Polish Political Science Yearbook, **vol. 47(4) (2018), pp. 709–721**
DOI: dx.doi.org/10.15804/ppsy2018409 PL ISSN 0208-7375
www.czasopisma.marszalek.com.pl/10-15804/ppsy

Małgorzata Babula
WSPiA University in Rzeszów (Poland)

Citizenship, the Vector of Present?

Considerations *de lege lata* Based on the Polish Domestic Law

Abstract: The modern world is opening up to a series of innovations, differences and broadly understood diversity. The pace of changes becomes a peculiar substructure of creating patchwork nations. The variety of races, colors, religions and cultures. All of the above contain a point which, like an electron, resembles an omnipresent "variant". This constant value is a human being. We are accompanied by a sense of belonging to a specific place, culture and values. On this basis, we expect something (e.g. having rights and freedoms). Citizenship seems to be a binder that puts us in a clearly narrowed community with certain values and often allows us to distinguish our own "self". Created by history, absorbing presence, citizenship is an important element of our affiliation to the country, to culture and to the values hidden behind them. In the world of diversity, it seems to be a desirable and important element. The purpose of this article is to discuss the contemporary role assigned to citizenship, as well as to show the citizenship as a factor shaping the position of the individual and justifying the distinction made in specific areas of human functioning in the state.

Keywords: *citizenship; individual rights; constitution of the Republic of Poland*

Introduction

Martin Neumueller wrote once:

"First they came for the Communists, and I did not speak out because I was not a Communist. Then they came for the Socialists, and I did not speak out because I was not a Socialist. Then they came for the trade unionists, and I did not speak out because I was not a trade unionist. Then they came for the Jews, and I did not speak out because I was not a Jew. Then they came for me, and there was no one left to speak out for me" (https://goo.gl/p3nsMp).

This poem reflects how important is the necessity of belonging. An individual cannot exist in isolation from his origin. Therefore, the role of *citizenship* cannot be underestimated, especially, that (following Paulina Ura) citizenship is slightly connected with the specific

legal status of the individual, and it also extends to international public law, constitutional law and social sciences (Ura, 2014, p. 181).

Citizenship has already been created with an intention of privilege. The reason to create the right to citizenship was simple – the events of World War II caused the statelessness of millions of people and the necessity to solve this phenomenon was more than necessary (Pudzianowska, 2013, p. 194). Although already known in ancient Rome, as the most closely related contemporary form was established in the 18th century. Still, as legal institution developed in 19th century, after the French Revolution (Pudzianowska, 2013, pp. 21–26). Latin *civitas* refers to *civis*, which means *citizen* (Jóźwik, 2017, p. 107).

In terms of Polish language *citizenship* is defined as *officially recognized membership in a country* (https://sjp.pwn.pl/szukaj/obywatelstwo.html). However, this understanding is a bit misleading and inaccurate. *Citizenship* should not be understood as *nationality* while such a sense results from the dictionary. Those two terms differ and have separate meanings (Bodnar, 2008, pp. 32–37; Gulati et al., 2014, pp. 550–551). Being aware of the differences between *citizenship* and *nationality* it would be advisable to indicate them. It is not an easy task, due to the fact that there are as many opinions as people. Some say, that *nationality* is the term used to describe the whole of the entity's relations on the field *individual-State*, whilst *citizenship* refers to specific (clearly indicated) rights and duties of and individual. And this points out that *nationality* has wider meaning than *citizenship.* Others declare that both terms have similar meanings. But some say that *citizenship* refers to inner relations (within boundaries) and *nationality* is secured for international relations (Banaszak, 2012, p. 132; compare to Bodnar, 2008, pp. 34–37). And still the others think that *citizenship* not only refers to the inner relations but is secured for human beings, whilst *nationality* describes the relations between legal entity, ship and State (Ossowska-Salamonowicz, 2016, p. 78).

Still, though *citizenship* does not have a legal definition (Ura, 2014, pp. 181–182), it is a legal institution and it determines the link between the individual and the State (Pudzianowska, 2013, p. 34). However this *link* refers both to the international and national structure (2013, p. 52). Besides, Paulina Ura underlines that shaping citizenship cannot be limited by international regulations resulting from either customary law or contracts (Ura, 2014, p. 185). However it is not quite pre-eminent, because:

- even though Permanent Court of International Justice[1] (replaced in 1946 by International Court of Justice) already referred to the freedom of shaping citizenship by a State and ruled that it is a sovereign competence of a State;
- even though the same regulations are secured by the Convention on certain questions relating to the conflict of nationality laws (the Hague, 1930; compare to Pudzianowska, 2013, p. 56–64 and Bodnar, 2008, pp. 50–51);

[1] Further as: PCIJ.

– though the European Convention on Nationality underlines in art. 3 the same rule,
– the sovereignty in shaping the citizenship may be limited. This is the result form an advisory opinion on the *Acquisition of Polish Nationality* from 1923 created by PCIJ:

"Though, generally speaking, it is true that a sovereign state has the right to decide what persons shall be regarded as its nationals, it is no less true that this principle is applicable only subject to the treaty obligations' of the state. Attention should be paid to the limiting words, 'generally speaking', which doubtless have reference not only to the limitations 'which a state may voluntarily accept through conventions with other states, but also to the limitations places upon the freedom of a state to claim persons as its nationals by international law'" (Gulati et al., 2014, p. 550).

In one we may or even should agree: it is the State that governs its *citizenship* (as pointed out in the already mentioned convention from 1930).

The Right to a Citizenship in Polish Domestic Law

The standard in legal status of citizenship is that the right to citizenship is a subjective right and as such belongs to every individual (Kozłowski, 2017, p. 190). In other ways, statelessness is an exception and should be treated as an extraordinary situation (2017, p. 190).

The Polish Constitution regulates citizenship in Chapter II dedicated to liberties, rights and duties of a human being and a citizen[2]. The general rule is that Polish citizenship is obtained according with the rule of *ius sanguinis* (The Constitution of the Republic of Poland, 1997, Art. 34, Par. 1). The other possibilities of gaining it are regulated by the Citizenship Act (1997, Art. 34, Par. 2). By defining the "other possibilities", the legislator understands, among others, the principle of *ius soli*, which refers to a child found on the territory of the Republic of Poland and whose identity cannot be determined. But *ius sanguinis* and *ius soli* are not the only ways to become a Pole. The constant matter is that Polish citizenship may be acquired in four ways: by law; by granting Polish citizenship; by recognizing someone as a Polish citizen; by restoring Polish citizenship (Ustawa o obywatelstwie polskim, 2009, Art. 4). Polish citizenship is also subjected to certain rules, which are defined in the Act:

– the continuity of citizenship (Citizenship Act, 2009, Art. 2);
– the exclusivity of citizenship (2009, Art. 3);
– the equality of the spouses (2009, Art. 5) (Ossowska-Salamonowicz, 2016, pp. 80–81; Dąbrowski, 2012, p. 76).

As long as the Constitution contains only general provisions regarding citizenship (e.g. the acquisition and the loss), the Act contains more detailed regulations. The Constitution

[2] However, the citizenship appeals are already contained in the preamble and in the constitutional principles.

regulates the already mentioned rule of *ius sanguinis*. However it states "only" that Polish citizenship is acquired by the virtue of birth from parents who are Polish (1997, Art. 4, Par. 1). In case of adopting a child, he or she acquires Polish citizenship if the adoptive parent holds one, and if the adoption is full and takes place before the child is 16 years old (Ustawa o obywatelstwie, 2009, Art. 16). These are general rules, but the Citizenship Act provides with more detailed regulations.

Acquiring Polish citizenship by law was already discussed above. *Granting* Polish citizenship is restricted to President only and is a part of the so called traditional competences. According to the Polish Constitution President is entitled to grant Polish citizenship and give consent for the renunciation of Polish citizenship (Constitution, 1997, Art. 144, Par. 3, Point 19). This empowers President to act with no other restrictions that his own will or even decision, as long as granting is done in the form of a decision. In family matters it extends to parents, if both are given citizenship. If the referral is only for one parent, the extension to the child is possible with the consent of the other parent (unless there is only one) or when the other parent is a citizen of the Republic of Poland (Ossowska-Salamonowicz, 2016, pp. 85–86; Ustawa o obywatelstwie, 2009, Art. 7, Par. 2). Granting Polish citizenship is regulated in the Constitution, Article 137 and in the Citizenship Act which does not mention at all about any preconditions (Mielnik, 2010, pp. 475–476; compare with Skrzydło, 2013, p. 177). *Recognition* is restricted for foreigners and is regulated in the Citizenship Act, Art. 30. *Restoring* Polish citizenship refers to people, who somehow lost Polish citizenship, however, some restrictions have been made. Excluded from the chance to restore their Polish citizenship are people, who from September 1, 1939 to May 8, 1945 volunteered to serve in the armed forces of the Axis States (or their allies) or accepted there a public office; as well as the States and people who acted to the detriment of Poland or violated human rights (Ustawa o obywatelstwie, 2009, Art. 8, Par. 2).

In regard to acquiring Polish citizenship Marcin Dąbrowski underlines two important issues. First of all, what about a person with more than one citizenship? According to the Act it is possible and legal to possess double citizenship, however, even then she has the same duties and liberties as anyone with only one citizenship. The author highlights that such a regulation stays in collision with the Convention from 1930. The Article 4 of the Convention states clearly, that the State cannot exercise diplomatic protection for one of its citizens in respect of the State of which he also is a citizen (Dąbrowski, 2012, pp. 77–78). This issue was a subject of a judgment of the International Court of Justice in case Nottebohm (ICJ, 1955; http://www.icj-cij.org/files/case-related/18/12321.pdf)[3]. In order to prevent from collisions in deciding on citizenship of which State is more important, the rule of the effectiveness of citizenship has been created. The main goal of this rule is to examine the real and authentic connections of a person with each State. Literally, if someone lives in one country, works there and pays taxes as well, in case of collision he is marked as citizen

[3] Communique No. 55/25 (unofficial).

of this State (Pudzianowska, 2013, pp. 59–60; Dąbrowski, 2012, p. 78). Second of all, the Act stays in collision with Kodeks rodzinny i opiekuńczy[4] (Ustawa z dnia 25 lutego 1964 r. – Kodeks rodzinny i opiekuńczy; Dz. U. 1964 Nr 9 poz. 59 with changes). Regarding to changes implemented in KRiO in 2009 the new Citizenship Act[5] causes collision between those two documents. For instance, the situation of a child whose mother is a foreigner and whose father is a Polish citizen may become complicated when the father of the child denies the fatherhood or the declaration of will is not made. In both cases the child loses citizenship. Meanwhile, *primo* – the Constitution of the Republic of Poland provides only one possibility of losing citizenship – his renunciation; *secundo* – if father denies fatherhood (and mother is a foreigner) then in reality we do not know who is the father of the child. In this situation such a child should not acquire Polish citizenship at all (Dąbrowski, 2012, p. 78–79).

Beside the Constitution and the Act, there are two more documents referring to citizenship:

- the Act on repatriation (Ustawa z dnia 9 listopada 2000 r. o repatriacji; Dz. U. 2000 Nr 106, Poz. 1118 with changes.);
- the Law of the Pole Card[6] (Ustawa z dnia 7 września 2007 r. o Karcie Polaka; Dz. U. 2007 Nr 180, Poz. 1280 with changes.).

Repatriation – following Bogusław Banaszak – does not have one significant meaning. In general it refers to a possibility of returning to the State restricted for its citizens in a situation, when being outside the borders is caused by historical events (Banaszak, 2015, p. 538). The Act of repatriation defines who is a repatriate:

- a person of Polish origin,
- a person who arrived to Poland on the basis of a repatriation visa
- a person who arrived with the intention of settling permanently (Ustawa o repatriacji, 2000, Art. 1, Par. 2)[7].

Besides, the repatriate gains Polish citizenship at the time of crossing the border, however, still certain conditions (all at once) need to be fulfilled before:

- at least one of parents, grandparents or both grand grandparents have/had Polish nationality;

---

[4] Further: KRiO.

[5] Previous was created in 1962 and was no longer compatible with the post-communist reality.

[6] Law of the Pole Card plays important role just because of the fact, that it separates the term *citizenship* from *Polish nationality* or *Polish origin* (Mielnik, 2010, pp. 472–473).

[7] There is one more situation connected with repatriation when a person can acquire Polish citizenship – the recognition of a repatriate person residing in the Republic of Poland. According to the Act on repatriation such a person should have Polish roots, till 1st of January 2001, until 2001 was permanently residing in the territory of Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan and the Asian part of the Russian Federation.

– arriving to Poland on the basis of repatriation visa[8];
– arriving with the intention of settling permanently (Banaszak, 2015, pp. 358–360)[9].

I agree with Bogusław Banaszak who claims that few details regarding repatriation visa are puzzling. First of all, an access limited to certain countries. Secondly, such visa is issued by the consul and there is no possibility of appealing from his decision. This violates the fundamental rule of law (2015, p. 359). Besides, till September 2017 regulations regarding repatriation were secured only to the subjects mentioned in conditions in gaining the repatriation visa, and spouses were excluded from the procedure. The spouse of the repatriate was the subject to regulations applicable to the foreigner applying for a stay in Poland. Fortunately this year's amendment of the law granted the spouses the opportunity to apply for Polish citizenship similarly to repatriates[10].

According to the general rule, once gained, Polish citizenship cannot be lost. This means, that only an individual can resign from citizenship. Though it may seem interesting, that even if an individual wants to resign from Polish citizenship, he needs to receive an approval from the President of the Republic of Poland (Constitution, Art. 137). Bogusław Banaszak underlines that the necessity of receiving approval from President may seem at least not clear if not awkward (Banaszak, 2015, p. 361). And it would be hard to deny rightness to the author in seeking the justification of such regulation in one of the previous Basic Law of Poland, the so called Small Constitution in which it was directly mentioned about *President's competency to exempt from citizenship* (2015, p. 361). Still, there are some common guidelines in different States while limiting the citizen's right to deprive one's citizenship:

– avoiding and preventing from situations causing statelessness;
– the prohibition of the depravation of citizenship due to sex, race, religion, color and racial/ethnic origin (Bodnar, 2008, p. 61).

Marcin Dąbrowski points out that this general rule is not effectively secured by the Citizenship Act. The author underlines that new Act contains several regulations causing the loss of Polish citizenship by a person who has not renounced the act of renunciation, e.g.:

---

[8] Repatriation visa is issued to those who lived permanently on the territory of Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan and the Asian part of the Russian Federation.

[9] Author refers also to minors under the parental authority of repatriate acquires citizenship also through repatriation. If the repatriate is one parent, the other must give consent to the consul (2015, p. 359).

[10] The procedure of repatriation was criticized by potential repatriate. The procedure was very formal (that form stayed actually unchanged), but the repatriates also had to fulfill a number of unrealistic requirements (including, among other things, the requirement for savings and housing), which were happily revised on the occasion of the amendment of the Act. Other changes refer to the appointment of a new office – a plenipotentiary of the Government Plenipotentiary for repatriation and the establishment of the Council for Repatriation, which is an advisory body to the government attorney mentioned above (For more see: https://goo.gl/5xZ2yh).

– change in paternity determination referred to Article 6;
– Article 10, referring to the possibility of moving the final administrative decisions (Dąbrowski, 2012, pp. 93–94).

No matter of Polish internal regulations, as long as Poland is a Side-State of international law, the citizenship is gained on importance as a right[11]. The European Convention on Nationality created the institution of *the right to citizenship* and in consequence the authority of the State to decide on its citizenship was narrowed down to the international standards (Kozłowski, 2017, pp. 202). Krzysztof Kozłowski is on the position, that the role of citizenship decreased. According to the Author, the strong protection of the citizen of the Republic of Poland so far (exemplified by Article 55 of the Polish Constitution) has been "devalued" (Kozłowski, 2017, p. 202). In other words, in some respects the legal position of a Polish citizen has been equated with the position of any other individual (Art. 55 of the Constitution of The Republic of Poland referring to the prohibition of the extradition of a Polish citizen) (2017, p. 202). He highlights the core of the devaluation:

"The value constituting a set of individual rights and obligations is no longer citizenship (…) – but the wider principle of the dignity of the human being" (2017, p. 203).

On the other side, Dorota Pudzianowska indicates, that the impression of impoverishment the meaning of citizenship is only apparent, for there are a whole series of rights that belong only to citizens (Pudzianowska, 2013, pp. 196–197). Indeed, as a rule, the citizens' rights of a political nature are exclusively reserved; with an exception of the right to vote and to stand as a candidate at municipal elections, secured by the Article 40 of the Charter of Fundamental Rights of the European Union (Dz. Urz. UE 2016 C 202, p. 1). The Charter states that:

"Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State" (2000, Art. 40; Bodnar, 2013, pp. 66–74).

Other examples of right secured or predicted to be secure for citizens only:

1) *Ius domicili*. According to *Ustawa z dnia 14 lipca 2006 r. o wjeździe na terytorium Rzeczypospolitej Polskiej, pobycie oraz wyjeździe z tego terytorium obywateli państw członkowskich Unii Europejskiej i członków ich rodzin* (Art. 2, Point 3; Dz. U. 2006 nr 144, poz. 1043 with changes), an EU citizen is considered to be: a) a citizen of the EU Member State, b) a citizen of an EFTA Member State, c) a citizen of the Swiss Confederation (Bodnar, 2013, p. 69 – footnote No. 25; compare with: Pudzianowska, 2013, p. 197);
2) Economic rights secured by the International Covenant on Economic, Social and Cultural Rights (Międzynarodowy Pakt Praw Gospodarczych, Społecznych i Kulturalnych otwarty do podpisu w Nowym Jorku dnia 19 grudnia 1966 r.; Dz. U. 1997

[11] Although there is also the other side of the coin, which is discussed in the remainder.

nr 38, poz. 169) may be limited for foreigners and stateless people with respect to the rule of Art. 2 of the Covenant[12] (Pudzianowska, 2001, p. 198);
3) Political rights, such as: participation in the referendum (Art. 67 of the Constitution), participation in the election of the President, deputies and senators (Art. 62);
4) The right to social security (Art. 67);
5) The right to health care services financed by public funds (Art. 68, Par. 2) (2013, pp. 199–200);
6) The right to consular care from the Republic of Poland (Art. 36);
7) The right to setting up non-public schools and educational institutions (Art. 70, Par. 3);
8) The right to equal and universal access to education (Art. 70, Par. 4);
9) The right to support actions to improve and protect the environment (Art. 74, Par. 4) (Jagielski, 2013, p. 233).

The Constitutional Tribunal[13] implemented one more rule referring to the limitation of rights and liberties of an individual (and its special category: citizens). In a ruling from the 15th on November 2000, CT stated that limitation of a right/liberty cannot apply to *any* law, but only those rights and freedoms which concern foreigners as a special group of subjects, and thus do not concern citizens (Wyrok TK z dnia 15 listopada 2000 r., P.12/99; Dz. U. 2000 nr 100, poz. 1085). CT underlined also that such a limitation is permitted in accordance to the Art. 37, Par. 2 of the Constitution, however, the limitation of the limitation (sic!) hides not only in the single provision, but in the axiological entirety as the foundation for the establishment of law and its limitation (Dz. U. 2000 nr 100, poz. 1085; compare to Wróbel, 2002, p. 160). From the very origin this rule is connected to political rights. It is difficult to refuse the appropriateness of such a division. What, if not citizenship itself, impels a certain group of people as relevant? (Check the CT ruling: Orzeczenie TK z dnia 11 lipca 2000 r., K 30/99, OTK ZU 2000/5, poz. 145; Orzeczenie TK z dnia 9 marca 1988 r., U 7/87, OTK 1988, poz. 1). CT stated already several times in accordance to relevancy, e.g.:

"It means (the understanding of the principle of equality – *rem.*) in particular the order to treat the subject of law in the same class (category). All subjects of the law, which are equally important, should be treated equally, (…) without distinction neither discriminating nor favoring" (Wyrok TK z dnia 29 czerwca 2001 r. K 23/00, OTK ZU 5/2001, poz. 124).

Besides, the jurisdiction does not identify the principle of equality with the prohibition of differentiation, in accordance to positive discrimination (Banaszak, 2012, p. 148).

The Article 17 of the Treaty Establishing the European Community states: the citizenship of the Union is hereby established. Every person holding the nationality of a Member

[12] Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals (https://goo.gl/KB12u7).

[13] Further as CT.

State shall be a citizen of the Union. The citizenship of the Union shall complement and not replace national citizenship (https://goo.gl/455SYq). However, the right to a nationality (then *citizenship* if we want to relate it to national regulations) was secured for the first time already in the Universal Declaration of Human Rights. Its article 15 states that:

1) Everyone has the right to a *nationality*.
2) No one shall be arbitrarily deprived of his *nationality* nor denied the right to change his nationality (http://www.un.org/en/universal-declaration-human-rights/).

However, Krzysztof Kozłowski points to a hidden meaning for this regulation. First of all the Declaration is a part of a *soft law* and its provisions are not binding, and second of all, the tone of this article is quite laconic (Kozłowski, 2017, p. 190–191)[14]. Beside that, any other document representing the so called *hard law* did not adopt the meaning of citizenship adequate to the Declaration. The International Covenant on Civil and Political Rights[15] differs from the Declaration not only in understanding, but also regulating citizenship, and its Art. 24, Par. 3 referring to the discussed matter is an example of the legislative lack of precision. It states that: "Every child has the right to acquire a nationality, with no indication on who is responsible to act". But the Covenant does not regulate neither who is obliged to perform, nor which citizenship is the subject of the regulation (the State of birth or the State of parents citizenship) (Kozłowski, 2017, p. 191; Połatyńska, 2010, p. 4).

The role of citizenship is changing (term *growing* would miss the mark). While working on the EU Constitution, one of the arguments behind the creation and implementation of this document was the reference to citizenship. It was argued that such a single constitution would provide better protection for the rights of citizens. Voices in this case, opposing the EU Constitution, were arguing that the assumptions of the document of a common European state would be based on the cultural, religious and humanitarian heritage of Europe (Miętkiewicz, 2005, p. 76). The internationalization and the mixing of indigenous people with migratory population (foreigners, stateless, asylum seekers, etc.) forced the necessity of creating the document, that would deal with the issues of citizenship on the international level (respecting the national standards but also with a common policy for the states) (Białocerkiewicz, 2001, p. 35). The first idea was to create a faculty protocol to the European Convention on Human Rights devoted to anti-discrimination regulations (on the basis of citizenship). Due to lack of intention of States-Sides of the Convention, no protocol was finally created (Połatyńska, 2010, p. 6). The very first European document devoted to citizenship on international level is the European Convention on Nationality signed on November 6, 1997, declared as a result of these efforts. The Convention regulates:

---

[14] Though Author refers to the provisions of the Convention on the Reduction of Statelessness (1961), which is more detailed in the discussed issues, he also rightly points that Poland is not bound by its provisions. Therefore mentioning about this Convention is only informative.

[15] Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966; Dz. U. 1977, Nr 38, poz. 167.

the "significant aspects of citizenship by means of standards of international origin addressed to European countries, creating a minimum standard that should be respected by democratic states" (Białocerkiewicz, 2001, p. 35).

And as such it is a compilation of norms of the Universal Declaration of Human Rights and, among other things, the Convention of 1963 (Połatyńska, 2010, p. 7).

The Convention on Nationality separates citizenship from nationality (national origin), and above all the competence to determine *who is* and *who is not* a citizen of a particular country was left to decide by the State itself. The only – general – requirement is to keep national regulations in accordance with international treaties, international custom and rules of law (Krawiec, 2009, p. 179). Moreover, the Convention on Nationality makes a step towards multiple citizenship (in opposite to the convention from 1963).

As main aims, the Convention on Nationality places, e.g.:

- avoiding statelessness;
- preventing discrimination on the grounds of nationality;
- the prohibition of the arbitrary deprivation of citizenship;
- the rule of the equality of spouses;
- the necessity of solving issues regarding double- and multi-citizenship;
- the rule of non-discrimination on the basis of citizenship (2009, pp. 179–180; Białocerkiewicz, 2001, pp. 41–43)[16].

The Article 6 of the Convention on Nationality provides with the possibility of acquiring citizenship and Article 7 regulates the loss of citizenship. Due to the fact, that Poland is a State-Side of this Convention[17], assumptions mostly reflect regulations specific for Polish domestic law (see also Bodnar, 2008, pp. 114–116).

Conclusions

Poland accepted both the Universal Declaration on Human Rights and the Convention on Nationality. Both documents affect Polish law only to a very limited extent, because the right to citizenship is limited to people who acquire it *ex lege* (Mielnik, 2010, p. 479). Following Mariusz Jabłoński, the Constitution of Republic of Poland in the title of its Chapter II already

[16] In Article 4 Convention on Nationality regulates, that rules of nationality of each State should follow below principles: everyone has the right to a nationality; statelessness shall be avoided; no one shall be arbitrarily deprived of his or her nationality; neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse. And its Article 5 refers to non-discrimination: "The rules of a State Party on nationality shall not contain distinctions or include any practice which amount to discrimination on the grounds of sex, religion, race, color or national or ethnic origin"; https://rm.coe.int/168007f2c8.

[17] Republic of Poland signed the European Convention on Nationality on April 29, 1999 (Sandorski, 2006, pp. 52–86).

mentions separately a human being and a citizen (2010, pp. 529–532; Jabłoński, 2010, pp. 533–541). With no doubts the actual tendency is to eliminate as much as possible from the division to citizens and "others"; what can be observed in the jurisdiction of international tribunals, courts and other bodies. Though the demarcation line is officially losing on importance (citizenship has no longer distinctive character (Kozłowski, 2017, pp. 202–204)) in reality is still visible and significant. The arguments for its important role can be identical to the ones already known from the draft of the Constitution of the EU – used in opposite to the original premise (already mentioned: the cultural, religious and humanitarian heritage of – no longer Europe but – a State). With no doubts the tendency of international politics will be to decrease the role and importance of citizenship (Sandorski, 2006, pp. 52–86). And even if the rule of nondiscrimination due to nationality is not only important but a must, the differentiation in some areas can be also appropriate from the point of view of a purpose (e.g. political rights). The source of all liberalization of national legal solutions to the "externals" should be done not only with the respect to human dignity, but also very carefully. First of all the extensions of civic rights and freedoms could be accompanied by an equal extension of responsibilities to the "gifted" individuals. But citizenship itself has no longer the same meaning as it used to have in the past. The resilience of its present shape was forced by globalization processes. It is important, however, that the State, as the main donor in granting citizenship, retains autonomy on this field.

References

Banaszak, B. (2012). *Porównawcze prawo konstytucyjne współczesnych państw demokratycznych.* Warszawa: Wolters Kluwer.

Banaszak, B. (2015). *Prawo konstytucyjne*. Warszawa: C.H. Beck.

Białocerkiewicz, J. (2001). "Europejska konwencja o obywatelstwie". In K. Lubiński (Ed.), *Studia z prawa publicznego* (pp. 35–50). Toruń: Wydawnictwo UMK.

Bodnar, A. (2008). *Obywatelstwo wielopoziomowe. Status jednostki w europejskiej przestrzeni konstytucyjnej.* Warszawa: Wydawnictwo Sejmowe.

Bodnar, A. (2013). "Rozszerzenie czynnego i biernego prawa wyborczego w wyborach samorządowych na osoby nieposiadające obywatelstwa Unii Europejskiej". *Samorząd Terytorialny,* 9/2013 (273), pp. 66–74.

Charter of Fundamental Rights of the European Union (2000). Retrieved from: https://goo.gl/os5o5r.

Convention on certain questions relating to the conflict of nationality laws (1930). Retrieved from: https://goo.gl/wCGEx3.

Dąbrowski, M. (2012). "Ustawa o obywatelstwie polskim z dnia 2 kwietnia 2009 r. – wybrane problemy". *Przegląd Prawa Konstytucyjnego*, 4(12), p. 76.

Dz. Urz. UE 2016 C 202, p. 1.

European Convention on Nationality (1977). Retrieved from: https://rm.coe.int/168007f2c8.

Gulati, R. (2014). "The relevance of nationality in the age of Google, Skype and Facebook". In: F. Jenkins et al. (Eds.), *Allegiance ad identity in a globalised world* (pp. 448–568). Cambridge: Cambridge Press University. Retrieved from: https://goo.gl/x88tt3.

"First the came – pastor Martin Neumueller". *Hmd.org.uk*. Retrieved from: https://goo.gl/p3nsMp.

https://sjp.pwn.pl/szukaj/obywatelstwo.html.

ICJ. Communiqué No. 55/25 (Unofficial). Retrieved from: http://www.icj-cij.org/files/case-related/18/12321.pdf

International Covenant on Economic, Social and Cultural Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966; Dz. U. 1997 nr 38 poz. 169. Retrieved from: https://goo.gl/Ndphpg.

International Covenant on Civil and Political Rights adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966; Dz. U. 1977, Nr 38, poz. 167. Retrieved from: https://goo.gl/KB12u7.

Jabłoński, M. (2010). "Zasada różnicowania zakresu realizacji konstytucyjnych wolności i praw jednostki w oparciu o kryterium obywatelstwa polskiego". In M. Jabłoński (Ed.), *Wolności i prawa jednostki w Konstytucji RP. Tom I. Idee i zasady przewodnie konstytucyjnej regulacji wolności i praw jednostki w RP* (pp. 529–555). Warszawa: C.H. Beck.

Jagielski, M. (2013). "Konstytucyjna regulacja praw człowieka". In M. Małajny (Ed.), *Polskie prawo konstytucyjne na tle porównawczym* (pp. 222–243). Warszawa: C.H. Beck.

Jóźwik, A. (2017). "Obywatelstwo rzymskie, jego przemiany i znaczenie w dziejach państwa rzymskiego". *Współczesne prawo* (1), pp. 106–107.

Konwencja w sprawie pewnych zagadnień dotyczących kolizji ustaw o obywatelstwie oraz protokół dotyczący przypadku bezpaństwowości, podpisane w Hadze dnia 12 kwietnia 1930 r. (ratyfikowane zgodnie z ustawą z dnia 5 czerwca 1934 r.) – Dz. U. 1937 nr 47 poz. 361.

Kozłowski, K. (2017). "Ewolucja pojęcia obywatelstwa w okresie obowiązywania Konstytucji RP z 1997 r. – zagadnienia wybrane". In J. Jaskiernia, K. Spryszak (Eds.), *Dwadzieścia lat obowiązywania Konstytucji RP. Polska myśl konstytucyjna a międzynarodowe standardy demokratyczne* (pp. 188–204). Toruń: Wydawnictwo Adam Marszałek.

Krawiec, G. (2009). *Europejskie prawo administracyjne.* Warszawa: Wolters Kluwer. Retrieved from: https://goo.gl/TVY4Xd

Mielnik, B. (2010). "Zasada poszanowania obywatelstwa polskiego i zapewnienia opieki obywatelowi przebywającemu poza granicami kraju". In M. Jabłoński (Ed.), *Wolności i prawa jednostki w Konstytucji RP. Tom I. Idee i zasady przewodnie konstytucyjnej regulacji wolności i praw jednostki w RP* (pp. 470–509). Warszawa: C.H. Beck.

Miętkiewicz A. (Ed.) (2005). "Tak – dla konstytucji dla Europy". *Monitor Unii Europejskiej*, 1(06), p. 76.

Objectives and key provisions of the 1961 Convention on the Reduction of Statelessness. Retrieved from: http://www.unhcr.org/3bd7d3914.html

Ossowska-Salamonowicz, D. (2016). «Status obywatela i cudzoziemca w państwie. In M. Chmaj (Eds.), *Wolności i prawa człowieka w Konstytucji Rzeczypospolitej Polskiej* (pp. 78–109). Warszawa: Wolters Kluwer.

Orzeczenie TK z dnia 11 lipca 2000 r., K 30/99, OTK ZU 2000/5, poz. 145. Retrieved from: https://goo.gl/iwexQu.

Orzeczenie TK z dnia 9 marca 1988 r., U 7/87, OTK 1988, poz. 1. Retrieved from: https://goo.gl/c7HreS.

Połatyńska, J. (2010). "Prawo do obywatelstwa jako prawo człowieka". *Folia Iuridica. Zeszyty Naukowe Uniwersytetu Łódzkiego*. DOI: https://goo.gl/km8drz

(2017.03.07). "Projekt ustawy o zmianie ustawy o repatriacji oraz niektórych innych ustaw". *Premier.gov.pl.* Retrieved from: https://goo.gl/5xZ2yh.

Pudzianowska, D. (2013). *Obywatelstwo w procesie zmian.* Warszawa: Wolters Kluwer.

Sandorski, J. (2006). "Obywatelstwo polskie a członkostwo Polski w Unii Europejskiej". In L. Wiśniewski (Ed.), *Wolności i prawa jednostki oraz ich gwarancje w praktyce* (pp. 52–86). Warszawa: Wydawnictwo Sejmowe.

Skrzydło, W. (2013). *Konstytucja Rzeczypospolitej Polskiej. Komentarz.* Warszawa: Wolters Kluwer.

Treaty establishing the European Community (Amsterdam consolidated version), *Official Journal C 340, 10/11/1997 P. 0173–0306.* Retrieved from: https://goo.gl/455SYq.

The Universal Declaration on Human Rights (1948). Retrieved from: http://www.un.org/en/universal-declaration-human-rights.

Ura, P. (2014). "Obywatelstwo w świetle prawa administracyjnego". *Zeszyty Naukowe Uniwersytetu Rzeszowskiego. Seria Prawnicza*, 84/2014, p. 181.

Ustawa z dnia 25 lutego 1964 r. – Kodeks rodzinny i opiekuńczy; Dz. U. 1964 Nr 9 poz. 59 with changes.

Ustawa z dnia 9 listopada 2000 roku o repatriacji; Dz. U. 2000 nr 106, poz. 1118 with changes.

Ustawa z dnia 14 lipca 2006 r. o wjeździe na terytorium Rzeczypospolitej Polskiej, pobycie oraz wyjeździe z tego terytorium obywateli państw członkowskich Unii Europejskiej i członków ich rodzin; Dz. U. 2006 nr 144, poz. 1043 with changes.

Ustawa z dnia 7 września 2007 r. o Karcie Polaka; Dz. U. 2007 nr 180, poz. 1280 with changes.

Ustawa z dnia 2 kwietnia 2009 r. o obywatelstwie polskim, Dz. U. 2012, poz. 161 with changes.

Wróbel, A. (2002). "Obywatelstwo polskie a prawa i wolności konstytucyjne". In M. Chmaj et al., (Eds.), *Konstytucyjne prawa i wolności w Polsce. Zasady ogólne. Tom I* (pp. 147–161). Kraków: Zakamycze.

Wyrok TK z dnia 15 listopada 2000 r., P.12/99; Dz. U. 2000 nr 100 poz. 1085. Retrieved from: https://goo.gl/ruxeSc.

Wyrok TK z dnia 29 czerwca 2001 r. K 23/00, OTK ZU 5/2001, poz. 124. Retrieved from: https://goo.gl/zW3mdF.

Author

Małgorzata Babula
WSPiA University in Rzeszów, Department of Constitutional Law.
Contact details: malgorzata.babula@gmail.com