Cosgrave, “Naturalisation Procedures for Immigrants Ireland”, *EUDO Citizenship Observatory*, March 2013: 12.

evaluation and references to the case made by some possibly interested domestic actors: state agencies, non-governmental and civil society organizations involved in citizenship-related activities, national parliament and even private litigants.

Belgian state agencies and non-governmental organizations that work in citizenship-, migration- and human rights-related sphere, expressed no concerns with regard to the Rottmann case.¹⁵⁴ The overview of their publications discovered no documented signs of attention either to the CJEU judgment, or to the destiny of Dr. Rottmann. The study also looked through the available published documents of Irish state agencies, as well as leading non-governmental organizations that deal with human rights and migration issues.¹⁵⁵ All of these organizations establish in their mandates that they work with citizenship-related matters, in particular acquisition or/and loss of national citizenship. Nevertheless, none of them paid explicit attention to the Rottmann ruling, despite the fact that many of these organizations took account of Zambrano case¹⁵⁶ (for instance, Immigrant Council of Ireland,

¹⁵⁴ Domestic political actors, considered in the case of Belgium: Service Public Fédéral Justice – a state agency (<http://justice.belgium.be/fr/>); Federal Public Service Foreign Affairs (<http://diplomatie.belgium.be/en/>); Coordination et Initiatives pour Réfugiés et Étrangers (CIRÉ) – a non-profit organization (<http://www.cire.be>); King Baudouin Foundation – an independent, pluralistic foundation (<http://www.kbs-frb.be/index.aspx?langtype=1033>); Point de Contact belge du Réseau Européen des Migrations ; L’Institut de Recherche, Formation et Action sur les Migrations (IRFAM) – an academic research center (<http://irfam.org/index.php?articleID=18&themeID=8>); La Coordination Nationale d’Action pour la Paix et la Démocratie (CNAPD) – a non-profit organization (<http://www.cnapd.be>).

¹⁵⁵ Domestic political actors, considered in the case of Ireland: Office for the Promotion of Migrant Integration – a state agency (<http://www.integration.ie/>); Legal Aid Board, an independent, publicly funded organization (<http://www.legalaidboard.ie/>); Irish Human Right Commission (IHRC)- a public institution (<http://www.ihrc.ie>); Crosscare. Migrant Project – a non-governmental social care agency (<http://www.crosscare.ie/>); FLAC, promoting access to justice - an independent human rights organization (<http://www.flac.ie/>); Irish Council for Civil Liberties (ICCL) an independent human rights watchdog (<http://www.iccl.ie/>); Immigrant Council of Ireland - an independent immigrant human rights organization (<http://www.immigrantcouncil.ie/>).

¹⁵⁶ Mr. and Mrs. Zambrano, Columbian nationals, moved to Belgium. Both of them applied for asylum in 1999 and 2000 and both times their applications were rejected. Meanwhile, the family gave birth to two children (2003 and 2005), who were granted Belgian citizenship to avoid their statelessness. The repeated attempts to obtain legal residence rights of Mr. and Mrs. Zambrano did not bring any success. Additionally, Mr. Zambrano lost his state unemployment benefits. Mr. Zambrano challenged these decisions basing his arguments of the Chen judgment, in front of national courts. Eventually, the UK addressed the CJEU for preliminary ruling. The CJEU held that parents, children of whom are citizens of a Member State and legally reside within the EU, even though never made use of their right of free movement, cannot be denied access to residence and work permits. The Court reasoned that such kind of denial hinders the ability of the children to benefit from the rights conferred upon them by Union citizenship.

Legal Aid Board and FLAC). Interestingly, this later case before the ECJ on nationality matters, which is often regarded as ‘a companion’ of *Rottmann*, did enjoy attention of Irish domestic actors.¹⁵⁷ Nevertheless, even with regard to Zambrano, the organizations provided nothing more but just analysis of its implications on nationality law.

The silence of state agencies and non-governmental organizations in both Member States could be, perhaps, explained by the lack of media coverage that *Rottmann* received (as pointed out by Shaw), which caused insufficient awareness of the case and its implications. It is, however, hardly possible at least in the case of Ireland: there were at least two conferences organized in 2012 that discussed the implications of the *Rottmann* case.¹⁵⁸ It is interesting to point out that one of the conferences (PILA Practitioner Seminar - The Role of NGOs in Public Interest Litigation”, *Public Interest Law Alliance – a Project of FLAC*) was aimed at informing non-governmental organizations of their possibilities to initiate public interest litigations. Besides, it could be possible that the figure of Dr. Rottmann himself does not evoke much compassion due to particular circumstances of his case.¹⁵⁹ Possibly this did not permit him to capture much of the public interest.

Perhaps, the only Belgian domestic actor that framed its concerns with the implications of the *Rottmann* case on national legislation was Belgian parliament.¹⁶⁰ The proposal (version on September 21, 2011) to amend Belgian Citizenship Code in order to make acquisition of Belgian nationality neutral from the perspective of immigration provided

¹⁵⁷ Shaw in ed. Jo Shaw.

¹⁵⁸ “IHRC and Law Society Human Rights Conference Programme”, *Irish Human Rights Commission*, 13 October 2012, <http://www.ihrc.ie/publications/list/ihrc-and-law-society-human-rights-conference-progr-1/>; “PILA Practitioner Seminar - The Role of NGOs in Public Interest Litigation”, *Public Interest Law Alliance – a Project of FLAC*, 9 February 2012, <http://www.pila.ie/events/archive/pila-practitioner-seminar-the-role-of-ngos-in-public-interest-litigation/>.

¹⁵⁹ Jo Shaw in ed. Shaw.

¹⁶⁰

an extensive explanation of the implications of Rottmann.¹⁶¹ The proposal referred to the case to explain why there was a need to reconsider the rules governing withdrawal of Belgian nationality, described in Article 23 of Belgian Citizenship. Pointing out the proportionality tests of the Rottman case, as well as the suggestion of the CJEU to give the person in question a chance to recover his or her initial citizenship, the document provides for the amendment of Article 23 §2. Thus, after the amendment the current version of the law sounds as follows: the judge does not withdraw nationality of a person if it would render the person stateless, unless the nationality has been acquired as a result of fraudulent conduct, provision of false information or concealment a relevant fact. In this case, the Court provides the person a reasonable period of time, during which the person could try to recover the nationality of his country of origin.¹⁶² Article 23 §2 underlines that the provision is only applicable to previously naturalized citizens of Belgium. This finding demonstrates that Belgium actually introduced legislative adjustments to national citizenship law with the intention to comply with the Rottmann ruling.

Ireland had also got to experience an attempt to use the Rottmann case law in practice. As Blauberger pointed out, private litigants could also be regarded as actors, who are able to exercise pressure on domestic level.¹⁶³ The problematic issue with Irish nationality law that emerged in the *Mallak v Minister for Justice Equality & Law Reform* case in front of the Supreme court of Ireland concerned Section 15 of Irish Nationality and Citizenship Act on the conditions for issue of certificate of naturalization. Section 15 of the Act provides that “Upon receipt of an application for a certificate of naturalisation, the Minister may, in his

¹⁶¹

belge neutre du point de vue de l’immigration,”
22-24.

, 21 septembre 2011:

¹⁶² Article 23§ 2 du Code de la nationalité belge:

“Le juge ne prononce pas la déchéance au cas où celle-ci aurait pour effet de rendre l’intéressé apatride, à moins que la nationalité n’ait été acquise à la suite d’une conduite frauduleuse, par de fausses informations ou par dissimulation d’un fait pertinent. Dans ce cas, le juge accorde à l’intéressé un délai raisonnable afin qu’il puisse essayer de recouvrer la nationalité de son pays d’origine.”

¹⁶³ Blauberger 112.

absolute discretion, grant the application, if satisfied that the applicant complies with [...] conditions [...]” .¹⁶⁴ Mr. Mallak (the applicant) and his wife applied for asylum upon their arrival to Belgium from Syria in 2002; subsequently, both of them applied for citizenship.¹⁶⁵ While the application of Mr. Mallak’s wife was approved, Mr. Mallak’s application got rejected with the following supplementary note:

“In reaching this decision, the Minister has exercised his absolute discretion, as provided for by the Irish Nationality and Citizenship Acts 1956 and 1986 as amended. There is no appeals process provided under this legislation. However, you should be aware that you may reapply for the grant of a certificate of naturalisation at any time.”¹⁶⁶

As the note provided Mr. Mallak with no explanation of the reason of rejection, Mr. Mallak considered that the success of his further attempts to apply for naturalization was seriously impeded.¹⁶⁷ The High Court of Ireland, however, decided that the Minister was not obliged to provide Mr. Mallak with explanations of his application’s rejection.¹⁶⁸ Dissatisfied with the decision, Mr. Mallak applied to the Supreme Court of Ireland. The Supreme Court took the side of Mr. Mallak, however, dismissing his line of argumentation.¹⁶⁹ Mr. Mallak attempted to justify his position by arguing according to the Rottmann case that the decision

¹⁶⁴ Conditions for the acquisition of certificate of naturalization of Section 15 of Irish Nationality and Citizenship Act:

- (a) [The applicant, hereafter ‘he’] is of full age;
- (b) he is of good character;
- (c) he has (in the case of application made after the expiration of one year from the passing of this Act) given notice of his intention to make the application at least one year prior to the date of his application;
- (d) he has had a period of one year's continuous residence in the State immediately before the date of his application and, during the eight years immediately preceding that period, has had a total residence in the State amounting to four years;
- (e) he intends in good faith to continue to reside in the State after naturalisation;
- (f) he has made, either before a Justice of the District Court in open court or in such manner as the Minister, for special reasons, allows, a declaration in the prescribed manner, of fidelity to the nation and loyalty to the State.

¹⁶⁵ Desmond, Alan. “Irish Supreme Court restricts discretion in refusals of naturalization,” EUDO-Citizenship Observatory, *EUDO Observatory on Citizenship*, 11 December 2012.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

¹⁶⁸ “Mallak -v- MJELR, [2011] IEHC 306. JUDGMENT of Mr. Justice Cooke delivered the 22nd day of July, 2011,” *Courts Service*.

¹⁶⁹ Desmond.

not to grant him naturalization certificate should have been ‘proportionate’.¹⁷⁰ The argument was dismissed by both Courts (High and Supreme): according to them, *Rottmann* concerns only cases of withdrawal of citizenship, while the case of Mr. Mallak is on acquisition.¹⁷¹ Thus, the *Mallak v Minister for Justice Equality & Law Reform* case demonstrated that the *Rottmann* judgment acquired only the narrowest possible interpretation in the eyes of Irish courts.

Chapter 3 attempted to trace the (absence of) reaction on Belgium and Ireland to the *Rottmann* case in the form of legislative adjustments. The study revealed that out of all the possible actors, described by Blauberger in his conceptual framework, only national parliament of Ireland and a private litigator in Belgium exercised pressure on these two states to acknowledge the implications of the *Rottmann* case. The findings of the chapter demonstrated multiple weaker or stronger evidences that Member States actually react to the case in various forms. However, following Conant’s explanation of contained compliance, Member States and their agents obviously prefer to assign the *Rottmann* ruling the narrowest interpretation, the possible.¹⁷² The findings of the chapter lead to the rejections, even though partial, of the hypothesis that the absence of Member States’ response to the case is explained by the lack of pressure of interested actors on national governments.

¹⁷⁰ “*Mallak -v- MJELR*, [2011] IEHC 306. JUDGMENT of Mr. Justice Cooke delivered the 22nd day of July, 2011,” *Courts Service*.

¹⁷¹ Desmond.

¹⁷² Conant 68-69.

Conclusion

This thesis considered Member States' reasons for the lack of reaction to the Rottmann case. The case received wide attention of the scholars and legal experts, who provided multiple explanations of *Rottmann's* applicability to national citizenship laws in the EU. The common concern of the commentators with regard to the case was the absence of Member States' legal adjustment actions or other types of reaction to the ruling.

The thesis presupposed that the absence of reaction to Rottmann could be explained by no motivation to comply with the ruling. The study adopted Michael Blauburger's conceptual framework, which establishes that pressure of interested actors is necessary to trigger legislative adjustments.

This study applied Hoop test as a process tracing method, identifying absence of pressure of interested actors as a cause, no motivation for compliance as an intermediary condition, which leads to the lack of reaction of Member States to the Rottmann ruling. The findings of the study demonstrated both strong and weak evidences for the presence of domestic reaction to the case. However, not all the groups of domestic actors demonstrated response to the case. Thus the thesis concludes that the hypothesis of the study was partially rejected.

It should be admitted that the Hoop test conducted in the study is 'weak', which means that it was easy to collect evidence. In order to bring the study to the next level, it is suggested to conduct parallel process-tracing tests of other passible explanations of the absence of Member States' reaction to *Rottmann*.

Bibliography

Alter, Karen. "Who Are the "Masters of the Treaty"?: European Governments and the European Court of Justice". *International Organization* vo. 52 no. 1 (1998): 121-147.

"Answer given by Lord Cockfield on behalf of the Commission (19 February 1988)" in *Official Journal of the European Communities* no. C 123 (10 May 1988): 16, accessed May 26, 2013, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1988:123:FULL:EN:PDF>.

"Answer given by Mrs Reding on behalf of the Commission." *Parliamentary Questions. European Parliament*, February, 2012, accessed May 26, 2013, <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2011-011522&language=EN>.

Beach, Derek. "Why Governments Comply: an Integrative Compliance Model that Bridges the Gap between Instrumental and Normative Models of Compliance," *Journal of European Public Policy* vo. 12 no. 1 (February 2005): 113-142.

Becker, Hilka and Catherine Cosgrave, "Naturalisation Procedures for Immigrants Ireland", *EUDO Citizenship Observatory*, March 2013, accessed on May 12, 2013, <http://eudo-citizenship.eu/admin/?p=file&appl=countryProfiles&f=23-Ireland.pdf>.

"Belgium: Bill to Tighten Access to Naturalisation." *EUDO Observatory on Citizenship*, April 30, 2010. <http://eudo-citizenship.eu/news/citizenship-news/293-belgium-bill-to-tighten-access-to-naturalisation>.

Borzel Tanya A., Meike Dudziak, Tobias Hofmann, Diana Panke, and Carina Sprungk. "Recalcitrance, Inefficiency, and Support for European Integration: Why Member States Do (not) Comply with European Law", *Center for European Studies Working Paper Series* no. 151 (2007), accessed May 26, 2013, http://aei.pitt.edu/9013/1/Borzel_CES_151.pdf.

Cambien, Nathan. "Case Law. Janko Rottman v Freistaat Bayern." *Columbia Journal of European Law* no. 17 (2010-2011): 375-294.

"Case C-135/08. Judgment of the Court (Grand Chamber) of 2 March 2010. Janko Rottman v Freistaat Bayern." *EUR-Lex*, accessed May 26, 2013, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62008J0135:EN:NOT>.

"Case C-135/08. Opinion of Mr. Advocate General Poiares Maduro delivered on 30 September 2009. Janko Rottman v Freistaat Bayern." *EUR-Lex*, accessed May 26, 2013, <http://eur-lex.europa.eu/Notice.do?val=501535:cs&lang=en&list=513113:cs,508876:cs,501535:cs,473839:cs,&pos=3&page=1&nbl=4&pgs=10&hwords=c%20135%2008~>.

"Case C-200/02. Judgment of the Court (Full Court) of 19 October 2004. Kunqian Catherine Zhu and Man Lavette Chen v Secretary of State for the Home Department," *EUR-Lex*, accessed May 26, 2013,

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62002J0200:EN:NOT>.

“Case C-34/09. Judgment of the Court (Grand Chamber) of 8 March 2011. Gerardo Ruiz Zambrano v Office national de l’emploi (ONEm).” *EUR-Lex*, accessed May 26, 2013, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62009C0034:EN:HTML>.

Chayes, Abram and Antonia Handler Chayes. *The New Sovereignty: Compliance with International Regulatory Agreements*. Cambridge, Mass.: Harvard University Press, 1995.

“Code de la nationalité belge”. *Service publique fédéral Justice*, accessed May 26, 2013, http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1984062835&table_name=loi.

Collier, David. “Understanding Process Tracing”, *Political Science and Politics* vo. 44, No. 4 (October 2011): 823-830.

Conant, Lisa. *Justice Contained: Law and Politics in the European Union*. Ithaca, N.Y.: Cornell University Press, 2002.

“Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union.” *Official Journal of the European Union* C 115 51 (2008), accessed May 26, 2013, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:en:PDF>.

Davies, Gareth T. “The Entirely Conventional Supremacy of Union Citizenship and Rights” in Jo Shaw ed., “Has the European Court of Justice Challenged Member State Sovereignty in Nationality Law?,” *EUDO Observatory on Citizenship*, accessed May 26, 2013, <http://eudo-citizenship.eu/commentaries/citizenship-forum/citizenship-forum-cat/254-has-the-european-court-of-justice-challenged-member-state-sovereignty-in-nationality-law?showall=1&limitstart>.

Desmond, Alan. “Irish Supreme Court restricts discretion in refusals of naturalization,” *EUDO-Citizenship Observatory*, *EUDO Observatory on Citizenship*, 11 December 2012, accessed May 26, 2013, <http://eudo-citizenship.eu/news/citizenship-news/755-mallak-case>.

De Groot, Gerard René and Anja Seling. “Decision of 2 March 2010, Case C-315/08. Janko Rottman V. Freistaat Bayern. Case Note 2. The Consequences of the *Rottmann* Judgment on Member State Autonomy – The European Court of Justice’s Avant-Gardism in Nationality Matters,” *European Constitutional Law Review* no. 7 (2011): 150-160.

De Groot, Gerard René and Anja Seling. “The consequences of the *Rottmann* judgment on Member State autonomy - The Court’s avant-gardism in nationality matters” in Jo Shaw ed., “Has the European Court of Justice Challenged Member State Sovereignty in Nationality Law?,” *EUDO Observatory on Citizenship*, accessed May 26, 2013, <http://eudo-citizenship.eu/commentaries/citizenship-forum/citizenship-forum-cat/254->

[has-the-european-court-of-justice-challenged-member-state-sovereignty-in-nationality-law?showall=1&limitstart.](#)

D'Oliveira, Jessurun H.U. "Decision of 2 March 2010, Case C-315/08. Janko Rottman V. Freistaat Bayern. Case Note 1. Decoupling Nationality and Union Citizenship?," *European Constitutional Law Review* no. 7 (2011): 138–149, doi:10.1017/S1574019611100073.

Dougan, Michael. "Some Comments on Rottmann and the "Personal Circumstances" assessment in the Union Citizenship Case Law" in Jo Shaw ed., "Has the European Court of Justice Challenged Member State Sovereignty in Nationality Law?," *EUDO Observatory on Citizenship*, accessed May 26, 2013, <http://eudo-citizenship.eu/commentaries/citizenship-forum/citizenship-forum-cat/254-has-the-european-court-of-justice-challenged-member-state-sovereignty-in-nationality-law?showall=1&limitstart>.

"European Convention on Nationality CETS No.: 166." *Council of Europe*. Treaty Office, accessed May 12, 2013, <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=166>.

"European Convention on Nationality. CETS No.: 166. Status as of: 31/5/2013". *Council of Europe*. Treaty Office, accessed May 12, 2013, <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=166&CM=1&CL=ENG>.

Foblets, Marie-Claire and Zeynep Yanasmayan. "Country report: Belgium", *EUDO Citizenship Observatory*, January 2010, revised in April 2010, accessed May 26, 2013, <http://eudo-citizenship.eu/admin/?p=file&appl=countryProfiles&f=Belgium.pdf>

Garrett, Geoffrey, R. Daniel Kelemen, and Heiner Schultz. "The European Court of Justice, National Governments, and Legal Integration in the European Union", *International Organization* vo. 52 no. 1 (Winter 1998): 149-176.

Handoll, John. "Country Report: Ireland", *EUDO Citizenship Observatory*, October 2012, accessed on May 26, 2013, <http://eudo-citizenship.eu/admin/?p=file&appl=countryProfiles&f=Ireland.pdf>.

"Irish Nationality and Citizenship Act, 1956." *Irish Statute Book*. Office of the Attorney General, accessed May 26, 2013, <http://www.irishstatutebook.ie/1956/en/act/pub/0026/print.html>.

Kochenov, Dimitry. "Double Nationality in the EU: An Argument for Tolerance," *European Law Journal* vo. 17 no. 3 (May 2011): 323–343.

Kochenov, Dimitry. "Two Sovereign States vs. a Human Being: CJEU as a Guardian of Arbitrariness in Citizenship Matters" in Jo Shaw ed., "Has the European Court of Justice Challenged Member State Sovereignty in Nationality Law?," *EUDO Observatory on Citizenship*, accessed May 26, 2013, <http://eudo-citizenship.eu/commentaries/citizenship-forum/citizenship-forum-cat/254-has-the>

[european-court-of-justice-challenged-member-state-sovereignty-in-nationality-law?showall=1&limitstart](http://eudo-citizenship.eu/commentaries/citizenship-forum/citizenship-forum-cat/254-has-the-european-court-of-justice-challenged-member-state-sovereignty-in-nationality-law?showall=1&limitstart).

Kostakopoulou, Dora. "European Union Citizenship and Member State Nationality: Updating or Upgrading the Link?" in Jo Shaw ed., "Has the European Court of Justice Challenged Member State Sovereignty in Nationality Law?," *EUDO Observatory on Citizenship*, accessed May 26, 2013, <http://eudo-citizenship.eu/commentaries/citizenship-forum/citizenship-forum-cat/254-has-the-european-court-of-justice-challenged-member-state-sovereignty-in-nationality-law?showall=1&limitstart>.

Mahoney, James. "The Logic of Process Tracing Tests in the Social Sciences," *Sociological Methods & Research* no. 41 (2012): 570-597.

"Mallak -v- MJELR, [2011] IEHC 306. JUDGMENT of Mr. Justice Cooke delivered the 22nd day of July, 2011," *Courts Service*, accessed on May 23, 2012, <http://courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/fb5a4e668f58b0f6802578fd002eac29?OpenDocument>.

Mann Dennis-Jonathan and Kai P. Purnhagen. "The Nature of Union Citizenship between Autonomy and Dependency on (Member) State Citizenship - a Comparative Analysis of the Rottmann Ruling, or: How to Avoid a European Dred Scott Decision?," *Wisconsin International Law Journal* vo. 29 no. 3: 484-533.

"Minister Shatter introduces major changes to citizenship application processing regime". *Department of Justice and Equality*, 16 June 2011, accessed on May 12, 2013: <http://justice.ie/en/JELR/Pages/PR11000088>.

, 21 September 2011, accessed on May 12, 2013: <http://www.lachambre.be/doc/flwb/pdf/53/0476/53k0476011.pdf#search=%22rottman%22>.

Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee under Article 25 TFEU. On Progress towards Effective EU Citizenship 2007-2010. Brussels: European Commission, October 27, 2010, accessed on May 26, 2013, http://ec.europa.eu/danmark/documents/alle_emner/juridiske/com_2010_602_en.pdf.

Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee and the Committee of the Regions under Article 25 TFEU. On Progress towards Effective EU Citizenship 2011-2013. Brussels: European Commission, May 8, 2013, accessed on May 26, 2013, http://ec.europa.eu/justice/citizen/files/com_2013_270_en.pdf.

Rostek, Karolina and Gareth Davies. "The Impact of Union Citizenship on National Citizenship Policies", *Tulane European & Civil Law Forum* vo. 22 (2007): 89-156. HeinOnline, accessed on 26 May 2013,

<http://www.heinonline.org/HOL/Page?handle=hein.journals/teclf22&?&collection=journals&id=91>.

Shaw, Jo. “Concluding thoughts: Rottmann in context” in Jo Shaw ed., “Has the European Court of Justice Challenged Member State Sovereignty in Nationality Law?,” *EUDO Observatory on Citizenship*, accessed May 26, 2013, <http://eudo-citizenship.eu/commentaries/citizenship-forum/citizenship-forum-cat/254-has-the-european-court-of-justice-challenged-member-state-sovereignty-in-nationality-law?showall=1&limitstart>.

Tallberg, Jonas. “Paths to Compliance: Enforcement, Management, and the European Union,” *International Organization* vo. 56 no. 3 (Summer 2002): 609–643.

“Question for Written Answer to the Commission. Rule 117. Sir Graham Watson (ALDE).” Parliamentary Questions. *European Parliament*, December 7, 2011, accessed May 26, 2013, <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2011-011522&format=XML&language=EN>.

Wautelet, Patrick. “Naturalization Procedures for Immigrants. Belgium,” *EUDO Citizenship Observatory*, February 2013, accessed on May 26, 2013, <http://eudo-citizenship.eu/admin/?p=file&appl=countryProfiles&f=16-Belgium.pdf>.

“Written Answers - Naturalisation Applications. Wednesday, 4 July 2012”. *Houses of the Oireachtas*, Dáil Éireann Debate vo. 771 no. 2., accessed on May 12, 2013, <http://debates.oireachtas.ie/dail/2012/07/04/00165.asp>.

“Written Question No 1694/87 by Mrs Raymonde Dury (S—B) to the Commission of the European Communities (12 November 1987) (88/C 123/31)” in *Official Journal of the European Communities* no. C 123 (10 May 1988): 15, accessed May 26, 2013, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1988:123:FULL:EN:PDF>.