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European Citizenship or Citizenship in Europe

European citizenship or citizenship in Europe?[1] Answering this question is not easy, for the regulation of citizenship appears as an elemental part of nation development throughout history. The European identity means the foundation of European citizenship. This is based on a sort of collective cultural and historical European heritage, which connects all of the inhabitants of Europe. The contents of the legal relationship of citizenship are defined by those rights and obligations which can be practiced by a citizen of an EU member state as a citizen of the Union, or the ones which should be fulfilled. All in all, the foundation of European citizenship is no less than being a citizen of a member state. This means that one must look for its foundations and development of the citizenship rights of each state. While looking for the European identity, one should be thinking of such common traditions and inheritances like the Latin language, Christianity, or several types of theoretical backgrounds, such as Enlightenment. Yet it must not be forgotten that European nations also pursued the development and maintenance of their national identities. This duality did not just obstruct the development of European culture, but also helped it.

By looking at integration history, we can see a type of development in European citizenship. A type of market-citizenship appeared in the Treaty of Rome of 1957, with the basic content of freedom of movement. The next step of development was the Treaty of Maastricht in 1992, where the European Council had the creation of "Europe of the citizens" in its mind.[2] The Article 17 of the Treaty of Lisbon (1997) were already dealing with EU citizenship. It can also be stated that during the integration development the Union actually reached the level of development where it wanted to define what does EU citizenship actually means, and what common values are connected to it. The European citizenship is the result of member state citizenship, not an independent citizenship with EU rights and duties attached to it.[3] And this leads us to the interpretation of citizenship via status rights.

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[2] BLUTMAN LÁSZLÓ: *Az Európai Unió joga a gyakorlatban.* HVG.Orac, Budapest, 2013. 566. p.; VÁRNAY ERNŐ – PAPP MÓNIKA: *Az Európai Unió joga.* Complex, Budapest, 2010. 55–56. pp.

[3] http://eur-lex.europa.eu/legal-content/HU/TXT/?uri=uriserv:OJ.C_.2007.306.01.0001.01.HUN#a-003 (26.05.2014.)

It can be observed that being the citizen of the European Union is "traditionally" connected to being a citizen of one of the member states.[4] In order to understand the development of EU citizenship, we should look back all the way to the 19th century. In my opinion, based on the comparative examination of legal historical antecedents, that makes the contemporary regulations understandable. The examination of the past could lead us to the understanding of the current regulation. This could also provide some edification to the experts of legislation. The historical tradition does not strictly refer to the contents of European identity, but also influence the process of legislation even today. The creation of a unified Europe was and is always challenging, especially in a continent where nations generally tend to pursue keeping up their national sovereignty, and also to give meaning of each legal institution. The national identity is the foundation of European identity, but it does not mean giving up the former.[5] The definition of the citizens of a nation is closely related to the expression of sovereignty, to define citizenship as a concept.

The appearance of citizenship as a concept essentially appeared in the 19th century of the states of continental Europe, yet only in the 20th century in the United Kingdom due to specific historical and political events. European states began to determine who belongs to the given state and how do they define the concept of citizen and citizenship in the 19th century, and it was a method of some sort of self-definition. We can get a more thorough image in connection to the definition of the theory if we do not look only at the separate European citizenship models but incorporate the European political, economic and social procedures of the given era. I wish to introduce the legal development of three basic models of citizenship in Europe: the French, the German and the English. I am going to use chronological order of the appearance of citizenship during my presentation. Basically, the regulation of citizenship can be grouped based on these three examples. As a specific example, the Hungarian legal development can be mentioned, which basically followed the German example of citizenship. The nation states had to form their citizenship rights systems in such European and international atmosphere. Defining who belongs to the given state, and what is citizenship itself.

I. Development of French citizenship

The nation state based on the concept of political nation was formed in France during the revolution of 1879.[6] The "nation state and democracy are the children of the French Revolution".[7] The concept of citizen appeared as early as the accompanying

[4] MARÁCZ LÁSZLÓ – VERSTEEGH, CORNELIA: *European Citizenship as a New Concept for European Identity.* Acta Universitatis Sapientiae, European and Regional Studies. 2010/2. 161-168. pp.

[5] PACZOLAY PÉTER: *A nemzeti, a vallási és az európai identitás.* http://www.magyarpaxromana.hu/kiadvanyok/vallasokeuropa2/paczolay.htm (22.05.2014.)

[6] KOVÁCS ATTILA ZOLTÁN: *Az uniós állampolgárság és nemzeti kisebbségek.* Kisebbségkutatás 2003/4. http://www.hhrf.org/kisebbsegkutatas/kk_2003_04/cikk.php?id=1061 (02.06.2014.)

[7] HABERMAS, JÜRGEN: *Állampolgárság és nemzeti identitás.* Beszélő. http://beszelo.c3.hu/cikkek/allampolgarsag-es-nemzeti-identitas (02.06.2014.)

Declaration of Rights of Man and Citizens (26th August 1789).[8] The French Revolution broke feudal and monarchic traditions. In spite of its title, the Declaration did not define the concept of citizen. All individuals were equal and called now *citoyens*. The determination of who was French and who was a foreigner that was only a question of fact.[9] It was answered according to the jurisprudence development by the Parliament of the Ancien Regime.[10] The first article stated that: "Men are born and remain free and equal rights."[11] The Declaration of Rights did not directly define the term of citizen because it defined the citizen's political rights. Article 6 states that: "all citizens have the right to participate personally or through their representatives in the formation of the law".[12] While Article 14 states that: "all citizens have the right to confirm, either themselves or through their representatives, the necessity of the public contribution".[13] All those who were represented were citizens, they had the right to vote. It was an extensional concept of sovereignty and of citizenship that the Declaration proclaimed in this year. It meant the most important part of the French constitutional politics.[14]

The concept of "*citizens*" was never defined through nationality in this Declaration. The concept of national meant those people who did not exercise the political rights but they had civil rights. According to the Declaration, all citizens had political rights, thus these people had civil rights too. If a foreigner took up residence in France, he did not

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[8] GUIGUET, BENOIT: *Citizenship and Nationality: Tracing the French Root of the Distinction.* In: LA TORRE, MASSIMO (ed.): European Citizenship: An Institutional Challenge. Kluwer Law International, The Hague, London, Boston, 1998. 98–99. pp., WELLS, CHARLOTTE C.: *Law and Citizenship in Early Modern France.* The John Hopkins University Press, Baltimore, London, 1995. 82–83. pp., JENKINS, BRIAN: *Nationalism in France. Class and Nation since 1789.* Taylor & Francis Group, Savage, Maryland. 1990. 13–18. pp., BELL, DAVID A.: *The Cult of the Nation in France. Inventing Nationalism, 1680–1800.* Harvard University Press, Cambridge; Massashusetts, London; England, 2001. 155–159. pp., HAYES, CARLTON J. H.: *France: A Nation of Patriots.* Octagon Books, New York, 1930. 22–23. pp., WENDEN, CATHERINE WIHTOL DE: *European Citizenship and Migration.* in: LEVEAN, RÉMY – MOHSEN-FINAN, KHADIJA – WENDEN, CATHERINE WIHTOL DE (eds.): New European Identity and Citizenship. Ashgate Pub Ltd., Burlington. 2002. 81. p., CAHM, ERIC: *Politics and Society in Contemporary France (1789–1971).* Publ.: Harrp, London, Toronto, Wellington, Sydney, 1972. 6–7. pp., JELLINEK, GEORG: *The Declaration of the Rights of Man and of Citizens. A Contribution to Modern Constitutional History.* Henry Holt and Company, New York, 1901. 1–7. pp., HARGREARES, ALEC G.: *Immigration, 'Race' and Ethnicity in Contemporary France.* Routledge, London, New York, 1995. 52. p., FAULKS, KEITH: *Citizenship.* Routledge, London, New York, 2000. 31. p., CLARKE, PAUL BARRY: *Citizenship.* Pluto Press, London, 1994. 115–116. pp., CASTLES, STEPHEN – DAVIDSON, ALASTAIR: *Citizenship and Migration, Globalization and the Politics of Belonging.* Routladge, New York, 2000. 36. p., MCMILLAN, JAMES F.: *France and Women 1789–1914 Gender, Society and Politics.* Routledge, London, New York, 2000. 16–20. pp., KROPOTKIN, PETER: *The Great French Revolution 1789–1793.* Vanguard Press, New York. 1971. 141–146. pp., SYBEL, HENRICH VON: *History of the French Revolution.* Vol. 1. Muray, London, 1867. 87–107. pp., SUTHERLAND, D. M. G.: *The French Revolution and Empire. The Quest for a Civic Order.* Blackwell Publishing, Oxford, 2003. 82–83. pp., LEFEBORE, GEORGES: *The French Revolution from Its Origins to 1793.* Presses Universitaires de France, London, New York, 1962. 129–130. pp.

[9] GUIGUET 1998, 98–99. pp.

[10] *Ibid.* 99. p.

[11] *Ibid.* 99. p., BRISSAUD, JEAN: *A History of French Public Law.* BeardBooks, Boston. 1915. 543. p.

[12] TROPER, MICHAEL: *The Concept of Citizenship in the Period of the French Revolution.* In: LA TORRE 1998, 29. p.

[13] *Ibid.* 29. p.

[14] PARRY, D. L. L. – GIRARD, PIERRE: *France since 1800 Squaring the Hexagon.* Oxford University Press, Oxford, 2002. 27. p., FAULKS 2000, 30–31. pp.

get political rights immediately but he would have civil rights, because these rights were natural rights. So the French people were all citizens in the broader sense of the word because they had a civil rights, but also in the narrow sense, because they had political rights, although that some were only passive citizens.

The situation was the same in the 1791 Constitution, although it did not accord the right to vote everybody. It's first section relative guarantee of the rights of men. In this place the word citizen was used in the same sense as in the Declaration of Rights. It had effect only on the political rights. "It was the possession of these latter rights which defined the French citizen."[15]

The Constitution of 1791 distinguished between passive (*passifs*) and active (*actifs*) citizens.[16] Those people were passive citizens who did not fulfil the enumerated criteria. Anybody else was active citizens who alone could vote in the national assemblies. Nevertheless the passive citizens could vote to elect municipal officers. These regulations were set forth in Title III of Constitution. *Abbé Sieyès* said that "All a country's inhabitants must enjoy the rights of the passive citizen: all have the right to protection of their person, their property, their liberty etc. but not all have the right to taken an active part in the formation of the public powers, not all are active citizens."[17] In contrast it did not make a distinction between national belonging in political rights. "They did not ask: Who is French? but rather: who shall enjoy political rights?"[18] This Constitution used the term "*citoyen*" to denote the national or state-member in the modern sense. After this Constitution the Revolutionary regulations used it to denote the holder of political rights (*citoyen actifs*) too.

The next important step in the history of French citizenship law was the Girondin project. It had a second section entitled: Of the status of citizens and the necessary conditions for exercising rights. Article 1 provided definition of citizenship. "Every men, having reached the age of twenty-one, who is inscribed in the civic register of a primary assembly and who has resided on French territory for one year without interruption is a citizen of the Republic."[19] It was the same as in 1791 but it had two differences. First of all, the concept of *ius soli* was used in a more definitive manner. Here the citizenship depended only on the place of residence. The second difference was that the phrasing *ceux qui* (those who) in the 1791 Constitution was changed to tout homme (all men). It was a very essential difference.[20]

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[15] *Ibid.* 33. p.

[16] FAULKS, 2000, 346. p., BRUBAKER, ROGERS: *Citizenship and Nationality in France and Germany.* Harvard University Press, Cambridge (USA), London, 1992. 87. p. The author uses different words about the active and passive citizen. In pursuance of the author they distinguished between *citoyen francais* (French citizens) and *citoyen actifs* (active citizens). The *citoyen francais* connoted the passive citizens. BRISSAUD 1915, 553. p.

[17] GUIGUET 1998, 103. p.

[18] BRUBAKER 1992, 87. p.

[19] TROPER 1998, 35. p.

[20] More about from this topic in: HUFTON, OLWEN H.: *Women and the Limits of Citizenship in the French Revolution.* University of Toronto Press, Toronto, Buffalo, London, 1992. 201. p., JAMES F. MCMILLAN 2000, 16–20. pp.

The Constitution of 1793 enlarged the Girondin Project. The Constitution defined the concept of the citizen[21] and the conditions for the exercise of political rights (Article 4).[22] The principle of *ius soli* was retained. A foreigner who fulfilled these very liberal conditions was able to vote without undergoing naturalization. The sovereign people were the totality of French citizens. This considerable advantage made a possibility to confer on everyone the civil and the political rights.[23] The constitution gave citizenship to the people who have had a civic and loyal spirit to the revolution.[24] It created the concept of modern citizen.[25] The *ius domicile* formulation was in this constitution which was a flexible rule and sometimes produced multiple citizenship.[26]

The Constitution of the 5th Fructidor, Year III. (1795) was not able to retain this advantage, because it linked the right to vote to the level of taxes paid. It elaborated the necessary conditions of the French citizenship. It was inspired by the Girondin project. The Constitution of Year III used the word citizen with the modern meaning of national. In this sense, the French citizen who was not a foreigner. "Foreigners, whether or not they are established in France, can inherit from their parents, be they French or foreign, they can contract to buy and receive goods located in France, and dispose of them in the same way as French citizens, by all the means authorized by law."[27] This regulation was word for word the same as the seventh title of the 1791 Constitution. The word "*citizen*" could refer to both a national and a passive citizen. This Constitution was a very important step in the development of the concept of national and the law of nationality. It re-established the homogeneity of the citizens and did not distinguish between rights and the exercise of rights. All citizens who comprised the body of the sovereign people had the right to vote. The Constitution "gave birth to a new concept, that of national. A concept, the real function of which is not to distinguish the French from the foreigners but to distinguish the French from each other."[28]

The Revolution and Napoleonic regulations of citizenship laid down the basic principles of the expansive citizenship law in France. The Revolution transformed the legal and political meaning of citizenship but it did not radically transform the criteria that distinguished the French from foreigners. The principles of birthplace, descent and domicile were combined in the old regulations. So the "*qualité de francais*" became more inclusive during the last century of regimes.

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[21] GIUGUET 1998, 104. p. The title was: *De l'état des citoyens* (on the status of citizens).

[22] TROPER 1998, 38–39. pp.

[23] BRISSAUD 1915, 553–554. pp., TROPER 1998, 40–41. pp., JENKINS 1990, 22–23. pp., HUFTON 1992, 39–50. pp., DYNNESON 2001, 180–185. pp.

[24] WENDEN 2002, 82. p.

[25] KASPERSEN, LARS BO: *State and Citizenship under Transformation in Western Europe.* In: MCNEELY, CONNIE L. (ed.): Public Rights, Public Rules Constituting Citizens in the World Polity and National Policy. Routledge, New York, London, 1998. 134. p., KROPOTKIN 1971, 472. p., HAZEN 1932, 651–656. pp., SOUTHERLAND 2003, 282–289. pp.

[26] BAUBÖCK, RAINER: *Transnational Citizenship, Membership and Rights in International Migration.* Edward Elgar Publishing, Brookfield. 1994. 32–33. pp.

[27] *Ibid.* 47–48. pp.

[28] TROPER 1998, 50. p., BRISSAUD, 1915, 554–555. p., KROPOTKIN 1971, 473. p., HAZEN 1932, 830. p.

The next very important step was the Code Civil in the history of French citizenship law. It was agreed that "all Frenchmen enjoy equal civil rights."[29] Foreigners enjoyed the civil rights if there were reciprocal agreements with the other state where they came from. It was the basic differentiation between French and foreigners. The Code civil adopted the principle of *ius sanguinis*. It was the only period in the French constitutional history when the *ius sanguinis* vanquished over the *ius soli*.[30] French citizenship was defined by descent, from a father to his children.

A new situation emerged in the aftermath of the Revolution of 1848.[31] Many foreigners contributed to the glorious events in February. They led the Provisional Government to issue a decree facilitating naturalization in March. These regulations were rescinded after three months. Under this time 2400 persons had been naturalized. The naturalization regulations established extreme preconditions and procedures in December of 1849. They proposed to restrict the acquisition of citizenship by those who were born abroad or who only had a residence in France. Extended the attribution of citizenship to who born and raised in France. The expansive proposal was adopted in 1851. The naturalization regulations were appertained to only the third generation immigrants. "The 1851 law declared French every person born in France of foreign parents, at least one of whom was also born in France."[32]

The most important reform in the nineteenth century took place in 1889. The principles of *ius soli* and *ius sanguinis* were mixed in the history of the French Citizenship[33] but first was re-established in this year. After that there were some revisions of French citizenship law in 1927, 1945 and 1973. These modifications touched the naturalization, the effect of marriage and the conditions of *ius sanguinis* but they did not touch the principle of *ius soli*. It meant the second generation citizenship law. Three motifs were inspired these dominant revisions. The first was the rhetoric of inclusion; the second was the weakness of ethnicity and the third was the ambiguities of nationalism.[34] The one of the most important regulation of citizenship was the French Nationality Code (1993) in the French constitutional law of the 20th century.[35]

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[29] BRUBAKER 1992, 87. p., CESARANI, DAVID – FULBROOK, MARY (eds.): *Citizenship, Nationality and Migration in Europe*. Psychology Press, London, New York, 1996. 77. p., WELLS 1995, 144–146. pp.

[30] CESARANI – FULBROOK 1995, 75. p.

[31] THOMSON, DAVID: *France Empire and Republic 1850–1940. Historical Documents*. Walker and Company, New York, 1968. 31–32. pp.

[32] CESARANI – FULBROOK 1995, 77–78. pp., BRUBAKER 1992, 93. p., JENKINS 1995, 56–87. pp.

[33] HARGREAVES 1995, 31. p., DYNNESON 2001, 242. p.

[34] PARRY – GIRARD 2002, 112., 179–181. pp., BRUBAKER 1992, 110–113. pp., HARGREAVES 1995, 169–176. p., FAVELL, ADIAN: *Philosophies of Integration Immigration and the Idea of Citizenship in France and Britain*. Palgrave McMillan, New York, 2001. 44. p., BRUBAKER, ROGERS: *Immigration, Citizenship, and the Nation – State in France and Germany*. In: SHAFIR, GERHSON (ed.): The Citizenship Debates. A Reader. University of Minnesota Press, Minneapolis, London, 1998. 145–148. pp. More about from this French immigration politics are in: TOGMAN, JEFFREY M.: *The Ramparts of Nations, Institutions and Immigration Policies in France and the United States*. Greenwood Publishing Group, London, 2002. 199. p., SILVERMAN, MAXIM: *Deconstructing the Nation, Immigration, Racism and Citizenship in Modern France*. Routledge, London, New York, 1992. 204. p.

[35] HARGREAVES 1995, 24–25. pp., PLENDER, RICHARD: *The New French Nationality Act*. The International and Contemporary Law Quarterly, 1974/4. 709–747. pp.

II. Development of German citizenship

After the establishment of the concept of French nation, we must look at the legal development of German citizenship. The roots of the development and formation of the German citizenship in the 19th century also must be found amongst the German national traditions. The German construction of public law had a major part in the development of the concept of nation and citizenship. The endeavour of the German states to be unified and to become an individual state. Basically, citizenship rights were based on the principle of *ius territoriale*.

The Vienna Congress marked 1815 as the termination of the German-Roman Empire. The League of Rhine, established in 1806, also came to an end. By unifying 39 states, the German Confederation (*Deutshcer Bund*) was formed. The Confederation File (*Bundesakte*) accepted during the Vienna Congress served as a legal basis for the Confederation.[36] The German citizenship rights, which were mainly based on lineage, were defined by the sovereign German states and the German Confederation between 1815 and 1866. The sovereign German states mainly had interests in establishing the concept of citizenship to protect their boundaries as an action against immigrants. The contemporary German citizenship rights separated people as either aliens (*Ausländers*) or German. The expression *Ausländer* referred to citizens who do not belong to any German state.[37]

The 18th article of the German Federal Act of 1815 guaranteed the basic rights to every German. This was the document which actually introduced the differentiation between Germans and non-Germans. Yet it must be emphasized that it did not contain the definition of citizenship. The 18th article of the Federal Act established the main basic rights which stated the contents of the citizenship legal relationship, thus creating the contents of German citizenship. Such rights were that "the subjects of the German states"[38] could purchase estates anywhere in the area of the Confederation, could move freely to any other member state, received acquittance from paying immigration tax (*Freizügigkeit*), and the basics of freedom of speech and press also appeared. From the point of view of our examination, the freedom of emigration and immigration are worth mentioning, and also the regulation of not having to pay tax after these. This meant nothing more or less than the appearance of the prelude of the freedom of movement in its modern sense[39]

The purpose of the regulations of the *Bundesakte* was to create a unified German community. Providing the citizens of the participating states with the same rights, this meant the creation of legal equality.[40] This definition process was made on the level of

[36] KISTELEKI KÁROLY: *Az állampolgárság fogalmának és jogi szabályozásának történeti fejlődése – koncepciók és alapmodellek Európában s Magyarországon.* PhD dolgozat, ELTE-ÁJK, Budapest. 2009. 132. p., KISTELEKI KÁROLY: *Az állampolgárság fogalmának és jogi szabályozásának fejlődése. Koncepciók és alapmodellek Európában és Magyarországon.* Martin Opitz Kiadó, Budapest, 2011.

[37] FAHRMEIR, ANDREAS K.: *Nineteenth-Century German Citizenship: a Reconsideration.* The Historical Journal, 1997/3 .727–728. pp.

[38] *Ibid.* 729. p.

[39] *Ibid.* 730. p.

[40] KISTELEKI 2009, 132–133. pp.

the sovereign German states, but with the exception of a few states (for example, Austria, Bavaria, Baden, Wüttemberg, Saxe-Coburg-Saalfeld, Saxe-Meiningen), there was no law on citizenship before 1830. But it can also be said that many legal sources used and assumed the theory and existence of citizenship (for example, the contemporary constitutions of certain German states, like Groß-Herzegthums Hessen, Bavarien, Wüttemberg).[41] The individual constitutions regulated citizenship only in a very short manner, and in the meantime they differentiated the citizens according to whether he or she is the citizen of a German state (*Staatsangehörige*), or a citizen who also practiced political rights (*Staatsbürger*).[42]

The theoretical background must also be mentioned, for it had a major part in the development and formation of German citizenship. Romanticism provided its foundation, with enlightenment and the new European idea system which appeared after the French Revolution accompanying it. This appeared in the extension of the definition of "nation", against the understanding of the concept in the Middle Ages. They seemed to discover the national unity in the "common language, culture and customs".[43] The historical past, the preservation and nursing of customs and linguistic values formed some sort of identical congeniality. But nationalism appeared everywhere in Europe in the '40s, and because of this, the creation of nation states became the primary objective. The theory of nation state also appeared, which meant that those who do not live in a given country do not belong to the nation in question.

Because of its significance, Prussia stood out of the states of the Confederation. This situation changed significantly after the liberation of the serfs. A major case of peregrination began in order to gain a proper livelihood. In order to somewhat regulate the immigration from other German areas, Prussia introduced aggravations by stating who belongs to the given state and who is an alien.[44] In order to do so, the state regulated citizenship in 1842 by introducing the "Law Respecting the Acquisition and Loss of the Quality as a Prussian subject, and his Admission to Foreign Citizenship".[45] This legal regulation is founded on the principle of lineage, *ius sanguinis*.

The proper expression to define citizenship is difficult to find in German nationality law, too. The most precise and modern expression is *Staatsangehörigkeit*. But it must be mentioned that this was not the proper expression in the 19th century. They also used the definition "right of a native" (*Recht des Inländers*). The concepts of *Heimaitsrecht* and *Indigenat* also had similar meanings. *Indigenat* was a legal technical expression to citizenship. *Heimaitsrect* referred to the right to settle. However, by the end of the 19th century, these two ideas were completely separated. *Heimaitsrect* was going to mean the right to belong to a certain community and settle. *Indigenat* was going to be the actual analogue of citizenship in the member states. The whole citizenship system becomes unsustainable by the middle of the 19th century. They should have standardized the regulations instead of just solving problems.

[41] FAHRMEIR 1997, 731–732. pp.
[42] *Ibid.* 733. p.
[43] KISTELEKI 2009, 133. p.
[44] *Ibid.* 134–136. pp.
[45] FAHRMEIR 1997, 734. p.

A good way to make an example of this is to cite the case of *Johann Heinrich Hanemann*, bread kneader. *Hanemann* was one of those individuals who were German, but without being a citizen of any German states. Originally, he was a citizen of Hanover. He left the state in 1832. He deceptively wanted to acquire two citizenships. He was denizened in Hamburg, 1832, for he disguised himself as his formerly deceased older brother. After his fraud was discovered, he was expelled. After this, he was denizened in Altona (Holstein) in 1833 without the 15-year compulsory waiting period. Naturally he didn't tell about his former criminal record. But the fraud was found out in connection to another crime in 1840 by the officials of Altona, and they expelled *Hanemann* without looking up whether or not he has another citizenship. After this, *Hanemann* filed a petition to the federal parliament to procure a citizenship in 1845. The examination committee stated that Holstein-Lauenburg should have found out the naturalization of the individual. This meant that the office didn't proceed by the books during the case in question. But since the Danish Prime Minister rejected the decision, the parliament could not do anything for the case of the petitioner. By the time the trials ended in 1846, *Hanemann* returned to Hamburg. However, it remains unknown what happened to the person afterwards. As we can see in the aforementioned example, the different regulations of the member states could result in legal problems, and a standardized arrangement of citizenship was necessary. Especially in order to avoid becoming stateless.

But everything changed in 1848. Due to the revolution, the military forces dispelled the constituent assembly. The wave of revolutions which was present in the whole of Europe in 1848 resulted in foundational changes even in citizenship rights. One of the most significant events in the development of German citizenship laws was the Frankfurt constitution of 1848, where it is clear that the participants made an attempt to create a unified German nation-state. This constitution follows the example of the Belgian constitution of 1830, which was about the rights of the Belgians, unlike the French example, which is about the rights of people and citizens.

The North German Confederation was created in 1866. The Hanza towns formed it, with Prussian leaders. Only the South German cities joined to the Confederation during the Franco-Prussian war, with the exception of Austria.[46] After the so-called "small Germany solution" unification in 1871, the constitution of the *Deutsches Reich* came into effect. This constitution described two separate definitions of citizenship. The common or imperial citizenship: *Reichsangehörigkeit*, and the member state citizenship. The citizenship law of 1870[47] organically fits into the process of codification of

[46] *Ibid.* 751. p.

[47] POLNER ÖDÖN: *Állampolgárság.* In: MÁRKUS DEZSŐ (ed.): Magyar Jogi Lexikon Vol. 1. Budapest, 1898. 489. p. See: BECKER, PAUL: *Der Kampf um ein gemeinsames Indigenat in Deutschland.* Limburg a. d., Lahn, 1929. 64–77. pp., KISTELEKI KÁROLY: *Az állampolgárság fejlődésének három európai útja: a német, a francia és a brit modell.* In: Gábor Béli – István Kajtár – Róbert Szekeres (eds.): Jogtörténeti tanulmányok VIII. PTE-ÁJK, Pécs, 2005. 269. p., BELLEBAUM, KARL: *Staats- u. Reichsangehörigkeit, Staats- u. Reichbürgerrecht in Deutschland.* H. Schneider, Siegen, 1897. 7–22. pp., HEIDE, GEORGE: *Der Verlust der deutschen Reichs- und Staatsangehörigkeit durch Entlassung. Nach den Reichgesetzen vom 1. Juni 1870 und vom 22. Juli 1913.* Druckerei und Verlag GmbH., Breslau, 1915. 11–24. pp.

European citizenship laws, which later served as the foundation of the Hungarian citizenship law.[48] The principle of *ius sanguinis* has predominated primarily.

It can be stated the German constitutional law meant that a given person (*Staatsbürger*) can practice the full legal circle which is due to the citizens, and thus can take part in the political control under the concept of citizenship (*Staatsbürgerthum*). This legal relationship of public law between the state and its citizen was called naturalization (*Staasangehörigkeit*), while the individual was called naturalized person (*Staatsangehörige*).[49]

III. Development of English citizenship

We can observe the predominance of historical tendencies most powerfully by examining the development of the concept of English citizenship. Nationality is a modern concept which basically describes the relationship formed between the state and its citizen. It bears a strong connection to the establishment of nation states and its theory: political theory of the nation state. Most nations determine what belongs to the state and with what conditions. Each nation has the right to decide who belongs to said state on its own.

Those people who were born in either the motherland or any of the monarch's dominiums until 1848 are qualified as natural born subjects. Those people who were naturalized had to take a denizenship oath: the oath of allegiance. The second historical reason is that the United Kingdom ceased to be an Empire in the 20th century, and had no specific political theory by which it could have define its own identity. Shortly after World War II, the British Nationality Act of 1948 was created. It stated the conditions of the membership of the former Empire, now the Commonwealth of Nations. Based on this theory, most of the citizens of the Commonwealth remained British subjects in spite of the fact that the phrase "subject" lost its basic significance. Most of the Commonwealth countries became republics. They did not owe allegiance to the crown anymore. However, the British monarch still remained the leader of the Commonwealth of Nations. In the legal vernacular, the term "British subject" became interchangeable with "Commonwealth citizen". Both expressions meant that everyone is the citizen of the United Kingdom and the Colonies of Independent Commonwealth countries. The third historical reason was that by the immigration acts that came into effect from 1962

[48] VARGA NORBERT: *A magyar állampolgársági jog a 19. században.* Akadémiai Kiadó, Budapest, 2012.

[49] NAGY ERNŐ: *Magyarország közjoga. (Államjog.)* Athenaeum, Budapest, 1907. 106. p. The notion of *Staatsangehörige* was subject of the crown and *Staatsbürger* meant the citizenship, FERDINÁNDY GEJZA: *Magyarország közjoga. (Alkotmányjog.)* Politzer és fia kiadása, Budapest, 1902. 201. p., KOELLREUTTER, OTTO: *Der englische Staat der Gegenwart und das britische Weltreich.* Ferdinand Hirt., Breslau, 1935. 73. p. Szabó referred the idea of *Staatsangehörigkeit* with citizenship. SZABÓ ISTVÁN: *Német alkotmányfejlődés 1806–1945.* Szent István Társulat, Budapest, 2002. 150. p., ROTERMUND, ERNST: *Der Verlust der staatsangehörigkeit mit besonderer Berücksichtigung des Deutsches Reiches.* Druck von Oscar Brandsteller, Leipzig, 1912. 11. p. Brubaker made a distinction between these conceptions. BRUBAKER 1992. pp. 69–70. Stolleis describes the concept of *Staatsbürger.* STOLLEIS, MICHAEL: *Staatsbürger.* In: WERKMÜLLER, DIETER (hrg.): Handwörterbuch zur Deutschen Rechtsgeschichte. 4. band, Erich Schmidt Verlag, Berlin, 1990. 1812–1814. pp.

to 1971, they destroyed the whole former citizenship structure. These acts introduced many types of British subjects, giving them a wide variety of rights. Those people belonged into these groups who were not considered aliens. In the sense of reforming the citizenship, the next significant turn of events was in 1972, when the country joined the EU. The aliens got the same rights as the British subjects: for example, freedom of movement or free access to employment. This lead to the need in the United Kingdom to reform its whole citizenship and nationality rights' system.

As we can see, because of its own legal and political system, the concept of citizenship only appeared in England in the middle of the 20th century. The thusly created nationality laws, the categories which define each citizen's status must be cleared. We must deal with the term "British subject" first, for this was the earliest concept to appear. The British subject equals British nationality before 1948. Its essence was the loyalty to the crown. According to the 1948 act, this expression meant the same as Commonwealth citizen.[50] These terms were interchangeable in UK nationality law, but there were two problems with it. There were some British subjects were not citizen of any of the units concerned (for example: people of Indian descent in Commonwealth countries, Irish people). They had the status of British subject before 1948 but did not acquired citizenship form independents units. "These British subjects without citizenship owe allegiance, may hold British passport, and are regarded as British nationals by international law. But they are not Commonwealth citizens"[51] On the other side the Commonwealth citizens term was generalised description of non-British inhabitants of the Commonwealth.[52]

The British subject without citizenship of any Commonwealth country (BSWC) which, according to the 1948 act, included citizens with British subject and Commonwealth citizen statuses. There was an opportunity to have a "patrial" BSWC status. Those people could have these who were otherwise considered as BSWC and their parents were born inside the UK. The name of this citizenship category was changed after the act of 1981, and became simply British subject.[53]

The act of 1948 introduced the category of Citizenship of the United Kingdom and Colonies (CUKC). This equals to the former category of British Nationality.[54] The countries are: United Kingdom (England, Wales, Scotland and Northern Ireland), British Islands (Channel Islands, Isle of Men, and Rockall), colonies (Belize, Bermuda, British Antarctica, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands and Dependencies, Gibraltar, Gilbert Islands, Hong Kong, Montserrat, New Hebrides, Pitcairn Islands, St. Helena, Turks and Caicos Islands and Tuvalu) and associated states (St. Lucia, St Vincent, Dominica and Antigua and St Kitts-Nevis-Anguilla).[55]

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[50] DUMMETT, ANN: *Citieznship and Nationality*. Runnymede Trust, London, 1976. 9–10. pp.
[51] *Ibid.* 23. p.
[52] *Ibid.*
[53] DUMMET ANN – MARTIN, IAN: *British Nationality*. National Council for Civil Liberties, London, 1982. 9. p.
[54] *Ibid,* 9–10. pp.
[55] DUMMET 1976, 26–27. pp.

A Citizens of Independent Commonwealth Countries was another category. These countries were Canada, Australia, New Zealand, India, Sri Lanka (Ceylon), Ghana, Malaysia, Cyprus, Nigeria, Sierra Leone, Tanzania, Jamaica, Trinidad and Tobago, Uganda, Zambia, Gambia, Singapore, Guyana, Botswana, Lesotho, Barbados, Mauritius, Swaziland, Tonga, Western Samoa, Fiji, Bangladesh, Grenada, Kenya, Malawi, Malta, Bahamas, Nauru and The Seychelles.[56]

British protected person was defined again by the 1948 British Nationality Act: "a member of a class of person declared by Order in Council made in relation to any protectorate, protected states, mandated territory or trust territory [...] by virtue of their connection with that protectorate, state or territory."[57]

The definitions mentioned above cannot be understood without elaborating on the meaning of the expression "patrial". This concept was introduced by the Immigration Act of 1971, and was revoked by the British Nationality Act of 1981. So the expression of patriality was no more, but its essence remained the same, as the phrase "having right of abode in the UK". This meant that such a person can live in the territory of the UK. The act of 1981 was basically also founded on a right of abode.

Those who were considered patrials could not be deported and had immunity over the immigration inspection. This also meant that all people considered being "alien" was "non-patrial". Those who belonged to the CUKS group were also considered patrials:

- if a person was born in the UK, the Channel of Islands or the Isle of Man before March 31st, 1971;
- if a person was denizened in the UK or the aforementioned islands;
- if a person was registered in the UK or the aforementioned islands, except: a) if the person was registered as a minor (s. 7. 1948. British Nationality Act), or after October 28th, 1971, by the High Commissioner, in an independent Commonwealth country; b) if the person was female and was registered according to the act of 1948, s. 6. (2), and got married after October 28th, 1971 to a man who was considered CUKC;
- if the person was registered after he or she was born overseas according to the British Nationality Act of 1964 (No. 2.), as a stateless child of a British woman;
- those people who were born aboard a ship or aircraft which belongs to the British government or got registered in the UK;
- if the person was adopted in the UK after January 1st, 1950, or in the aforementioned islands after January 1st, 1959 by a CUKC father, or if the mother was the only foster parent, the mother had to have a CUKC status;
- if the mother or father of said individual was born, adopted, denizened or registered on either of the British Isles. The illegitimate children could only get their mothers' statuses.
- if the person had parents of CUKC statuses, and the parents' parents were born, denizened, adopted or registered in the UK or any of the Isles. The relevant

[56] *Ibid.* 33–34. pp.
[57] *Ibid.* 25–26. pp.

grandparents had to be British at the time the parents were born, and the parents also had to be British at the time the child was born.
- if the person had CUKC status, and lived in the UK for at least 5 years, and his or her residence did not have a time limit. In this case, the individual's place of birth or lineage did not matter.
- if the person was a CUKC woman and got married to a patrial CUKC man, regardless of his birth or lineage.

The citizens of the Commonwealth were considered as patrials, if a) the person's parents were considered natural born CUKSs at the time of the child's birth in the UK and the Isles; b) a woman who got married or married to a patrial CUKC; c) a woman who got married or married to a patrial Commonwealth citizen. If a person did not fulfil the aforementioned conditions, he or she did not get a patrial status according to the Immigration Act of 1971. However, it can be stated according to the act of 1981 that almost all patrials became British citizens. Those Commonwealth citizens who were qualified as patrials could stay in the UK, but lost their patrial statuses. The nomenclature "patrial" was terminated by the act of 1981.[58] The concept of citizenship only appeared in the English Nationality Law because of the act of 1948. The fact that the English citizenship system is so complicated stems from the historical traditions and the political system of public law.

The three European models all had great effects on the legal development of several other countries. With taking the national traditions into account, the inclusion of certain regulation patterns can be observed in Europe. The development of citizenship rights in the 19th century Hungary is an excellent example for this.

[58] *Ibid.* 12. p.